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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Part 3

Price Changes in Federal Register Publications

AGENCY: Administrative Committee of the Federal Register.
ACTION: Final rule.

SUMMARY: The Administrative Committee of the Federal Register (ACFR) announces changes in the prices of certain publications. Certain prices are reduced to reflect lower costs, and othes are increased to fully recover production and distribution costs to the Government. The ACFR also adds to its regulations the prices of magnetic tapes for the **Federal Register** and CFR which were previously approved. The price changes are made to more accurately reflect the cost of producing and distributing these publications by the Government.

EFFECTIVE DATES: **Federal Register** and CFR magnetic tape prices, § 3.4(b) (3) and (4)—July 29, 1988

Federal Register microfiche price, § 3.4(b)(3)—October 1, 1988, Code of Federal Regulations prices, § 3.4(b)(4)—January 1, 1989, Weekly Compilation of Presidential Documents prices, § 3.4(b)(7)—October 1, 1988.

Federal Register Index price, § 3.4(b)(8)—October 1, 1988, List of CFR Sections Affected price, § 3.4(b)(9)—October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Denise Normandin, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, 202–523–5240.

SUPPLEMENTARY INFORMATION: The ACFR which establishes prices for **Federal Register** publications has determined that adjustments must be made on the prices of certain **Federal Register** publications to reflect more accurately the production and distribution costs to the Government. Effective October 1, 1988 the prices for annual subscriptions for the **Federal Register** Index will be reduced from $22 to $19, for the List of CFR Sections Affected (LSA) will be reduced from $24 to $21, and for the **Federal Register** microfiche will be increased from $188 to $195. Also effective October 1, 1988 the annual subscription to the Weekly Compilation of Presidential Documents will be reduced from $64 to $55, and the price of a single copy of the Weekly Compilation of Presidential Documents will be increased from $1.75 to $2.00.

Effective January 1, 1989, the price of a subscription to the paper edition of the Code of Federal Regulations will be increased from $595 to $620, the price of an annual subscription of the microfiche edition will be increased from $185 to $188, and the price of a single copy of Code of Federal Regulations microfiche will be reduced from $3.75 to $2.00.

The ACFR is also including in its regulations the prices for the magnetic tapes of the **Federal Register** and Code of Federal Regulations which were previously approved by the ACFR and published as a notice in the **Federal Register** on August 6, 1987 at 52 FR 29236. For the daily **Federal Register** the prices of the magnetic tapes are $175 per daily tape, $18,750 per six-month subscription and $37,500 per annual subscription. The prices of the magnetic tapes of the Code of Federal Regulations are $125 per tape and $21,750 per annual subscription.

This is not a major rule under E.O. 12991. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to these changes because they do not constitute a rule as defined by the Act.

List of Subjects in 1 CFR Part 3

Government publications, **Federal Register** publications, Subscription rates.

For the reasons set out in the preamble Part 3 of Chapter I of Title 1 is amended as follows:

PART 3—SERVICES TO THE PUBLIC

1. The authority citation for Part 3 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

2. Section 3.4 is amended by revising paragraphs (b)(3), (4), (7), (8) and adding (b)(9) to read as follows:

§ 3.4 Subscriptions and availability of Federal Register publications.

* * * * *

(b) * * *

(3) **Federal Register.** Daily issues will be furnished by mail to subscribers for $340 per year or $170 for six months in paper form; $195 per year in microfiche form; or $37,500 per year or $18,750 for six months in magnetic tape. Subscription fees are payable in advance to the Superintendent of Documents, Government Printing Office. Limited quantities of current or recent copies may be obtained for $1.50 per copy in paper or microfiche form, or $175 per magnetic tape.

(4) *Code of Federal Regulations.* A complete set will be furnished by mail to subscribers for $620 per year for the bound, paper edition, $188 per year for the microfiche edition; or $21,750 per year for the magnetic tape. Subscription fees are payable in advance to the Superintendent of Documents. Individual copies of the bound, paper edition of the Code volumes are sold at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of an individual copy in microfiche form is $2.00 per copy, or $125 per magnetic tape.

* * * * *

(7) *Weekly Compilation of Presidential Documents*—(i) *Nonpriority mailing.* Issues will be furnished by mail to subscribers for $55 in advance to the Superintendent of Documents, Government Printing Office.

(ii) *First-class mailing.* Issues will be furnished to subscribers by first-class mail for $96 per year payable in advance to the Superintendent of Documents, Government Printing Office. Individual issues may be obtained for $2.00 per copy from the Superintendent of Documents, Government Printing Office.

(8) *Federal Register Index.* The annual subscription price for the **Federal Register** Index purchased separately is $19.

(9) *List of CFR Sections Affected (LSA).* The annual subscription price for

the List of CFR Sections Affected (LSA) purchased separately is $21.

Don Wilson,
Chairman.
Ralph E. Kennickell, Jr.,
Member.
Carol Williams,
Member.
Approved: July 22, 1988.
Edwin Meese III,
Attorney General.
Don W. Wilson,
Archivist of the United States.
[FR Doc. 88-17160 Filed 7-28-88; 8:45 am]
BILLING CODE 1505-02-M

DEPARTMENT OF AGRICULTURE

7 CFR Part 1d

Rural Labor; Immigration Reform and Control Act

AGENCY: Department of Agriculture.
ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR Part 1d, which defines fruits, vegetables and other perishable commodities as prescribed by section 302(a) of the Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat. 3359 (hereinafter referred to as "the Act"). This rule will assist the Immigration and Naturalization Service in determining the special agricultural workers to be admitted into the United States for temporary residence.

EFFECTIVE DATE: July 29, 1988.

FOR FURTHER INFORMATION CONTACT: Al French, Special Assistant for Agricultural Labor to the Assistant Secretary for Economics, Room 227-E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 447-4737.

SUPPLEMENTARY INFORMATION: Section 302(a) of the Act directed the Secretary of Agriculture to publish regulations defining the fruits, vegetables, and other perishable commodities in which field work related to planting, cultural practices, cultivating, growing, and harvesting will be considered "seasonal agricultural services." On June 1, 1987, the United States Department of Agriculture (USDA) published its final rule (52 FR 20372), including the determination that cotton was not a fruit, vegetable, or other perishable commodity within the meaning of the Act. This final rule redefines cotton as a result of the decision in *National Cotton Council of America, et al. v. Richard E. Lyng, et al.*, No. CA-5-87-0200 (N.D. Tex. February 8, 1988).

Section 1d.5 of the rule defined "fruits" to mean "the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence." Section 1d.7 of the rule defined "other perishable commodities" to mean "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." Section 1d.7 of the rule provided an exclusive list of those commodities which were deemed to be "other perishable commodities." Cotton was listed as an example of a commodity which was deemed not to be a perishable commodity. Thus, under the framework of definitions in Part 1d, USDA did not consider cotton to be a fruit.

On February 8, 1988, the United States District Court for the Northern District of Texas entered a summary judgment in the case of *National Cotton Council of America, et al. v. Richard E. Lyng, et al.* The judgment stated in pertinent part:

> The court has determined that cotton is a fruit and thus within the ambit of the term 'fruits and vegetables of every kind' as used in 8 U.S.C. 1160(h) and also within the ambit of the defendant's regulatory definition of the term 'fruits' as used in said statute, codified at 7 CFR Part 1.d.5.

In compliance with the judgment of the court, USDA is rescinding that portion of the rule published June 1, 1987, which in effect lists cotton as an example of a commodity which is not a fruit or vegetable within the ambit of the Act and the rule.

The judgment of the court that concludes that cotton is a fruit leaves no discretion on the part of the Secretary to heed any comments that might be forthcoming if opportunity for public comment on this rule was afforded. Hence, pursuant to 5 U.S.C. 553, good cause is found that notice and opportunity for public comment is unnecessary, and good cause is found to make this rule effective less than 30 days after publication in the **Federal Register.**

The Assistant Secretary for Economics has reviewed this rule in accordance with Executive Order 12291 and has determined that it is not a major rule.

List of Subjects in 7 CFR Part 1d

Immigration, Rural labor.

Accordingly, Part 1d, Title 7, Code of Federal Regulations is amended as follows:

PART 1d—RURAL LABOR—IMMIGRATION REFORM AND CONTROL ACT OF 1986—DEFINITIONS

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

Authority: 8 U.S.C. 1160

2. Section 1d.7 is revised to read as follows:

§ 1d.7 Other perishable commodities.

"Other perishable commodities" mean those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of field work, and have critical and unpredictable labor demands. This is limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties, spanish reeds (arundo donax), spices, sugar beets, and tobacco. This is an exclusive list, and anything not listed is excluded. Examples of commodities that are not included as perishable commodities are animal aquacultural products, birds, dairy products, earthworms, fish including oysters and shellfish, forest products, fur bearing animals and rabbits, hay and other forage and silage, honey, horses and other equines, livestock of all kinds including animal specialties, poultry and poultry products, sod, sugar cane, wildlife, and wool.

Done at Washington, DC, this 25th day of July, 1988.

Richard E. Lyng,
Secretary of Agriculture.
[FR Doc. 88-17094 Filed 7-28-88; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 624]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: Regulation 624 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 340,000 cartons during the period July 31 through August 6, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 624 (§ 910.924) is effective for the period July 31–August 6, 1988. Comments due August 29, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning the possible impact of volume regulations on small entities. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: R. Charles Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20250–6456. Telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended, and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

At the beginning of each marketing year, the Lemon Administrative Committee (committee) submits a marketing policy to the Department which discusses, among other things, the potential use of volume and/or size regulations for the ensuing season. The Committee's 1988–89 season marketing policy contemplated the use of volume regulation this season. The U.S. Department of Agriculture has completed a preliminary review of that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

Lemons regulated under Marketing Order No. 910 are grown in California and Arizona. For marketing order purposes, the production area is divided into three districts: District 1, representing Central California; District 2, representing Southern California; and District 3, representing Arizona and the desert area of California. In recent seasons, District 1 has accounted for around 14 percent of total production, District 2 about 51 percent, and District 3 around 35 percent. The estimated production for the 1988–89 crop season is 44,760 cars (1 car equals 1,000 cartons, 1 carton equals 37½ pounds).

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic fresh market is fairly static, receiving around 14,500–16,000 cars per year unless unusual conditions occur. Quantities utilized in the export market have ranged from about 7,500–9,000 cars in the past four years. Exports vary depending on factors such as the amount of competitive supplies, foreign monetary exchange rates, quality, quantity, and trade practices. The processing market is basically a residual outlet. Estimated crop utilization for the 1988–89 season is 16,500 cars for domestic fresh markets, 9,000 cars export, with the remaining 19,260 to processed and other outlets.

The California-Arizona lemon industry is characterized by a large number of growers that cover a large geographical area. The number of growers is estimated to be in the range of 2,000 to 2,500. There are approximately 85 handlers of California-Arizona lemons in the regulated area.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three fiscal years of less than $500,000 and agricultural service firms, which includes handlers, are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona lemon producers and handlers may be characterized as small producers and handlers.

Volume regulations issued under the authority of the act and Marketing Order No. 910 are intended to provide benefits to both producers and consumers. Producers benefit in areas such as increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from pre-planned shipping levels, resulting in a more stable market. Consumers are assured of a steady supply of lemons in the market throughout the marketing season.

Benefits and costs of issuing regulations are difficult to quantify, as indicated in various studies regarding effects of marketing orders and criteria for measuring their effects. Although the information currently available to the AMS is limited, the known costs to growers of implementing the regulations appear to be significantly offset when compared to the potential benefits of regulation.

The reporting and recordkeeping requirements under M.O. 910 are incurred by handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

If volume regulations were not to be used for the 1988–89 season, it is likely that most of these reporting and recordkeeping functions would still be carried out. The method of calculating the quantities of lemons available for fresh shipment by handlers for any given week is based on information gathered over several previous weeks' time. Therefore, there is an incentive to keep and maintain records in anticipation of future implementation of regulation.

Based on consideration of the conditions that exist in the lemon industry at this time, the Administrator of the AMS has determined that the issuance of weekly volume regulations will not have a signficant economic impact on a substantial number of small entities. However, the submission of comments on economic impacts on small entities are encouraged from all interested parties. This matter will be further evaluated in view of the applicable comments received.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Act. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1988–89. The

committee met publicly on July 26, 1988, at Los Angeles, California to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market conditions are mixed.

Pursuant to 4 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation of an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.924 is added to read as follows:

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

§ 910.924 Lemon Regulation 624.

The quantity of lemons grown in California and Arizona which may be handled during the period July 31 through August 6, 1988, is established at 340,000 cartons.

Dated: July 27, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–17285 Filed 7–28–88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 981

[AMS–FV–88–112FR]

Handling of Almonds Grown in California; Revision of Salable and Reserve Percentages for the 1987–88 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the salable and reserve percentages for marketable California almonds received by handlers during the 1987–88 crop year, which began July 1, 1987. The salable percentage is increased from 82 to 100 percent, and the reserve percentage is correspondingly decreased from 18 percent to 0 percent. This action is taken under the marketing order for California almonds to promote orderly marketing conditions.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525–S, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 981, as amended [7 CFR Part 981], regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

There are approximately 105 handlers of almonds subject to regulation under the almond marketing order and approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action removes a requirement that all handlers of California almonds hold 18 percent of marketable almonds received during the 1987–88 crop year in reserve. Handlers may now ship 100 percent of their merchantable almonds received during the 1987–88 crop year to any markets they desire. Therefore, this action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

On October 26, 1987, a final rule was published in the **Federal Register** [52 FR 39903] establishing salable, reserve, and export percentages of 82 percent, 18 percent, and 0 percent, respectively, for the 1987–88 crop year. That action was based on a unanimous recommendation of the Almond Board of California (Board), which works with the U.S. Department of Agriculture (USDA) in administering the order. The recommendation was made pursuant to Sections 981.47 and 981.49 of the order, based on the then current estimates of marketable supply and combined domestic and export trade demand for the 1987–88 crop year. This recommendation was made at the Board's July 29, 1987, meeting.

On May 13, 1988, the Board met to review the salable and reserve percentages that had been established for the 1987–88 crop year and the supply and demand estimates from which those percentages were derived. At that meeting, pursuant to Section 981.48 of the order, the Board recommended an increase in the salable percentage from 82 percent to 100 percent of the 1987–88 marketable production, and a corresponding decrease in the reserve percentage from 18 percent to 0 percent. The Board recommended that this revision take place effective August 1, 1988.

The estimates used in reviewing the salable and reserve percentages are shown as follows: The Board's July 29, 1987, estimates are shown as a basis for comparison.

MARKETING POLICY ESTIMATES—1987 CROP

[Kernel weight basis in millions of pounds]

	Initial estimates	Revised estimates
Estimated production:		
1. 1987 production	600.0	655.1
2. Loss and exempt	30.0	22.9
3. Marketable production	570.0	632.2
Estimated trade demand:		
4. Domestic	160.0	160.0
5. Export	320.0	320.0
6. Total	480.0	480.0
Inventory adjustment:		
7. Carryin 7/1/87	76.2	76.2
8. Desirable carryover 6/30/88	63.6	114.6
9. Desirable additional carryover 8/1/88	0	113.8
10. Adjustment	-12.6	152.2
Salable and reserve percentages:		
11. Adjusted trade demand (item 6 plus item 10)	467.4	632.2
12. Reserve (item 3 minus item 11)	102.6	0
13. Salable % (item 11 ÷ item 3 × 100)	82%	100%
14. Reserve % (100% minus item 13)	18%	0%

Estimated 1987 crop production has increased from 600.0 million kernelweight pounds to 655.1 million kernelweight pounds. Estimated weight loss resulting from the removal of inedible kernels by handlers and losses during manufacturing has decreased from 30.0 million kernelweight pounds to 22.9 million kernelweight pounds. Therefore, marketable production is increased from 570.0 million kernelweight pounds to 632.2 million kernelweight pounds.

Estimated 1987–88 trade demand (shipments) remains unchanged at 480.0 million kernelweight pounds. Carryin on July 1, 1987, also remains unchanged at 76.2 million kernelweight pounds. Estimated salable carryover on June 30, 1988, based on the 82 percent salable percentage in effect at that time, is expected to increase from 63.6 million kernelweight pounds to 114.6 million kernelweight pounds due to the increase in marketable production.

The revised estimates include an additional desirable carryover of salable almonds on August 1, 1988, of 152.2 million kernelweight pounds. At its May 13, 1988, meeting, the Board indicated that additional almonds are needed to maintain sales momentum during the period from August 1, 1988, until mid-October when 1988 crop almonds are ready for shipment. As of April 30, 1988, 415.3 million kernelweight pounds of almonds have been shipped and an additional 174.9 million kernelweight pounds had been sold but not shipped. Based on these figures, it is expected that most handlers will attain a soldout position by August 1, 1988, under the current 82 percent salable percentage. Therefore, the release of an estimated additional 152.2 million kernelweight pounds of almonds through the increase of the salable percentage from 82 percent to 100 percent is warranted.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that the revision of the salable and reserve percentages, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It has been determined that conditions warrant publication of this final rule without prior opportunity for public comment, because this action relaxes restrictions on handlers by allowing them to ship additional almonds to salable outlets. This action must be taken promptly to ensure a sufficient quantity of almonds for normal domestic and export needs and to maintain the current momentum of sales. Therefore, pursuant to the administrative procedure provision in 5 U.S.C. 553, it is found with good cause that notice of public rulemaking and other public procedure with respect to this final action are impracticable and contrary to the public interest.

It is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553]. The marketing order for California almonds requires that the revised salable and reserve percentages established for a particular year apply to all marketable almonds received by handlers from the beginning of that year. The 1987–88 year began July 1, 1987.

List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Salable, Reserve, and Export Percentages

2. Revise § 981.235 to read as follows:

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

§ 981.235 Salable, reserve and export percentages for almonds during the crop year beginning July 1, 1988.

The salable, reserve, and export percentages, during the crop year beginning July 1, 1987, shall be 100 percent, 0 percent, and 0 percent, respectively.

Dated: July 26, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–17089 Filed 7–28–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1076

[DA–88–112]

Milk in the Eastern South Dakota Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the months of August 1988 through February 1989 certain provisions of the Eastern South Dakota milk order. The provisions suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market. The suspension is needed to prevent uneconomic movements of milk.

EFFECTIVE DATE: July 29, 1988.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Suspension: Issued June 17, 1988; published June 22, 1988 (53 FR 23405).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Eastern South Dakota marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on June 22, 1988 (53 FR 23405) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1988 through February 1989 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1076.13, paragraphs (c) (2) and (3)

Statement of Consideration

This action removes for the months of August 1988 through February 1989 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The suspension was requested by Land O'Lakes, Inc. (LOL), an association of producers that handles most of the market's reserve milk supplies.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during this month) during the months of August through February.

The suspension is necessary to assure the continued participation in the marketwide pool of producers historically associated with the Eastern South Dakota market. Operation of the 35-percent diversion limit during August through February would require LOL to deliver 65 percent of its milk to pool plants. According to the cooperative's estimates, only 39 to 50 percent of its milk will be needed at distributing plants. Without suspension of the diversion limit, the balance of LOL's members' milk would have to be delivered to a supply plant, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL and its member producers, with no offsetting benefits to other market participants.

In comments filed in support of the proposed suspension, LOL stated that requiring the full 65 percent of its milk to be delivered to pool plants would serve no useful purpose other than demonstrating the availability of a reserve supply of milk for Class I use. The cooperative argued that because the reserve milk will not be needed for Class I use, the requirement should be suspended.

In view of these circumstances, it is concluded that the diversion limits in the Eastern South Dakota milk order should be suspended for the months of August 1988 through February 1989 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk, from producers who regularly supply the market, otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1076

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1076.13 of the Eastern South Dakota order are hereby suspended for the months of August 1988 through February 1989, as follows:

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. The authority citation for Part 1076 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1076.13 [Amended]

2. In § 1076.13, paragraphs (c) (2) and (3) are suspended for the months of August 1988 through February 1989.

Signed at Washington, DC, on: July 25, 1988.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 88-17093 Filed 7-28-88; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 316 and 350

[Docket No. 85-014F]

Elimination of Sealing Requirement for Rendered Edible Animal Fat

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat inspection regulations to allow inspected and passed product, particularly rendered edible animal fat, transported in properly labeled tank cars or tank trucks, to move in commerce without an official seal. Formerly, establishments which processed and then transported such product to another establishment were required to have the means of conveyance sealed with an official seal by a Program employee. Establishments which received the officially sealed conveyance containing such product were required to have the seal broken by a Program employee. This rule removes an official sealing requirement that no longer appears to be necessary. The rule also deletes the requirement that a Program employee insert the "date of loading" on the label affixed to the tank car or tank truck and permits an establishment employee to insert the "date of loading."

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule allows rendered edible animal fat, shipped in tank cars or tank trucks, to be transported in commerce without an official seal provided the tank car or tank truck bears a label containing appropriate information about the product. This change could affect in a positive manner about 250 meat establishments as it removes an unnecessary official sealing requirement.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601).

At present, there are approximately 250 establishments involved in either shipping or receiving rendered edible animal fats. These establishments range from small to very large operations. These establishments are presently prohibited from shipping product unless it is sealed by a Program employee. Those receiving such product must have the seal broken by a Program employee.

This rule allows establishments to ship and receive products without having to wait for an inspector to seal the tank car or tank truck or break the seal. This is particularly beneficial for all establishments that may have to hold the tank car or tank truck and pay demurrage until the inspector is available to seal the tank car or tank truck and/or to break the seal. (*Demurrage* is the detention of tank car(s) or tank truck(s), by the shipper or receiver mainly for loading and unloading, beyond the time agreed upon, and an extra fee is charged by the carrier for such detention.)

Background

On December 1, 1987, FSIS published a proposed rule (52 FR 45639) to amend the Federal meat inspection regulations to allow inspected and passed product, particularly rendered edible animal fat, transported in properly labeled tank cars or tank trucks, to move in commerce without an official seal. FSIS also proposed to delete the requirement that a Program employee insert the "date of loading" on the label affixed to the tank car or tank truck.

Tank cars or tank trucks carrying inspected and passed product (which appears to involve only rendered edible animal fats) are required to bear a label in accordance with § 316.14 of the Federal meat inspection regulations (9 CFR 316.14). The label must contain the name of the product, the official inspection legend, and the words "date of loading" followed by a space in which the inspector shall insert the date.

Formerly, rendered edible animal fat was shipped by tank car or tank truck, under official seal, to other federally inspected establishments for further processing. Before a refining establishment could unload the rendered edible animal fat, § 325.16 of the Federal meat inspection regulations (9 CFR 325.16) requires that the official seal be broken by a Program employee. When a sealed tank car or tank truck was not present, the establishment had to wait until a Program employee arrived at the establishment to break the seal. This prevented the inspector from completing inspection of the other establishments on his/her patrol assignment and did not effectively utilize inspection resources.

Formerly, the rationale for sealing a tank car or tank truck was to ensure that "inspected and passed" product did not become adulterated with inedible animal fat or other substances. The sealing requirement was reinstated in 1965 after the Department discovered that rendered edible animal fat was mixed with water and represented as pure edible animal fat. However, the majority of products regulated by FSIS are permitted to be transported under the official inspection legend with proper labeling and do not require official sealing. Products bearing proper labeling and the mark of inspection have an equal chance of becoming adulterated as does rendered edible animal fat. Since 1965, FSIS has not experienced problems with any particular product transported in tank cars or tank trucks. Also, since that time, approximately 88 billion pounds of rendered edible animal fat have been produced and shipped domestically.

This action amends the Federal meat inspection regulations by eliminating the official sealing provision in § 316.14(b) (9 CFR 316.14(b)) for product moved in tank cars or tank trucks. Such product is permitted to move in commerce provided the tank car or tank truck bears a label in accordance with § 316.14 of the Federal meat inspection regulations (9 CFR 316.14).

In addition, this action deletes the requirement under § 316.14 that the "date of loading," a required feature of the label, be inserted by an inspector. This change permits the "date of loading" to be inserted by an establishment employee. FSIS has determined that requiring a Program employee to insert the date is not conducive to effective utilization of inspection resources and has no effect on the wholesomeness of the product.

This rule also amends Part 350 of the voluntary inspection and certification regulations (9 CFR Part 350), promulgated under the Agricultural Marketing Act of 1946 (7 U.S.C. 1622), by deleting the requirement that tank cars and tank trucks be equipped for sealing and be sealed by a Program employee before FSIS will furnish the identification service provided under § 350.3 (9 CFR 350.3).

Summary of Comments

FSIS received 8 comments in response to the proposed rule (52 FR 45639). Seven commenters expressed support for the proposal and recommended that FSIS implement the regulatory change in a final rule; one commenter opposed the proposed rule.

The opposing commenter believes that the current sealing requirement served to control some deceptive industry practices, but does not believe it eliminated the problem of converting inedible animal fats to edible animal fats or mixing edible animal fats with inedible animal fats or other substances. The commenter also believes that one cannot readily distinguish inedible animal fats from edible animal fats by color and/or odor, thus contributing to the potential for illegal diversion.

Other than an isolated incident in 1965 when an establishment misrepresented rendered edible animal fat mixed with water as pure rendered edible animal fat, no instances concerning the illegal diversion of inedible animal fats to edible animal fats or mixing with other substances have been documented. Current Agency requirements, such as the denaturing of inedible rendered animal fats (9 CFR 325.11) to give the rendered fat so distinctive a color, odor, or taste that it

cannot be confused with rendered edible animal fat (9 CFR 325.13); and when denaturing is not employed, requiring renderers, dealers, brokers, or others engaged in the transportation of inedible rendered animal fat to obtain a numbered permit from the FSIS Regional Director to engage in buying, selling, transporting and other related activities (9 CFR 325.11); and similar restrictions are considered to be adequate to prevent the diversion or misrepresentation of rendered inedible animal fat.

The commenter further suggests that if the Agency eliminates the exemption of "technical animal fat not intended for human food" from denaturing requirements and develops an enforceable denaturing standard for all inedible fats, the sealing requirement could be changed. As mentioned earlier, the safeguards to preclude adulteration during transportation (9 CFR 325.11) such as denaturing, use of numbered transportation permits, and similar restrictions full serve the Agency's needs.

Agency information indicates that FSIS has not experienced any problems with the rendering industry concerning rendered edible fat, other than the isolated incident mentioned earlier FSIS believes that the industry is operating within the provisions of the applicable regulations.

As discussed earlier, the majority of products regulated by FSIS are permitted to be transported under the official inspection legend with proper labeling and do not require official sealing. Products bearing proper labeling and the mark of inspection have an equal chance of becoming adulterated as does rendered edible animal fat. FSIS believes that the reinstatement of the sealing requirement in 1965 has served its purpose and that the official sealing/seal breaking requirements no longer are necessary. This flexibility allows FSIS to utilize its inspection resources more effectively and lessens the financial burden and inconvenience to the industry without compromising the effectiveness of the regulations.

List of Subjects

9 CFR Part 316

Meat inspection, Sealing, Edible products, Animal fat.

9 CFR Part 350

Meat inspection, Certification service.

Final Rule

For the reasons stated in the preamble, Parts 316 and 350 of the Federal meat inspection regulations are amended as follows:

PART 316—MARKING PRODUCTS AND THEIR CONTAINERS

1. The authority citation for Part 316 continues to read as follows:

Authority: 34 Stat. 1264, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254

2. Section 316.14 is revised to read as follows:

§ 316.14 Marking tank cars and tank trucks used in transportation of edible products.

Each tank car and each tank truck carrying inspected and passed product from an official establishment shall bear a label containing the name of the product in accordance with § 317.2 of this subchapter, the official inspection legend containing the number of the official establishment and the words "date of loading," followed by a suitable space in which the date the tank car or tank truck is loaded shall be inserted. The label shall be located conspicuously and shall be printed on material of such character and so affixed as to preclude detachment or effacement upon exposure to the weather. Before the car or truck is removed from the place where it is unloaded, the carrier shall remove or obliterate such label.

PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

3. The authority citation for Part 350 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 60 Stat. 1087, as amended, 7 U.S.C. 1622; 60 Stat. 1090, as amended, 7 U.S.C. 1624; 34 Stat. 1264, as amended, 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695; 7 CFR 2.15(a), 2.92.

4. Paragraph (a)(4) of § 350.3 is revised to read as follows:

§ 350.3 Types and availability of service.

(a) * * *

(4) The service will be available for products moved in tank cars and tank trucks from an official establishment or from a location operating under this service only if such tank cars or tank trucks bear a label before leaving such official establishment or such other location, in accordance with 9 CFR §§ 316.14 and 317.2.

* * * * *

Done at Washington, DC, on July 15, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-17090 Filed 7-28-88; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Parts 317 and 381

[Docket No. 85-029F]

Random Weight Packaging of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends § 317.2(h)(5) of the Federal meat inspection regulations and § 381.121(c)(5) of the Federal poultry products inspection regulations. Currently, the net weight statements on random weight packages of meat and poultry products may be stated in pounds and decimal fractions of the pound, with the decimal fraction of the pound not to exceed two decimal places. The final rule allows these statements on random weight packages to be expressed to three or more decimal places. This regulation will facilitate the use of modern weighing equipment and permit the statement of net weight on packages to be expressed in accordance with the weighing equipment's capabilities.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule, while allowing for some recapture of lost profit to businesses that use more accurate equipment, will not result in recapture in an amount exceeding $100 million. FSIS may incur some incidental costs in training, staff time, and development of verification procedures to enforce the regulations.

Effects on Small Entities

Under the circumstances mentioned above, the Administrator, Food Safety and Inspection Service, has determined that this action will not have a

significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601).

The final rule treats all businesses alike. Businesses are not required to label to three or more decimal places and may choose not to use the weighing equipment described in this rule. Market pricing of meat and poultry products tends to minimize the economic impact resulting from the use of different weighing equipment.

Background

The National Conference on Weights and Measures (NCWM) has requested that both FDA and FSIS allow declarations in pounds on random weight packages to be stated in terms of three decimal places. FDA has responded to the request by informing NCWM that it cannot change its regulations without an enabling amendment to the Fair Packaging and Labeling Act, 15 U.S.C. 1451 *et seq.*, (FPLA). Products under FSIS jurisdiction are specifically exempted from those limitations under the FPLA, and FSIS responded to the NCWM's request by publishing a proposed rule on July 1, 1987 (52 FR 24475).

The proposed rule marked a departure from past practice, when USDA and FDA promulgated similar regulations concerning statements of net weight on random weight packages. However, since consumer products regulated by FDA are subject to the FPLA, net weight requirements on random weight packages of FDA-regulated products may not be carried out to more than two decimal places, 15 U.S.C. 1453 (a)(3)(A)(ii). Meat, meat products, poultry, and poultry products are specifically exempt from this provision of the FPLA, 15 U.S.C. 1459 (a)(1).

In a letter to FSIS dated July 5, 1985, Ezio F. Delfino, Chairman of NCWM stated, "It is the opinion of the NCWM that three decimal places will permit better inventory control for the scale user and better resolution of tare and less money value error for the consumer. For products with extremely high per pound prices, the precision is warranted."

These considerations were taken into account when the shift was made from analog (fractional pounds and ounces) to digital scales and measuring in hundredths of a pound. These justifications are still true in theory, and the final rule will not have as critical an impact on the marketplace as previous refinements.

In instances where state-of-the-science measuring equipment enables accurate net weight labeling to thousandths of pound, producers could gain some advantage because of better inventory control and because the amount of "giveaway" would be reduced. Giveaway occurs when the weight is rounded off. For example, rounding 1.099 pounds down to 1.09 pounds results in the producer/seller to lose nine thousandths of a pound of inventory in giveaway. Reading 1.0999 pounds down to 1.099 pounds results in a loss of only nine ten thousandths of a pound, or one tenth of the amount. These are very small amounts, and even in a very large scale operation, would probably not add up to a large amount of money. In any event, pricing generally accommodates the potential loss due to rounding down. The final rule allows large producers to recover some profits otherwise lost to a larger scale giveaway while costing little to individual consumers because of smaller amounts usually purchased.

Equipment intended to be used for weighing to more than two decimal places will first be reviewed by FSIS, which will determine the acceptability of the equipment and any necessary use conditions of a weighing device depending upon its intended use in a meat or poultry plant, e.g., on-line cured pork products or on-line poultry weighing (See 9 CFR 308.5 and 381.53). FSIS evaluations of these types of equipment have generally focused on sanitation issues, namely, cleaning, and other similar factors to a greater extent than evaluations of precision and accuracy. Precision and accuracy have usually been evaluated at the point of inspection. These certifications of weights and measures have generally been conducted by State and local officials.

Summary of Comments

FSIS received two comments in response to the proposed rule. Both commenters, the American Association of Meat Processors (AAMP), and the National Food Processors Association (NFPA), expressed unqualified support for the proposal and recommended that FSIS implement the regulatory change in a final rule.

Final Rule

For the reasons stated in the preamble, FSIS is amending § 317.2(h)(5) of the Federal meat inspection regulations and § 381.121(c)(5) of the Federal poultry products inspection regulations by eliminating the requirement that net weights on random weight packages be stated in terms of pounds and/or decimal fractions of the pound carried out to not more than two decimal places. This will permit statements of net weight on these packages to be declared in terms of three or more decimal places.

List of Subjects

9 CFR Part 317

Labeling, Marking devices, Containers.

9 CFR Part 381

Mandatory poultry products inspection, Labeling, Containers.

PART 317—[AMENDED]

1. The authority citation for Part 317 is revised to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

§ 317.2 [Amended]

2. Section 317.2(h)(5) (9 CFR 317.2(h)(5)) is amended by deleting the words "carried out to not more than two decimal places."

PART 381—[AMENDED]

3. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

§ 381.121 [Amended]

4. Section 381.121(c)(5) (9 CFR 381.121(c)(5)) is amended by deleting the words "carried out to not more than two decimal places."

Done at Washington, DC on July 15, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88–17091 Filed 7–28–88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 87F-0338]

Indirect Food Additives; Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of zeolite Na-A as a pigment extender in the manufacture of paper and paperboard for use in contact

with food. This action responds to a petition filed by the PQ Corp.

DATES: Effective July 29, 1988; objections and requests for hearing August 29, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 6, 1987 (52 FR 42728), FDA announced that a petition (FAP 7B4030) had been filed by the PQ Corp., P.O. Box 258, Lafayette Hill, PA 19444, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of zeolite A in the manufacture of paper and paperboard for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this review, the agency finds that a more appropriate and accurate name for the food additive is zeolite Na-A, CAS Reg. No. 68989–22–0. The agency concludes that the food additive is safe and effective for the requested use, and that the food additive regulations in § 176.170(a)(5) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before August 29, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 176.170 is amended by revising the table in paragraph (a)(5) to alphabetically add a new entry in the list of substances to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Zeolite Na-A (CAS Reg. No. 68989–22–0).	For use as a pigment extender at levels not to exceed 5.4 percent by weight of the finished paper and paperboard.

* * * * *

Dated: July 21, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–17147 Filed 7–28–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 173

Contractor Business Integrity and Ethics

AGENCY: Office of the Under Secretary of Defense (Acquisition), Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: The Under Secretary of Defense (Acquisition) issued a directive-type memorandum on July 15, 1988, to implement acquisition procedures pertaining to Contractor Business Integrity and Ethics. The memorandum establishes procedures for use with specific contractors to protect the DoD's interests in acquisitions that will exceed $100,000. Further, the memorandum includes a listing of contractors, entitled, "List of Contractors From Whom Certification is Required" that specifies the contractors to whom the DoD procedures apply.

DATES: Effective July 15, 1988. Comments must be received by August 29, 1988.

ADDRESS: Office of the Deputy Assistant Secretary of Defense (Procurement), Room 3C838, Pentagon, Washington, DC 20301–5000.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred Volkman, Director, Contract Policy Administration, DASD(P)/CPA, (202) 697–0895.

Determination to Issue an Interim Rule

A determination has been made by the Under Secretary of Defense for Acquisition that urgent and compelling circumstances regarding Contractor Business Integrity and Ethics make compliance with requirements of

subsections 22 (a) and (b) of the Office of Federal Procurement Policy Act impracticable and the requirements are therefore waived.

SUPPLEMENTARY INFORMATION: It has been determined by the Under Secretary of Defense (Acquisition) that procedures are desirable to protect DoD's interests in contracts in excess of $100,000 with specific contractors.

List of Subjects in 32 CFR Part 173

Armed Forces; Government procurement.

Accordingly, Title 32, Chapter 1, Subchapter E, is amended by adding Part 173 as follows:

PART 173—CONTRACTOR BUSINESS INTEGRITY AND ETHICS

Sec.
173.1 Scope.
173.2 Certificate of contractor business integrity and ethics.
173.3 Profit recapture for illegal or improper activity.
Appendix—List of Contractors From Whom Certification is Required

Authority: 10 U.S.C. 2202.

§ 173.1 Scope.

(a) A "Certificate of Contractor Business Integrity and Ethics" shall be required from offerors specified on the "List of Contractors From Whom Certification is Required" prior to the award of a contract that will exceed $100,000. Contracting officers shall not consent to subcontracts if the proposed subcontractor is on the "List of Contractors From Whom Certification is Required", unless the subcontractor has executed the certificate. If the offeror cannot certify as provided in paragraph (a)(1) of (a)(2) in the certificate and in lieu, thereof, provides the separate certifications described in paragraph (b) or (c), award to such offeror shall not be made until all circumstances have been reviewed and the Service Acquisition Executive determines that award to the offeror would be appropriate under the circumstances.

(b) The contract clause "Profit Recapture for Illegal or Improper Activity" will be included in all contracts that exceed $100,000 issued hereafter with contractors on the "List of Contractors From Whom Certification is Required".

§ 173.2 Certificate of contractor business integrity and ethics.

(a) The offeror certifies, to the best of its knowledge and belief, that

(1) It has not—

(i) Employed, contracted with, or otherwise retained, directly or indirectly, at any subcontract tier, any individual or company to obtain, or

(ii) Otherwise obtained from the Government, directly or indirectly, any source selection information concerning this acquisition, except for information that was officially made available by the contracting officer, or information that was generally available to the public. For purposes of this certification, source selection information is oral or written information pertaining to the following:

(A) Acquisition plans.

(B) Source selection plans.

(C) Technical evaluation plans.

(D) Source selection evaluation information (evaluations, audit reports, financial reports, recommendations, rankings, competitive range determinations, technical reports, cost and pricing information, competitors' proposals).

(E) Internal government program estimates; and

(2)(i) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to

(A) Those prices,

(B) The intention to submit an offer, or

(C) The methods or factors used to calculate the prices offered;

(ii) The prices in this offer have not been knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(iii) No attempt has been made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(3) In making the certifications required by paragraph (a)(1) of this section, the offeror shall describe the steps it took to determine that it had not retained any individual or company to obtain, or otherwise obtained, any source selection information. In making the certification required by paragraph (a)(2) of this section, the offeror shall describe the steps it took to determine that the prices in this offer have been arrived at independently, that the prices were not disclosed to any other offeror or competitor, and that no attempt was made to restrict competition.

(b) If the offeror cannot certify to paragraph (a)(1) of this section, the offeror must furnish separately a certified written statement setting forth in detail, the identities of the individuals employed or otherwise retained, the purposes for which they were retained, the corporate personnel with whom they worked, a summary of the work product or services that were provided, as accounting of all billings presented and/or paid, a description of what source selection information was obtained, and how, when, and from whom the source selection information was obtained.

(c) If the offeror cannot certify to paragraph (a)(2) of this section, the offeror must furnish separately a certified written statement setting forth in detail, the terms or substance of any agreement, disclosure, or attempt to restrict competition, the identities of the other offerors or competitors involved, and the names and titles of any involved corporate personnel.

(d) These certificates and accompanying statements required, must be executed by the offeror's corporate president or his designee at no more than one level below the president's level.

§ 173.3 Profit recapture for illegal or improper activity.

(a) The Government, at its election, may reduce the contract price by the amount of any anticipated profit determined as set forth in paragraph (b) of this section, or 10 percent of the contract price, whichever is greater; if

(1) A person or business entity is convicted for violating 18 U.S.C. 201–224 (bribery, graft, and conflicts of interest), 18 U.S.C. 371 (conspiracy), 18 U.S.C. 641 (theft of public money, property or records), 18 U.S.C. 1001 (false statements), 18 U.S.C. 1341 (fraud), 18 U.S.C. 1343 (fraud by wire) for any act in connection with or related to the obtaining of this contract; or

(2) The Secretary of Defense, or his designee, determines that any officer, employee, or agent of the contractor or any person or business entity operating on behalf of the contractor obtained from the Government, directly or indirectly, any source selection information concerning this contract prior to its award, except for information that was officially made available by the contracting officer, or information that was generally available to the public. For purposes of this clause, source selection information is oral or written information pertaining to the following:

(i) Acquisition plans.

(ii) Source selection plans.

(iii) Technical evaluation plans.

(iv) Source selection evaluation information (evaluation, audit reports, financial reports, recommendations, rankings, competitive range determinations, technical reports, cost

and pricing information, competitors' proposals).

(v) Internal government program estimates; or

(3) The Secretary of Defense, or his designee, determines that:

(i) The prices in this contract were not arrived at independently because, for the purpose of restricting competition, the contractor consulted, communicated, or agreed with any other offeror or competitor relating to

(A) Those prices,

(B) The intention to submit an offer, or

(C) The methods or factors used to calculate the prices offered;

(ii) The prices in this contract were knowingly disclosed by the contractor, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of negotiated solicitation) unless otherwise required by law; or

(iii) An attempt was made by the contractor to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

Prior to making a determination, the Secretary or his designee shall provide to the contractor a statement of the action being considered and the basis therefor. The contractor shall have 30 calendar days after receipt to submit any information that the contractor wants the Secretary to consider.

(b) The amount of anticipated profits referred to in paragraph (a) of this section, shall be determined by the contracting officer from records or documents in existence prior to the date of the award of the contract.

(c) The rights and remedies of the government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Note: Instructions for incentive contracts, paragraph (a) of this section, should be modified to eliminate target profit and reduce the ceiling price by an equal amount.

For cost type contracts, paragraph (a) of this section, should be modified to eliminate fee paid or to be paid.

Appendix—List of Contractors From Whom Certification Is Required

Armtec, Incorporated, 410 Highway 19 South, Palatka, FL 32077

Cubic Corporation, 9333 Balboa Avenue, San Diego, CA 92123: All divisions and subsidiaries.

Emhart Corporation, 426 Colt Highway, Hartford, CT 06101: All divisions and subsidiaries.

Executive Resource Associates, 2011 Crystal Drive, Suite 813, Arlington, VA 22202

Hazeltine Corporation, 500 Commack Road, Commack, NY 11725: All divisions and subsidiaries.

Kane Paper Corporation, 2365 Milburn Avenue, Baldwin, NY 11510

Litton Data Systems, Incorporated, 8000 Woodley Avenue, Van Nuys, CA 91408

Loral Aircraft Braking Systems, 1210 Massillon Road, Akron, OH 44315

Loral Defense Systems Akron, 1210 Massillon Road, Akron, OH 44315

Loral Electronic Systems, Ridge Hill Road, Yonkers, NY 10710

McDonnell Douglas Corporation, Banshee Road, P.O. Box 516, St. Louis, MO 63166: All divisions and subsidiaries.

Northrop Corporation, Ventura Division, 1515 Rancho Conejo Boulevard, Newbury Park, CA 91320

Teledyne Electronics, 649 Lawrence Drive, Newbury Park, CA 91320

Unisys Corporation, One Unisys Place, Detroit, MI 48232

Unisys Corporation, Defense Systems Division, 3333 Pilot Knob Road, Eagan, MN

Unisys Corporation, Defense Systems Division, Neil Armstrong Boulevard, Eagan, MN

Unisys Shipboard & Ground Systems Group, Marcus Avenue, Great Neck, NY 11020

United Technologies Corporation, UT Bldg, Hartford, CT 06101: All divisions and subsidiaries.

Varian Associates, Incorporated, 611 Hansen Way, Palo Alto, CA as to contracts originating in the following division: Continental Electronics Manufacturing Co.,[1] Dallas, TX

Whittaker Corporation (Lee Telecommunications Corporation (LTC), Route 1, Farmington, AR 72730)

Zubier Enterprises, 6201 Pine Street, Harrisburg, PA

July 25, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-17034 Filed 7-28-88; 8:45 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1 and 201-41

[Firmr Interim Rule 1]

Mandatory Federal Telecommunications System (FTS) 2000 Network

AGENCY: Information Resources Management Service, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule provides for the mandatory use of FTS 2000 services when made available on that network. Temporary blanket exceptions to the use of the FTS 2000 network are provided to Federal agencies for all requirements other than switched voice services. Written exceptions to the application of this interim rule are required beginning October 1, 1988, for procurement planning purposes. Previous regulatory exclusions (see § 201-1.103(c)) are voided. GSA will review and update existing exclusionary agreements with concerned agencies at their request. The intent of this regulation is to implement the FTS 2000 network provisions contained in the Conference Report to Pub. L. 100-202 dated December 22, 1987.

DATES: Effective date: October 1, 1988.

Comments are due: August 29, 1988.

ADDRESS: Comments should be addressed to: General Services Administration (KMPR), Project KMP-88-44, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: William R. Loy, Regulations Branch (KMPR), Office of Information Resources Mangement Policy, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) The Conference Report to Pub. L. 100-202 (H.R. Conf. Rep. No. 100-498, 100th Cong., 1st Sess. 1166, December 22, 1987) specifies that by July 1988 GSA publish regulations governing the use of the FTS 2000 network. These regulations must provide that: agencies subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759) must use the FTS 2000 network; exceptions shall be granted by GSA for agencies' unique or special purpose network requirements; and that agencies may appeal a GSA denial of an exception request to the Office of Management and Budget (OMB).

(2) Therefore, consistent with the legislative intent of Pub. L. 100-202 and to ensure large scale economies, the use of FTS 2000 services is mandatory when made available on the FTS 2000 network. This applies to all Federal agencies unless otherwise provided for by law or excepted by GSA. Temporary blanket exceptions to the use of the FTS 2000 network are provided to Federal agencies for all requirements other than switched voice services. (These exceptions also cover the use of data offerings under switch voice provisions of the FTS 2000 contract.)

(3) Agencies may appeal a GSA denial of an exception to OMB under the procedures in 40 U.S.C. 759(e) and § 201-1.102-2(c).

(4) Previous regulatory exclusions (§ 201-1.103(c)) for the Department of Defense, National Aeronautics and Space Administration, Tennessee Valley Authority, Nuclear Regulatory Commission, Department of Energy,

[1] Firm suspended as of July 6, 1988.

Federal Aviation Administration, Veterans Administration, and the Bureau of Prisons are void as of October 1, 1988. GSA will review the underlying exclusionary agreements and current requirements with each of these agencies at their request.

(5) Agencies need not seek exceptions for requirements that have already been authorized under FIRMR provisions prior to October 1, 1988, until the end of the current contract life for these requirements.

(6) Changes made in 41 CFR Chapter 201 are explained in the following paragraphs.

(a) In Part 201–1, Federal Information Resources Management Regulations System, § 201–1.103, paragraphs (c)(3) and (c)(4) are removed to withdraw previous regulatory exclusions for certain agencies. Section 201–1.103(c)(5) is redesignated as § 201–1.103(c)(3).

(b) In Part 201–41, Routine changes and use of the Federal Telecommunications System (FTS), § 201–41.005 is revised by removing the word "[Reserved]" and inserting the new section caption "The mandatory FTS 2000 network" with the addition of text consistent with the legislative intent of the mandatory FTS 2000 provisions contained in the Conference Report to Pub. L. 100–202.

(7) Pursuant to 41 U.S.C. 418b(d), the publication of a proposed rule has been waived because urgent and compelling circumstances require the timely issuance of an interim rule consistent with the FTS 2000 provisions contained in the Conference Report to Pub. L. 100–202. The interim rule itself is a solicitation for public comments while additional rulemaking activity is in progress to implement this rule on a comprehensive basis.

(8) The GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. This interim rule is not expected to have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.). This Governmentwide management regulation will have little or no net cost effect on society.

(9) All comments received during the interim rule comment period will be considered in a proposed codification amendment to permanently implement the new provisions.

List of Subjects in 41 CFR Parts 201–1 and 201–41

Government procurement, Government property management, Information resources activities, Telecommunications, and Federal Telecommunications System.

PART 201–1—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM

§ 201–1.103 [Amended]

Section 201–1.103(c) is amended by removing paragraphs (3) and (4), and by redesignating existing paragraph (5) as paragraph (3).

PART 201–41—ROUTINE CHANGES AND USE OF THE FEDERAL TELECOMMUNICATIONS SYSTEM (FTS)

1. The table of contents for Part 201–41 is amended by revising the entry for § 201–41.005; and the authority citation for Part 201–41 is revised to read as follows:

Authority: Sec. 205(c) 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345; 40 U.S.C. 751(f).

2. Section 201–41.005 is added to read as follows:

§ 201–41.005 The mandatory FTS 2000 network.

(a) *Scope.* This section prescribes policies and procedures regarding mandatory agency use of the FTS 2000 network.

(b) *General.* The Conference Report to Pub. L. 100–202 (H.R. Conf. Rep. No. 100–498, 100th Cong., 1st Sess. 1166, December 22, 1987) specifies that: Agencies subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759), must use the FTS 2000 network; exceptions shall be granted by GSA for agencies' unique or special purpose network requirements; and that agencies may appeal a GSA denial for an exception to the Office of Management and Budget (OMB).

(c) *Policy.* (1) Federal agency activities subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759), shall use the FTS 2000 network to satisfy telecommunications requirements which are within the scope of FTS 2000 network services unless:

(i) The agency requests and obtains an exception from GSA;

(ii) A blanket exception is provided in this § 201–45.005; or

(iii) An exception to the use of the FTS 2000 network for the agency is otherwise specifically provided by law.

(2) Exceptions to the use of the FTS 2000 network shall be considered by GSA for agencies' unique or special purpose network requirements.

(3) The use of FTS 2000 services is mandatory when made available on the FTS 2000 network. For all requirements other than switched voice services, temporary blanket exceptions to the use of the FTS 2000 network are hereby provided to Federal agencies. (These exceptions also cover the use of data offerings under switched voice provisions of the FTS 2000 contract.) The FTS 2000 Interagency Management Council is undertaking a comprehensive study of the Government's information network requirements, as directed in the Conference Report to Pub. L. 100–202 (H.R. Conf. Rep. No. 100–498, 100th Cong., 1st Sess. 1166, December 22, 1987). The blanket exceptions provided in this section will be reexamined in the period between completion of this study and completion of the transition to FTS 2000.

(d) *Procedures.* (1) Exceptions to the use of the FTS 2000 network are required beginning October 1, 1988, for procurement planning purposes. Federal agencies may continue to use intercity telecommunications services and facilities authorized under FIRMR provisions prior to October 1, 1988, until the end of the current contract life for these requirements without obtaining an exception to the use of the FTS 2000 network.

(2) If required, agency requests for an exception to the use of the FTS 2000 network shall be sent to General Services Administration, Information Resources Management Service (K), Washington, DC 20405. Agency requests must address the unique or special purpose network requirements which justify the basis for the requested exception.

(3) Federal agencies may conduct procurements for intercity telecommunications services and facilities without prior approval of GSA under Part 201–38 or 201–39 when:

(i) Requirements are within the scope of an exception to the use of the FTS 2000 network provided by GSA; and

(ii) The total dollar value of telecommunications resources required by the procurement (including evaluated optional features and renewals over the life of the contract) does not exceed $2.5 million ($250,000 for a specific make and model specification or for requirements available from only one responsible source).

(4) Agencies may appeal a GSA denial to the Office of Management and Budget (OMB) under procedures in 40 U.S.C. 759(e) and § 201–1.102–2(c).

Dated: July 14, 1988.

John Alderson,

Acting Administrator of General Services.

[FR Doc. 88–17070 Filed 7–28–88; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85–388; RM 5167]

Amendment Rules Relating to Applications to Serve Rural Service Areas

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission is correcting the rules adopted in the Final Rule (Further Order on Reconsideration).

EFFECTIVE DATE: June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Andy Nachby, David Siehl, Mobile Services Division, Common Carrier Bureau; tele: 632–6450.

In the Further Order on Reconsideration (FCC 88–155) in the above captioned matter, previously published in the **Federal Register,** 53 FR 18562, May 24, 1988, the Rules Section inadvertently deleted or omitted certain specific requirements for applications or Rural Service Areas (RSAs). The Rules Section is corrected as follows:

PART 22—[AMENDED]

1. Former § 22.913(a)(1), relating to a major action under § 1.1305 of the rules, was inadvertently deleted in the amendment of § 22.913. Therefore, § 22.913(a) is corrected to include former § 22.913(a)(1) as newly designated § 22.913(a)(10) to read as follows: (§ 22.913(a)(10) is added):

§ 22.913 Content and form of MSA and NECMA applications.

(a) * * * (10) An exhibit indicating whether a grant of the application will be a major action under § 1.1305 of the Commission's rules.

* * * * *

2. Minor changes to § 22.913(b) (4) and (5) to reflect the amendment of § 22.913 (a) were inadverently omitted. Therefore, § 22.913(b)(4) pertaining to the second sentence and § 22.913(b)(5) are corrected to read as follows (§ 22.913(b)(4) second sentence and (b)(5) are revised):

§ 22.913 Content and form of MSA and NECMA applications.

(b) * * *

(4) * * * The exhibits specified in § 22.13 (1) and (2) and § 22.913(a) (1), (7), (9), and (10) shall immediately follow the initial Form 401 * * *.

(5) The exhibits required by § 22.913 (a) (3), (4), (6), and (8) shall not exceed three pages in length each.

* * * * *

3. Newly added § 22.923 inadvertently omitted the requirement for an exhibit addressing whether the grant of the application will be a major action under § 1.1305 of the Commission's Rules. Further, § 22.923(a)(1) inadvertently omitted specific information necessary to satisfy the map requirement under the section. Therefore, § 22.923 is corrected to read as follows (§ 22.923(a) (1) and (11) are revised):

§ 22.923 Content and form of Rural Service Area (RSA) applications.

(a) * * * (1) An exhibit including a map or maps of the cellular system's existing Cellular Geographic Service Area, if any, and the Cellular Geographic Service Area proposed in the application. This exhibit shall contain all the information specified in § 22.903(a)(1). In addition, this exhibit shall include an 8½ by 11 inch reduced copy of a 1:250,000 or 1:500,000 scale map, depicting the complete RSA and any CGSA(s) therein. Boundaries of the RSA, CGSA(s), and 39 dBu contours must be clearly indicated. The full-size map need not be included in the microfiche copies of the application from which the microfiche is made. For microfiching purposes, the reduced map is sufficient.

* * * * *

(11) An exhibit indicating whether a grant of the application will be a major action under § 1.1305 of the Commission's Rules.

* * * * *

4. In § 22.923(b)(5), the last sentence is revised to read as follows:

§ 22.923 [Amended]

* * * * *

(b) * * *

(5) * * * In addition, the information on the transmittal sheet and on the microfiche envelope must be identical.

Federal Communications Commission.

H. Walker Feaster,

Secretary.

[FR Doc. 16094 Filed 7–28–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 74

[MM Docket No. 86–112]

Rules To Provide for Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: Action taken herein extends the time for filing oppositions to petitions for reconsideration in the *Report and Order* in MM Docket No. 86–112, FCC 88–125, released April 15, 1988, 53 FR 14802 (April 26, 1988), for one week from July 8, 1988, until July 15, 1988. The *Report and Order* adopted changes to the rules to allow noncommercial educational FM translator stations assigned to reserved channels and owned and operated by their primary stations to receive signals for rebroadcast by any technical means the licensee deems suitable, including satellite and microwave transmission. The extension of time was reqested by National Public Radio.

DATES: Replies to Oppositions to Petitions for Reconsideration are due on July 15, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION:

Order

By the Chief, Mass Media Bureau.

Adopted: July 11, 1988.

Released: July 13, 1988.

1. On June 30, 1988, National Public Radio (NPR) filed a request for a one week extension of time, from July 8, 1988, to July 15, 1988, in which to file its Reply to Oppositions to Petitions for Reconsideration in the above-docketed proceeding. NPR states that the extension of time is needed to accommodate the travel plans of co-counsel. In addition, NPR requests the one week extension due to proximity of filing deadlines in two other Commission proceedings, the *Further Notice* in this proceeding and the *Notice of Inquiry* in MM Docket No. 88–140,[1]

[1] *Further Notice of Proposal Rule Making* in MM Docket 86–112, FCC 88–125, released April 15, 1988; *Notice of Inquiry* in MM Docket No. 88–140, FCC 88–120, released June 2, 1988.

both of which have a bearing on the FM translator issues addressed in the Petitions for Reconsideration and the Oppositions. NPR adds that it has contacted counsel for each of the parties filing oppositions to its Petition for Reconsideration in this proceeding and that none objects to the requested extension of time.

2. In light of the factors indicated by NPR, we believe that an extension of time to file its Reply to Oppositions is warranted. We do not believe that a one week extension will adversely prejudice the opposing parties or unduly delay the resolution of this proceeding.

3. Accordingly, it is ordered, that NPR's request for a one week extension of time to file its Reply to Oppositions in the above-captioned docket is granted. The Reply to Oppositions will be due on July 15, 1988.

List of Subjects in 47 CFR Part 74

Noncommercial FM translators.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-17110 Filed 7-28-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 146
Friday, July 29, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 933

[Docket No. AO F&V 87-1]

Strawberries Grown in Florida; Decision and Referendum Order on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes a Federal marketing agreement and order for strawberries grown in Florida. Strawberry producers will be given the opportunity to vote in a referendum on the proposed order. The proposed order would fund production, varietal and market research and promotion for stawberries grown in Florida. It would be financed by assessments levied on handlers of strawberries grown in Florida. The proposed order would establish a committee composed of 12 stawberry producers to administer the program. The assessment rate would be recommended by the committee and approved by the Secretary.

DATE: The referendum shall be conducted from August 17–31, 1988.

FOR FURTHER INFORMATION CONTACT: John Toth or William Pimental, Fruit and Vegetable Division, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883, telephone (813) 299–4770; or Tom Tichenor, Marketing Order Administration Branch, Room 2531–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3930.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include the following. The Notice of Hearing was issued May 6, 1987 and published in the **Federal Register** (52 FR 17581) on May 11, 1987. An Extension of Time for Filing Briefs was issued July 13, 1987 and published in the **Federal Register** (52 FR 27369) on July 21, 1987. A Recommended Decision and Opportunity to File Written Exceptions to the Proposed Marketing Agreement and Order was issued March 1, 1988 and published in the **Federal Register** (53 FR 7194) on March 7, 1988.

The Recommended Decision provided an opportunity to file written exceptions to the Recommended Decision. Exceptions were received from the Florida Strawberry Growers Association (FSGA) of Plant City, Florida, the U.S. Small Business Administration (SBA), and John Stanaland, a strawberry producer in Wimauma, Florida.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12291.

Preliminary Statement

This decision is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing formulation of marketing agreements and marketing orders (7 CFR 900.1 through 900.18).

The proposed marketing agreement and order, hereinafter referred to collectively as the "order," were formulated on record of a public hearing held in Valrico, Florida, May 27–29, 1987.

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the RFA.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such action, in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and their rules and regulations are unique in that they are normally brought about through group action of essential small entities for their own benefit. Thus both the RFA and the Act are compatible with respect to small business entities.

The record indicates that most handlers regulated under this program would meet the Small Business Administration (SBA) definition of small agricultural service firms (13 CFR 121.2). Small agricultural service firms are defined as those having annual gross receipts for the last three years of less than $3,500,000. Approximately 20 handlers of Florida strawberries are subject to regulation under this marketing order. Small agricultural producers are defined by the SBA as having revenues for the last three years of less than $500,000. Approximately 160 strawberry producers would be affected by this proposed order. Testimony indicated that the production, harvesting and preparation for market of strawberries grown in Florida is relatively similar for all strawberry producers.

Florida is the second largest stawberry producing State, providing roughly one-sixth of the U.S. fresh strawberry production. California dominates the market with approximately 75 percent of the country's total fresh strawberry production. Commercial production of strawberries in Florida began about 100 years ago. The size of the industry has fluctuated during the last 25 years from between 1200 acres to its present size of around 5000 acres. The industry expanded in the last 1970's when producers began using plant varieties developed in California. Strawberries rank as Florida's fifth most important agricultural commodity in terms of cash receipts. Testimony indicates that annual sales have averaged $50 million over the last five years, and the total economic impact of the industry is estimated at $100 million annually. About eighty-five percent of the planted strawberry acreage in the State is in the two-county, west-central area outside Tampa.

At present, the average size of Florida strawberry farms is 21 acres. Approximately one-third of the farms are larger than 35 acres. Very few farms are less than five acres and less than 10 percent are over 75 acres.

Testimony indicates that there are approximately 20 handlers in the industry. At one time or another during the production season, a significant number of producers are also handlers of their own strawberry production. Only three of the major handlers act only as handlers and do not produce any strawberries.

The evidence indicates that Florida's strawberry industry is at a disadvantage in the marketplace. Production costs are higher, yields are lower, and quality of

the product is generally lower in Florida than in other States.

Florida producers use strawberry plant varieties developed in California research facilities for growing conditions in California. Seedlings must be purchased (assuming availability) and planted each year. The royalties paid per acre of seedlings are roughly equal to the assessments per acre that the record indicates might be collected under this proposed marketing order. While these varieties produce better than other available varieties, they do not produce up to standards found in California because of Florida's different growing conditions. The evidence indicates that yields can be as much as one third of yields in California.

Strawberry production is both capital and labor intensive. Because the varieties now used in Florida are not perfectly suited for the local growing conditions, the crop is more susceptible to diseases and insects found in the State. Production costs are high due to an increased need for insecticides and herbicides. In addition, harvesting costs tend to be high because laborers must sort through disease infected strawberries during the picking process.

Prices received for Florida stawberries vary from year to year and month to month within each marketing season. The evidence shows that Florida producers have an advantage early in the season when they are the only producers of stawberries in the country. Prices can be as much as 300 percent higher in December and January than in April and May when other producing regions harvest their production. However, early season production risks are higher due to occasional adverse weather conditions, and the production level is lower to varietal limitations. Consequently, less than 20 percent of Florida's production is harvested early in the season. The evidence indicates that if researchers in other regions are able to develop earlier harvesting varieties, the Florida industry could lose one marketing advantage it now has.

The proposed order would provide for varietal research and for market research and promotion activities. For about 20 years, the State of Florida has operated a production and varietal research facility dedicated to strawberry research. This facility has made some progress in adapting and developing different strawberry varieties to Florida growing conditions and earlier harvests. However, additional funds are needed to increase research efforts and reduce the time when a new strawberry plant variety, specifically developed for Florida conditions, could be developed, field tested and introduced. Research seeks to increase early plant productivity, improve disease resistance and develop a more hearty strawberry variety that would be less susceptible to changes in weather. Also, a variety that requires fewer fertilizer and pesticide applications would significantly reduce production costs and also would have a beneficial effect on the environment.

Some Florida producers and handlers believe that an improved quality strawberry would increase the demand for Florida strawberries and improve the industry's position in the marketplace. Funds generated under the proposed order could be used to supplement current research efforts. The evidence shows that the Florida strawberry industry has a great potential for an increase in market value and volume of production if a better quality strawberry variety could be developed.

Individual producers have worked from time to time with the existing State research program to develop an improved strawberry variety. However, the FSGA is the only organization that has provided supplemental funds to current research programs. While these contributions have been helpful in supporting research, more research funds are needed if the research efforts are to be increased and new varieties developed sooner.

In addition to supporting scientific research, marketing order funds would be used to promote Florida strawberries in the marketplace. The record indicates that FSGA is the only organization that funds promotional activities for the Florida strawberry industry. However, it is able to spend only a small amount of money during only a portion of the harvest season to promote the industry's product. These promotional efforts have included non-paid advertising such as hosting a local strawberry festival, developing point-of-purchase displays and distributing promotional literature to the news media sources.

FSGA is a voluntary organization that relies on voluntary contributions of its producer and handler members. Not all strawberry producers and handlers choose to be members of the association. However, all producers and handlers benefit from its research and promotional contributions. One of the objectives of the proposed order would be to give all industry members an opportunity to participate in determining the future direction of strawberry research and promotion, and to share in the costs of those efforts. Several witnesses testified at the hearing that an association based on voluntary membership will never have the support of the entire industry, and without such support a program of research and promotion will never be entirely successful.

If adopted by Florida strawberry producers, this program would authorize collection of an assessment fee from handlers who handle strawberries produced in Florida. The amount of assessment would be recommended by a committee of producers to the Secretary of Agriculture for approval. The record indicates that a total assessment in the range of three cents to five cents per flat would be an acceptable amount and would provide funds to finance the research and promotion programs and administer the marketing order. Such amounts would represent less than one percent of a handler's or producer's strawberry income, based on 1984–85 prices.

The evidence also shows that the assessment could be passed back to producers or shared by handlers and producers. However, the scope and extent of such passing back or sharing of assessments is not clear. Nonetheless, under the Act and the proposed order, it is the handler's responsibility to pay the assessment recommended by the committee and approved by the Secretary.

Certain recordkeeping and reporting requirements established under the proposed order would be imposed on strawberry handlers. Such recordkeeping and reporting requirements are minimal and should not impose an undue burden on handlers.

These requirements have been carefully evaluated against the potential benefits of the program. The added burden resulting from these requirements should not be significant when compared to the benefits which are expected to accrue to such businesses. All entities would be treated equally under the proposed order. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the reporting and recordkeeping provisions that are included in the proposed order will be submitted for approval to the Office of Management and Budget (OMB). They would not become effective prior to OMB approval.

The record supports the view that increased funding would increase the possibility and timeliness of research success and thereby improve the marketing of strawberries grown in Florida. Also, the industry would benefit from a unified organization that would direct the research and promotion efforts for the industry as a whole.

It has therefore been determined that the program should be submitted to producers for a referendum vote.

Findings and Conclusions

Discussions and rulings included in the discussions of the material issues, findings; and general findings of the Recommended Decision set forth in the March 7, 1988 issue of the **Federal Register** (53 FR 7194) are hereby approved and adopted subject to the following modifications and corrections:

The findings and conclusions in material issue number 2 of the recommended decision, concerning whether the economic and marketing conditions justify a need for the order, are amended by adding the following nine paragraphs after the 23rd paragraph of material issue number 2 to read as follows:

Frank Swain, Chief Counsel for Advocacy, writing for the Small Business Administration (SBA), contends that an orderly market presently exists because prices for strawberries react in a predictable supply and demand manner when California strawberries enter the market. However, according to testimony provided at the hearing, prices actually fall precipitously and fluctuate constantly during the period when California strawberries enter the market.

One reason for this fluctuation is that Florida strawberries lack the quality to compete with the higher quality strawberries from California. The proposed research and promotion order would tend to rectify this situation by increasing the research efforts to develop a better quality Florida strawberry to compete in the marketplace. Once a new, higher quality variety is developed, Florida producers would, for the first time, be able to compete on a more equal basis with their competition.

The SBA exception also assumes that adverse, early-season weather and Florida producers' reluctance to take added risks are the only factors involved in the light harvest during the months of December and January. Seedlings planted in August produce two harvests in their first year. The first harvest in December and January is light. The plants then set more abundant blossoms which lead to a larger harvest in April and May. The development of a plant variety that would produce a heavier first blossoming would increase yields in December and January. This is one of the goals of research efforts.

The SBA exception contends that there is no evidence that increased research would lead to the development of a new strawberry plant variety. However, according to evidence received at the hearing, current research funding provided by Florida's State government is at a minimum level. It is therefore reasonable to assume that additional funding would increase research efforts. For example, funding from the proposed order, if authorized, could increase the existing research budget by as much as 50 percent and could provide for additional, needed staff and an increase in variety trials. Testimony received at the hearing indicated that it is not a matter of whether research would be successful, but more a matter of when it would be successful. California research efforts took more than 20 years before a viable, improved variety was developed.

Regarding the fluctuation of the market for Florida strawberries, the record indicates that the impact of California strawberries is not only that more, higher quality strawberries enter the market, but also that the California strawberries demand a higher price in the same markets because of promotional efforts carried out by that State's own strawberry promotion program. Strawberries are not a staple in most American's diets. The demand for strawberries is not constant, but is very dependent on promotional campaigns and impulse buying.

The SBA exception also contends that any increase in Florida production would tend to drive prices down. This exception does not take into account increased promotional activities that would be carried out. The proposal would enable Florida producers to enjoy some of the same promotional opportunities now benefitting California producers. As noted above, increased promotional efforts directly affect demand and consumption. In addition, promotion programs can take many forms and do not have to include paid advertising, as indicated by the SBA exception. The purpose of the program is not to raise market prices of strawberries, as the SBA exception contends, but to increase returns to Florida producers, which this program is designed to do.

The SBA took exception to the Department's finding that the proposed marketing order would not have a significant economic impact on a substantial number of small businesses. The impact of the proposed order was analyzed in the Recommended Decision. It is estimated that an assessment fee in the range of three to five cents a flat, as tentatively proposed in testimony, would be less than 1 percent of the producer's selling price at the lowest prices in the production season. When prices are high, it is estimated that such assessment rates would be less than one third of 1 percent of market prices.

According to testimony of producers and handlers who currently pay similar fees voluntarily to the FSGA, the increased cost of the proposed order's assessment fee would not be burdensome. This testimony was not controverted at, or subsequent to, the hearing. A few producers testified that they have lost money for four of the last five production seasons and that any assessment, no matter how small, would force them into bankruptcy. However, the proposed order is intended to increase the sales of strawberries and thereby offset any assessment obligation.

The SBA exception did not consider the evidence in the Recommended Decision indicating production costs could be significantly less after improved varieties are developed. The record reflects that costs would be saved because fewer insecticides and pesticides would be needed. Harvesting costs could be reduced because of increased labor efficiency in picking healthier strawberries of a more consistent quality.

The SBA exception also contends that the Department did not consider State alternatives to a Federal marketing order program as required by Executive Order 12612. We have reviewed this proposed action in view of the provisions of the Executive Order and determined that the proposed order does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. This proposed action is consistent with the principles and provisions of Executive Order 12612. Testimony was provided, and entered into the Recommended Decision [53 FR 7198], of the FSGA's previous consideration of a State marketing order program. According to testimony, State laws were changed in the 1970's diminishing the effectiveness of State marketing order programs. Proponents considered a State marketing order but decided against such action because (1) it required separate enabling legislation, (2) individual commodity industries do not have direct control of the funds they collect, and (3) an unacceptably high administrative fee is charged by the State. Evidence indicated that only three Florida agricultural commodities now have active State marketing order programs, and at least two others have allowed their programs to terminate through inactivity.

Thus, the exception submitted by the Small Business Administration is denied for the reasons set forth in this decision.

An exception was also submitted by John T. Stanaland, a strawberry producer in Wimauma, Florida. Mr. Stanaland believes there is no need for a Federal marketing order and thus opposes the proposed order because the economic and marketing conditions do not justify a need for the marketing order. However, based on evidence of the hearing, the Department has determined that there is a need for the proposed order. Therefore, this exception is denied.

An exception to the Recommended Decision was filed on behalf of the Board of Directors of the Florida Strawberry Growers Association. Based upon that exception, the findings and conclusions in material issue number 3(b) of the Recommended Decision concerning the duties of the committee are amended by adding the following new paragraph after the 21st paragraph of material issue number 3(b) to read as follows:

The executive director of FSGA, Charles F. Hinton, filed an exception stating that § 933.29(i) as it appeared in the Notice of Hearing (52 FR 17584) should be reinstated in the proposed order. This paragraph specified the duty of the committee to consult, cooperate and exchange information with other marketing order committees and other individuals or agencies in connection with all proper committee activities and objectives. This paragraph was not included in the Recommended Decision because the activities specified in § 933.29(i) do not need to be specifically included in the proposed order as duties of the committee. This the committee may, to the extent permitted by law, engage in such activities as is necessary and proper in carrying out its responsibilities under the Act and order.

Based also upon the FSGA exception, the findings and conclusions in material issue number 3(d) of the Recommended Decision concerning and intellectual property such as patents, plant materials, copyrights, inventions and publications are amended by adding the following new paragraph after the third paragraph of material issue 3(d) to read as follows:

In the FSGA exception, Mr. Hinton requested clarification of § 933.51 regarding intellectual property such as patents, plant materials, copyrights, inventions and publications. Section 933.51 provides that the U.S. government shall own intellectual property arising out of marketing order funds. However, on a case-by-case basis, the committee may, with the approval of the Secretary, grant shared rights to appropriate research instititions for any rents, royalties, residual payments, or income from rental sale, leasing, franchising, or other uses of such patents, plant materials, copyrights inventions or publications. Accordingly, no change in the language of § 933.51 is necessary.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby denied for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, Marketing Agreement for Strawberries Grown in Florida, and Marketing Order for Strawberries Grown in Florida. These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, that this entire decision, except the annexed marketing agreement, be published in the **Federal Register.** The regulatory provisons of the marketing agreement are identical with those contained in the proposed order as hereby, annexed and published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted for the marketing order in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et. seq.*) to determine whether the issuance of the annexed order providing for the production research and marketing promotion of strawberries grown in Florida is approved or favored by the producers, as defined under the terms of the order, who during the representative period were engaged in the State of Florida in the production of strawberries for market. The representative period for the conduct of such referendum is hereby determined to be September 1, 1987 to May 31, 1988. The referendum ballot shall provide only for the approval or disapproval of the order.

The agents for the Secretary to conduct such a referendum is hereby designated to be John Toth and William Pimental, Fruit and Vegetable Division, USDA/AMS, PO Box 2276, Winter Haven, Florida, 33883; and Tom Tichenor, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 96456, U.S. Department of Agriculture, Washington, DC 20090–6456. The referendum shall be conducted from August 17 through 31, 1988.

List of Subjects in 7 CFR Part 933

Marketing agreement and order, Strawberries, Florida.

Signed at Washington, DC on July 25, 1988.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

Marketing Order for Strawberries Grown in Florida [1]

Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder, (7 CFR Part 900), a public hearing was held in Valrico, Florida, on May 27–29, 1987, upon the proposed marketing agreement and order on strawberries grown in Florida.

Upon the basis of the record it is found that:

General Findings

(1) The proposed marketing agreement and order and all of its terms and conditions thereof, as hereinafter set forth, will tend to effectuate the declared policy of the Act;

(2) The proposed marketing agreement and order regulate handlers of strawberries grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The proposed marketing agreement and order are limited in their applicability to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of strawberries in the production area which make necessary different terms and provisions applicable to different parts of such area; and,

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(5) The handling of strawberries in Florida, as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of strawberries grown in Florida shall be in conformity to and in compliance with the terms and conditions of the order, as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued by the Acting Administrator on March 1, 1988, and published in the **Federal Register** on March 7, 1988 (53 FR 7194) shall be and are the terms and provisions of this order, and are set forth in full herein. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and not to the proposed marketing order.

PART 933—STRAWBERRIES GROWN IN FLORIDA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

Definitions

§ 933.1 Secretary.

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

§ 933.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*; 68 Stat. 906, 1047).

§ 933.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 933.4 Production area.

"Production area" means the State of Florida.

§ 933.5 Strawberries.

"Strawberries" means all varieties of the edible fruit belonging to the roseaceous genus "Fragaria" commonly known as strawberries and grown within the production area.

§ 933.6 Fiscal period.

"Fiscal period" means the period beginning December 1 and ending the following November 30, or such other period as the committee, with the approval of the Secretary, may prescribe.

§ 933.7 Committee.

"Committee" means the Florida Strawberry Committee, established pursuant to this order.

§ 933.8 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of fresh strawberries for market.

§ 933.9 Handler.

"Handler" is synonymous with "shipper" and means any person who sells or handles fresh strawberries or causes fresh strawberries to be handled.

§ 933.10 Handle.

"Handle" or "ship" means to sell, consign, transport, deliver, or in any other way to place fresh strawberries within the production area or between the production area and any point outside thereof: *Provided*, That the term "handle" shall not include the transportation within the production area of strawberries from the field where grown to a handling facility located within such area for preparation for market.

Administrative Body

§ 933.20 Establishment and membership.

(a) The Florida Strawberry Committee, consisting of 12 producer members, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Each person selected as a committee member or alternate shall be an individual who is a producer, or an officer or an employee of a corporate producer.

(c) The composition of the committee, as much as is feasible, will represent the industry it serves. Handler representation through grower members on the committee will be a consideration for nomination.

§ 933.21 Term of office.

The term of office of committee members, and their respective alternates, shall be four (4) years, beginning on September 1 and ending on August 31 four years later: *Provided*, That (a) The term for one fourth of the initial members shall be for one (1) year; the term for the second fourth of the initial members shall be two (2) years; the term for the third fourth of the initial members shall be three (3) years; and the term for the final fourth of the initial members shall be four (4) years

(b) Committee members and alternates shall serve during the term of

office for which they have qualified and are selected, or during that portion thereof beginning on the date on which they are selected during such term of office and continuing until the end thereof, and until their succesors have qualified and are selected.

(c) Any member serving on the Florida Strawberry Committee will not be eligible for renomination to the committee for a period of one (1) year. Alternate members are not limited in the number of consecutive terms they may serve.

(d) The term of office of the initial committee members shall be: The three nominees receiving the three highest number of votes would serve four-year terms; the three nominees receiving the next highest number of votes would serve three-year terms; the three nominees receiving the enxt highest number of votes would serve two-year terms; and the three nominees receiving the next highest number of votes would serve one-year terms.

§ 933.22 Nomination.

The Secretary shall select the members of the committee and alternates from nominations which shall be made in the following manner:

(a) A meeting or meetings of producers shall be held in the production area to nominate members and alternates for the committee. The committee shall hold such meetings or cause them to be held prior to July 15 of each year preceding the beginning of a new term of office or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(b) At each such meeting at least one nominee shall be designated for each committee member and alternate whose term expires November 30 of the same year.

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as may be recommended by the committee and approved by the Secretary, not later than August 1 of each year preceding the beginning of a new term of office, or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(d) Only producers may participate in the nomination process.

(e) For the initial nomination process, the twelve individuals receiving the twelve largest number of votes would serve as committee members and the second twelve individuals receiving the twelve largest number of votes would be the respective alternates.

§ 933.23 Selection.

The Secretary shall select all members of the committee and their respective alternates, from nominations made pursuant to § 933.22, or from other qualified persons.

§ 933.24 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 933.22, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in § 933.20.

§ 933.25 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary in writing that such person agrees to serve in the position for which nominated for selection.

§ 933.26 Vacancies.

To fill any vacancy, occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in a manner specified in §§ 933.22 and 933.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § 933.20.

§ 933.27 Alternate members.

(a) An alternate member of the committee shall act in the place and stead of the member for whom that individual is an alternate, during the member's absence. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act until a succesor of such member is selected.

(b) If both a member and a respective alternate are unable to attend a committee meeting, the committee may designate any other alternate present to serve in place of the absent member.

§ 933.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 933.29 Duties.

It shall be, among other things, the duty of the committee:

(a) Prior to the beginning of each fiscal year, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available inforamtion as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping and marketing conditions with respect to strawberries, and report to the Secretary;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary or his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(g) Prior to the beginning of each fiscal period as determined by the Secretary, and as may be necessary thereafter, to prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee shall recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The Committee shall submit such budget for approval to the Secretary with an accompanying report showing the basis for its calculations; and

(h) To cause the books of the committee to be audited by a certified public accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report

shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers.

§ 933.30 Procedure.

(a) Seven members of the committee, including alternates acting for members, shall be necessary to constitute a quorum and the same number of concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: *Provided,* That if any assembled meeting is held, all votes shall be cast in person.

(c) The committee shall give the Secretary the same notice of meetings as is given to the members thereof.

§ 933.31 Expenses and compensation.

Members of the Committee, their alternates, subcommittees including any special subcommittees, shall serve without compensation but shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part.

Expenses and Assessments

§ 933.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to excercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired as described in § 933.41, or from other sources approved by the Secretary.

§ 933.41 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by levying assessments upon handlers as provided in this subpart. The means for collecting said assessments shall be as follows: Each handler who first handles strawberries shall pay to the committee the pro rata share, based on the volume of strawberries handled by such handler, of the expenses which the Secretary finds will be incurred by the committee.

(b) Assessments shall be levied at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information.

(c) At any time during, or subsequent to, a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendation, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all strawberries which are handled under this part during that fiscal year.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or otherwise become inoperative. If a handler does not pay said assessment within the time prescribed by the committee, the unpaid assessment may be subject to an interest charge at rates prescribed by the committee subject to approval of the Secretary.

(e) In order to provide funds for the administration for the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance and may also borrow money for such purpose.

(f) The committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 933.50. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use. The committee may not receive contributions from any person whose contributions would constitute a conflict of interest.

§ 933.42 Accounting.

(a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member of the committee or an alternate, such person shall account to the successor member, the committee, or to the person designated by the Secretary, for all receipts, disbursements, funds and property (including but not being limited to books and other records) pertaining to the committee's activities for which such person is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, the committee, or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, if the Secretary determines such action appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 933.43 Excess funds.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in acordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, to the extent practicable it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established; *Provided,* That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used

(i) To defray any expenses authorized under this part,

(ii) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses,

(iii) To cover deficits incurred during any fiscal period when assessment income is less than expenses,

(iv) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and

(v) To cover necessary expenses of liquidation in the event of termination of this part.

Upon such termination, any funds not required to defray the necessary expenses of liquidation, shall be disposed of in such manner as the Secretary may determine to be appropriate, if after reasonable effort by the committee, it is found impracticable to return such funds on a pro rata basis to the persons from whom such funds were collected.

§ 933.44 Special purpose exemptions.

(a) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may exempt from any and all requirements under, or established pursuant to, §§ 933.41, 933.60, and 933.61, the handling of strawberries in such minimum quantities, or for such specified purposes as the committee, with approval of the Secretary, may prescribe.

(b) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent strawberries handled under the provisions of this section from entering the channels of trade for other than the specified purpose authorized by this section. Such rules, regulations and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle strawberries pursuant to this section.

Research and Development

§ 933.50 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects, including production research, varietal research, and marketing research to promote efficient production of strawberries, as well as development projects and marketing promotion, designed to assist, improve, or promote the marketing, distribution, and consumption of fresh strawberries. The expenses of such projects shall be paid from funds collected pursuant to this part. Upon conclusion of each program, but at least annually, the committee shall summarize and report on the program status and accomplishments to industry members and the Secretary. A similar report to the committee shall be required of any contracting party on any such project.

§ 933.51 Patents, plant materials, copyrights, inventions, and publications.

Any patents, plant materials, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this part shall be the property of the U.S. Government as represented by the committee, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, francising, or other uses of such patents, plant materials, copyrights, inventions, or publications, accrue to the benefit of the committee. Upon termination of this part, § 933.74 shall apply to determine disposition of all such property.

Reports and Records

§ 933.60 Reports.

Upon request of the committee, made with approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the quantities of strawberries received by a handler and the quantities sold or otherwise disposed of by such handler.

(b) All reports and records furnished or submitted by handlers to, or obtained by the employees of the committee, which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall, at all times, be kept in the custody and under the control of one or more employees of the committee who shall disclose such information to no person other than the Secretary.

§ 933.61 Records.

Each handler shall maintain for at least two succeeding years such records of the strawberries received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 933.70 Compliance.

Except as provided in this part, no handler shall handle strawberries except in conformity to the provisions of this part.

§ 933.71 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employe appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 933.72 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 933.73 Termination.

(a) The Secretary may at any time, terminate this subpart.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever it is found that such operation obstructs or does not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever it is found that such termination is favored by a majority of the growers of strawberries, who, during such fiscal period, have been engaged in the area in the production of strawberries for market: *Provided*, That such majority have produced for market during such period more than 50 percent of the volume of strawberries produced for market in the area; but such termination shall be effective only if announced on or before November 30 of that fiscal period.

(d) Ten years from the effective date of this subpart the Secretary shall conduct a referendum to ascertain whether continuance of this subpart is favored by growers. Subsequent referenda to ascertain whether continuance of this subpart is favaored by the growers shall be conducted every six yers after the date of the preceding referendum.

(e) The provisions of this subpart shall terminate, in any event, whenever the provisions of the act authorizing the same, cease to be in effect.

§ 933.74 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and

disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 933.75 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not—

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart, or

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 933.76 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 933.77 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this subpart.

§ 933.78 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 933.79 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any grower, handler, or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 933.80 Separability.

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

§ 933.81 Amendments.

Amendments to this subpart may be proposed, from time to time, by the commitee or by the Secretary.

Marketing Agreement

***§ 933.90 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

***§ 933.91 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 933.92 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of fresh Florida strawberries in the same manner as is provided for in this agreement.

Signed at Washington, DC, on July 25, 1988.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 88-17092 Filed 7-28-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 967

[FV-88-109PR]

Celery Grown in Florida; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes establishing the quantity of Florida celery which handlers may market fresh during the 1988–89 marketing season at 6,789,738 crates or 100 percent of producers' base quantities. This proposal would encourage Florida celery growers to assume the risks of planting celery by placing a ceiling on the amount of Florida celery which could be shipped to fresh markets. It is intended to lend stability to the industry and, thus, help to provide consumers with an adequate supply of the product. However, as in past seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, since production and shipments are anticipated to be less than the allotment. This proposal was recommended by the Florida Celery Committee, the agency responsible for local administration of the order.

DATE: Comments must be received by August 29, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, P.O. Box 96456, Washington, DC 20250–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20250–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 967 [7 CFR Part 967], as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and

Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are seven handlers of celery who are subject to regulation under the marketing order for Florida celery during the course of the current season and 13 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Florida celery may be classified as small entities.

This proposal is based upon the recommendation and information submitted by the Florida Celery Committee (committee) and upon other available information. The committee met on June 9, 1988, and recommended a marketable quantity of 6,789,738 crates of fresh celery for the 1988–89 marketing year beginning August 1, 1988. Additionally, a uniform percentage of 100 percent was recommended which would allow each producer registered pursuant to § 967.37(f) of the order to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1988–89 supplies and prospective market demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent of the 1987–88 total base quantities is authorized for new producers and for increases by existing producers for the 1988–89 season. However, there were no applications for new or additional base submitted for the 1988–89 season.

The proposal would limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh makets during the 1988–89 season to 6,789,738 crates. This marketable quantity is identical to the 1987–88 marketable quantity and is about 20 percent more than the average number of crates marketed fresh during the 1982–83 through 1986–87 seasons. It is expected that the 6,789,738 crate marketable quantity will be above actual shipments for the 1988–89 season. Thus, the 6,789,738 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship.

This proposal would encourage Florida celery growers to assume the risks of planting celery by placing a ceiling on the amount of Florida celery which could be shipped to fresh markets. It is intended to lend stability to the industry and, thus, help to provide consumers with an adequate supply of the product. However, as in past seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, since production and shipments are anticipated to be less than the allotment.

Based on the above, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 967 is proposed to be amended as follows:

1. The authority citation for 7 CFR Part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Add a new § 967.324 under Subpart—Rules and Regulations to read as follows:

§ 967.324 Handling regulation, marketable quantity, and uniform percentage for the 1988–89 season beginning August 1, 1988.

(a) The marketable quantity established under § 967.36(a) is 6,789,738 crates of celery.

(b) As provided in § 967.38(a), the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1), a reserve of 6 percent of the total base quantities is hereby authorized for: (1) New producers and (2) increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: July 26, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–17156 Filed 7–28–88; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1763

Architectural and Engineering Services; Telephone Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration proposes to add Part 1763, Telephone Architectural and Engineering Services—Telephone Program, to 7 CFR Chapter XVII. This new part consolidates, revises, and clarifies the policies, requirements, and procedures presently contained in various REA publications including the following existing REA Bulletins:

340–1 Final Payments to Contractors, Engineers, and Architects—Telephone Program

341–1 Final Statement of Engineering Fee and Certificate of Engineer, Telephone Engineering Service Contract

341–3 Engineering Services for Telephone Borrowers

342–1 Architectural Services for Telephone Borrowers

380–3 Weekly Progress Report of Telephone Construction and Engineering Services

387–3 Final Documents Required to Close Out Construction of Buildings—Telephone Program

The Bulletins listed above contain certain policies, requirements, and procedures that will be incorporated into other CFR Parts. When that is accomplished, these Bulletins will be rescinded.

Part 1763 sets forth the provisions and requirements of the RE Act and the REA administrative policies, requirements, and procedures for the provision of architectural and engineering services for the planning and construction activities for telephone facilities and systems. The primary objectives of the proposed rule are to update, consolidate, clarify, and simplify REA policies and procedures; to lessen the burden on borrowers involved in planning and construction of telephone facilities; and

to decrease the processing time of related documents by REA.

All borrowers that are parties to the planning and construction of borrowers' telephone facilities and systems will be affected by this rule.

DATE: Public comments concerning this proposed rule must be received by REA no later than August 29, 1988.

ADDRESS: Comments may be mailed to William F. Albrecht, Deputy Assistant Administrator—Telephone, Telecommunications Staff Division, Rural Electrification Administration, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Comments received may be inspected in Room 4056 between 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: William F. Albrecht, Deputy Assistant Administrator—Telephone, Telecommunications Staff Division, Rural Electrification Administration, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 382–9549. The Draft Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

Public reporting burden for this collection of information is estimated to average .9 of an hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Currently, the policies and requirements for providing architectural and engineering services for planning and construction activities for borrowers' telephone facilities and systems are contained in numerous REA Bulletins and REA Staff Instructions (internal instructions for REA personnel). Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the **Federal Register.**

The proposed rule clarifies REA policies and requirements pertaining to the provision of engineering services by the borrower's own staff. It sets forth the minimum requirements the borrower's employees must meet for REA approval for the borrower to provide such services.

This proposed rule eliminates some reporting requirements and streamlines others, reducing the borrowers' burden, while permitting REA to maintain the security of the Government's loans.

7 CFR Part 1763 supersedes any sections of REA Bulletins with which it is in conflict.

List of Subjects in 7 CFR Part 1763

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA proposes to amend 7 CFR Chapter XVII by adding the following new Part 1763:

PART 1763—ARCHITECTURAL AND ENGINEERING SERVICES—TELEPHONE PROGRAM

Subpart A—General

Subpart B—Architectural Services

Subpart C—Engineering Services

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

Subpart A—General

§ 1763.1 General.

(a) The standard REA Loan Documents (as defined in 7 CFR Part 1758) contain provisions regarding engineering and architectural services performed by or for REA telephone borrowers. This part implements certain of the provisions by setting forth the requirements and procedures to be followed by borrowers in selecting architects and engineers and obtaining architectural and engineering services by contract or by force account.

(b) Architects and engineers performing services for REA telephone borrowers must meet the applicable registration and licensing requirements of the state in which the facilities will be located.

(c) Contracting for the services of an architect is required on all building projects financed with loan funds. The selection of the architect does not require REA approval. REA approval of the architectural services contract is required, and REA Contract Form 165, Architectural Services Contract—Telephone, shall be used except for unattended central office buildings when architectural services may be furnished under REA Contract Form 217, Postloan Engineering Service Contract. Refer to §§ 1763.20, 1763.21 and 1763.22 for further direction.

(d) The form of contract used for preloan engineering services, the selection of the preloan engineer, and the preloan engineering contract are not subject to REA approval. Some borrowers may have employees on their staff qualified to perform preloan engineering services. Refer to §§ 1763.40 and 1763.41 for further direction.

(e) Postloan engineering for major construction shall be performed by contract, except where REA has approved force account engineering. The selection of the contract engineer does not require REA approval. Contract Form 217 shall be used and it is subject to REA approval. Refer to § 1763.42 for further direction.

(f) When the extent of the proposed major and minor construction is such that the engineering involved is within the capabilities of employees on the borrower's staff, it may request REA approval to provide such services. This method of providing engineering services is referred to as force account engineering. Refer to § 1763.43 for further direction.

(g) Engineering services associated with minor construction and not covered by Form 217 may be provided by REA Contract Form 245, Engineering Service Contract, Special Services—Telephone. REA approval of this contract is not required.

§ 1763.2 Definitions.

For the purpose of this Part 1763:

(a) *Contract.* The services contract between the borrower and its architect or engineer.

(b) *Force Account Engineering.* Any preloan or postloan engineering services performed by the borrower's staff.

(c) *GFR.* REA General Field Representative assigned to the Project.

(d) *Project.* The rural telephone system, or portion thereof, described in the Plans and Specifications.

(e) *Loan Design (LD).* Supporting data for a loan application. See § 1749.32 for further information.

(f) *Major Construction.* A telephone plant project, estimated to cost more than $100,000, including all labor and materials.

(g) *Minor Construction.* A telephone plant project, estimated to cost $100,000 or less, including all labor and materials.

(h) *Postloan Engineering Services.* The design, procurement, and inspection of construction to accomplish the objectives of a loan as stated in a LD approved by REA.

(i) *Preloan Engineering Services.* The planning and design work performed in preparing a LD. This consists of helping the borrower determine the objectives for a loan, selecting the most effective and efficient methods of meeting loan objectives, and preparing the LD which describes the objectives and discusses the method selected.

§ 1763.3 Availability of REA forms.

Single copies of REA forms and publications cited in this Part are available free from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250–1500. These forms and publications may be reproduced.

§ 1763.4 List of Architects and Engineers.

(a) Engineers interested in performing services for borrowers shall keep REA informed on the qualifications of the principals who would be responsible for the work. Completed copies of REA Form 179, Architects and Engineers Qualifications, shall be submitted to REA for this purpose.

(b) REA will, upon request, supply the names of engineers who are performing, have performed, or have expressed an interest in performing engineering services for borrowers and have submitted a current Form 179 to REA. REA neither approves nor recommends engineers, but does maintain a listing of engineers participating or interested in participating in the program.

(c) Borrowers select their own architects. REA does not maintain a list of architects interested in performing services for borrowers.

§ 1763.5 Insurance requirements.

(a) Architects and engineers performing work for borrowers shall obtain insurance coverage as required by 7 CFR Part 1788.

(b) Borrowers shall ensure that their architects and engineers comply with the insurance requirements of their contracts. See 7 CFR 1788.54.

§ 1763.6 Payments.

(a) Borrowers shall make prompt payments to architects and engineers as required by the contract.

(b) REA shall not make loan funds available for late payment interest charges.

§§ 1763.7–1763.19 [Reserved]

Subpart B—Architectural Services

§ 1763.20 Selection of Architects.

The borrower shall be responsible for selecting and paying an architect for performing the architectural services required in the design and construction of buildings.

§ 1763.21 Architectural services contract.

(a) The borrower shall contract for architectural services on Form 165. Except as noted in § 1763.21(d), the borrower shall incur no obligation for architectural services until REA has approved this agreement. A borrower shall not enter into the architectural services contract for major construction before REA has approved the borrower's LD.

(b) Reasonable modifications or additions to the terms and provisions in Form 165 may be made in order to obtain the detailed services needed for a specific undertaking. However, such changes shall not relieve the architect of any of the responsibilities required by the REA form. Borrowers should obtain assistance from their legal counsel to ensure that the contracts are properly prepared and executed.

(c) Three executed copies of Form 165 shall be forwarded to REA. If REA approves the contract, one copy will be sent to the architect and one to the borrower.

(d) The borrower may execute a written agreement with the architect to obtain the preliminary services set forth in Article II, Section 1 of Form 165, until such time as the contract is prepared, executed by all parties, and approved by REA.

(e) Loan funds will not be available to pay for the preliminary architectural services if a loan is not made for the project, or if the project is abandoned.

(f) Subpart B of 7 CFR Part 1765 sets forth the requirements and the procedures to be followed by borrowers in constructing central office, warehouse, and garage buildings with REA loan funds.

§ 1763.22 Closeout of architectural services contract.

(a) Upon completion of all services and obligations required under the architectural services contract, the architect shall prepare REA Form 284, Final Statement of Architect's Fees. All fees shown on the statement shall be supported by detailed information where appropriate. For example: out-of-pocket expense, cost plus, and per diem types of compensation should be listed separately with labor, transportation, etc., itemized for each service involving these types of compensation.

(b) The architect shall forward two copies of Form 284 and supporting data to the borrower. If satisfactory, the borrower shall approve the statement, sign both copies, send one copy to the GFR and retain one copy.

(c) Upon approval of Form 284 by REA, the borrower shall promptly pay the architect.

§§ 1763.23–1763.39 [Reserved]

Subpart C—Engineering Services

§ 1763.40 Preloan engineering.

(a) All engineering services required by a borrower to support its application for a loan shall be rendered by a qualified engineer selected by the borrower or by qualified employees on its staff. The selection of the preloan engineer and the form of preloan engineering service contract are not subject to REA approval. Borrowers, however, should discuss their proposed method of obtaining preloan engineering services with the GFR before proceeding with any arrangements.

(b) REA Contract Form 835, Preloan Engineering Service Contract, Telephone System Design, is a suggested form of preloan engineering service contract. While this form of contract is not required, it should be referred to when determining the services the engineer will perform. Any form of contract used should specify that preloan engineering services conform to REA requirements for preloan studies. See Subpart D of 7 CFR Part 1749.

§ 1763.41 Preloan Engineering Procedures.

(a) The borrower should select a preloan engineer to prepare the LD when REA requests the borrower to furnish the data required to support the loan application. The borrower may utilize the list of engineers referred to in § 1763.4 in selecting the engineering firms to interview.

(b) The borrower must use general or other non-loan funds to pay the engineer for services performed under the contract until loan funds are available from REA. If the project is abandoned or funds are not included in the loan for preloan engineering, the borrower must use general or other non-loan funds to pay the engineer.

(c) Upon completion of all services and obligations under the Preloan Engineering Service Contract and release of loan funds by REA, the borrower may request an advance of loan funds using an FRS to cover the cost of the preloan engineering services. The request for loan funds must be supported by a final invoice from the engineer itemizing the services performed. See 7 CFR Part 1754.

§ 1763.42 Postloan engineering by contract.

(a) *Major construction.* (1) Three copies of Form 217 executed by the borrower and the engineer shall be sent to the GFR to forward to REA for approval. The engineer's estimate of the engineering fees, on REA Form 506, shall be included for approval by REA.

(2) REA will review the contract terms and conditions in its approval process. REA may withhold approval of the contract if, in REA's judgment:

(i) The contract form has been modified.

(ii) The contract will not accomplish loan purposes.

(iii) The engineering service fees are unreasonable.

(iv) The contract presents unacceptable loan security risk to REA. (See 7 CFR Part 1758)

(b) *Minor construction.* (1) Where an engineering firm is to inspect and certify construction accounted for under the work order procedure or the Contract for Miscellaneous Construction Work and Maintenance Services, REA Contract Form 773 (See Subpart G of 7 CFR Part 1765), a letter shall be sent to REA giving the name of the firm and the name and license number of the engineer who will sign the certification.

§ 1763.43 Postloan Engineering by Force Account.

(a) Major construction. When the extent of the proposal construction is such that the engineering involved is within the capabilities of employees on the borrower's staff, borrowers may request REA approval to provide such services by submitting the following:

(1) A description of services to be performed.

(2) The name and qualifications of the employee to be in charge. REA requires this employee to meet the State experience requirements for registered engineers. In the absence of specific State experience requirements, the employee must have at least eight years experience in the design and construction of telecommunication facilities with a least two years of the work experience at a supervisory level. REA does not require professional registration of this employee.

(3) The names and qualifications and project responsibilities of other principal employees who will be associated with providing the engineering services.

(4) REA Form 179 may be used to submit the employee qualifications.

(5) A copy of the resolution of the board of directors or a letter signed by an authorized corporate official acknowledging the data prepared in paragraphs (a)(1) and (2) and authorizing the engineering services performed by force account subject to REA approval.

(6) REA shall notify the borrower by letter of approval or disapproval to perform force account engineering. The letter shall set forth any conditions associated with an approval or the reasons for disapproval.

(7) REA's approval of force account engineering for major construction shall be only for the specific projects named in the notice of approval.

(b) *Minor construction.* (1) Where the borrower proposes to perform the inspection and certification of minor construction, the following shall be submitted to the REA:

(i) A copy of the employee's qualifications and experience record on Form 179, unless previously submitted. In accordance with industry practice, REA requires a minimum of four years of construction and inspection experience. The employee cannot be engaged in the actual construction.

(ii) A copy of the board resolution authorizing the performance of these services by an employee, subject to REA approval.

(iii) REA shall notify the borrower by letter of approval or disapproval of the borrower's staff employee to perform the inspection and certification of construction.

§ 1763.44 Loan funds for engineering services.

(a) REA will consider making loan funds available for preloan and postloan engineering services, if requested by the borrower.

(b) Advance of telephone loan funds shall be requested on an FRS.

(c) Loan funds for engineering services for minor construction shall be advanced on the basic of approval Summary of Work Orders, REA Form 771. The engineering services include the inspection and certification of the construction performed by an engineering firm or by an engineer on the borrower's staff. See 7 CFR Part 1765, Subpart G.

(d) Loan funds shall not be used for engineering services in connection with operation and maintenance.

(e) Loan funds for engineering services performed under Form 245, if approval, shall be advanced on the basis of approval summary of work orders, Form 771.

§ 1763.45 Engineer's progress reports.

(a) The engineer shall make progress reports to the borrower once each month during the design and construction of the telephone facilities, unless the contract requires more frequent reporting. The report shall reflect, beginning with the start of staking, the progress of staking, and construction on new and modified construction until all the construction, including cleanup has been completed, and the final

documents accepted by the GFR. REA Form 521, Progress Report of Telephone Construction and Engineering Services, may be used by the engineer for submitting progress reports to the borrower, or the engineer may develop a more specific form for use in fulfilling this requirement. One copy of each progress report covering construction must be submitted to the GFR.

(b) The engineer shall make Status of Contract and Force Account Proposal (FAP) reports to the borrower once each month. The report shall show for each contract or FAP the approval contract or FAP amount, the date of approval, scheduled date construction was to begin and the actual date construction began, the scheduled completion date, the estimated or actual completion date, the estimated or actual date of submission of closeout documents, and an explanation of dalays or other pertinent data relative to progress of project. One copy of the report must be submitted to the GFR.

§ 1763.46 Closeout of the Postloan Engineering Service Contract.

(a) Upon completion of all services required under the engineering service contract Form 217, the borrower's engineer shall prepare and forward to the borrower four copies of the Final Statement of Engineering Fee, REA Form 506.

(b) If the statement is satisfactory, the borrower shall sign the four copies, retain one copy and send three copies to the GFR.

(c) Upon approval of Form 506 by REA, the borrower shall requisition funds for final payment and promptly pay the engineer.

Dated: June 13, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 88-17095 Filed 7-28-88; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 842 3076]

Batesville Casket Co., Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Batesville, Ind. casket manufacturer from making future misrepresentations and unsubstantiated claims concerning casket durability and would prohibit false claims that the Commission or any other government agency has endorsed Batesville's products, warranty, or programs.

DATE: Comments must be received on or before September 27, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Rachel Miller, FTC/H-576, Washington, DC 20580. (202) 326-2463.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Caskets, Trade practices.

Agreement Containing Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Batesville Casket Company, Inc., a corporation, and it now appearing that Batesville Casket Company, Inc., a corporation, ("proposed respondent") is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Batesville Casket Company, Inc., a corporation, by its duly authorized officers and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Batesville Casket Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana. Its office and principal place of business is located at Highway 46 East, Batesville, Indiana 47006.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event the Commission will take such action as it may consider appropriate, or the Commission may issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of

service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

The following definitions shall apply to this order:

1. A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material, and ornamented and lined with fabric.

2. "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

3. A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

4. "Funeral services" are any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

Part I

It is Ordered that respondent Batesville Casket Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, offering for sale, sale or distribution of any casket in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting, directly or by implication, the durability or expected life of any casket, including but not limited to any misrepresentation of the period of time after interment, whether stated as a specific number of years or generally, during which any casket is designed, or in the ordinary course of events can reasonably be expected, to prevent the entrance of air, water, or other gravesite substance; and

B. Making any representation, directly or by implication, about the durability or expected life of any casket, unless at the time of making the representation respondent possesses and relies upon a reasonable basis for such representation. For purposes of this order, a reasonable basis shall consist of competent and reliable scientific evidence which substantiates such representation. To the extent that such evidence consists of technical, engineering or other professional tests, experiments, analyses, research, studies, surveys, or expert opions, such evidence shall be "competent and reliable" for purposes of this paragraph only if those tests, experiments, analyses, research, studies, surveys, or opinions are conducted and evaluated in an objective manner by persons qualified to do so, using only procedures that are generally accepted in the profession or science as yielding accurate and reliable results, and making only inferences and extrapolations that are generally accepted in the profession or science as reasonable and reliable.

C. Misrepresenting, directly or by implication, that the Federal Trade Commission or any other government agency has endorsed or approved any product or product characteristic, or any warranty or service program.

For purposes of this order, any representation for which the applicable conditions of interment are not specifically disclosed will be construed as a representation of casket performance in the majority of interment conditions found in the United States.

Also for purposes of this order, whenever a written warranty offering a remedy for any casket failure for a specified period of time is issued, or the duration of such a warranty is advertised, this shall be construed as a representation that the casket is designed, and in the ordinary course of events can reasonably be expected, to perform without that failure for that specified time period, UNLESS that warranty or advertising clearly and prominently discloses that the above representation is not made. (An example of such a disclosure would be: "Batesville makes no claim that its caskets will ordinarily remain protective for the entire warranty period. However, if this casket does not, we will . . . .") Nothing in this order requires that such a disclosure be made when issuing or advertising a written warranty if each representation made according to this paragraph is substantiated, and is not misrepresented, in compliance with this Part of this order.

Part II

It is further ordered that respondent and its successors and assigns shall maintain for three years after the date of the last dissemination of the representation, and upon request shall make available to the Federal Trade Commission for inspection and copying:

1. Copies of all materials relied upon for each representation covered by this order;

2. Copies of all materials relating to any test, experiment, analysis, research, study, survey, or expert opinion in the possession of the respondent that may contradict, qualify, or call into question any representation covered by this order.

Part III

It is further ordered that respondent shall forthwith distribute a copy of Attachment A to this order to each funeral provider and each casket showroom that purchased a casket from respondent during calendar year 1987, to each funeral provider and each casket showroom that received any marketing material from respondent during calendar year 1987, and to each journal, newspaper, magazine or other media outlet with which respondent has placed any advertisement concerning any casket during calendar year 1987, except that respondent need not send a copy of Attachment A to anyone to whom, prior to the date of service of this order, respondent has sent a copy of Attachment B together with a brochure incorporating the following language:

The Federal Trade Commission staff has informed Batesville of its belief that Batesville's pre-1988 warranties to replace caskets may have been understood to mean that the caskets would have remained protective throughout the warranty period under typical conditions of interment. Because of this concern, Batesville's New Progressive Warranty establishes warranty periods that more closely relate to the expected periods during which its caskets can be expected to remain protective.

Part IV

It is further ordered that respondent shall forthwith distribute a copy of this order, together with Attachment A to this order, to each of its operating divisions, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials.

Part V

It is further ordered that respondent notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered that respondent shall, within sixty (60) days after this order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order.

Attachment A to Order

Notice About Batesville's Protective Claims

The Federal Trade Commission has indicated that it has reason to believe that Batesville's warranty language could be understood to mean that most Batesville caskets will remain protective throughout the warranty period under typical conditions of interment.

Batesville's pre-1988 warranties should not have been understood to make any claims about normal or ordinary casket durability. Pursuant to an agreement with the Federal Trade Commission, Batesville wishes to remind Funeral Directors that those warranties constituted no more than a promise to replace any of its metal caskets which are found to have failed to completely resist the entrance of air, water or any outside element during the stated warranty period.

Batesville has revised its product warranties so that, unless otherwise stated on the warranty, the replacement periods shall more closely relate to the average or typical period during which the products can be expected to remain protective under varying interment conditions.

How This Affects Funeral Directors

Although Funeral Directors are not covered by this agreement, Funeral Directors are prohibited from making any untrue protective claims for caskets, under the Commission's Funeral Rule.

Signed:

Batesville Casket Company, Inc.

Attachment B to Order

Batesville Casket Company
Batesville, Indiana

Dear

Within the past few months we provided to you materials explaining our new warranty program. At the request of the Federal Trade Commission staff, we are replacing those materials with the enclosed materials, to remove any implication that the FTC has approved Batesville's products or warranty program. The FTC, of course, does not approve the products or programs of any company. We would appreciate your substituting the new materials for the old ones.

Please understand that the new warranties themselves remain in effect, and will be honored.

Sincerely,

Batesville Casket Company.

Enclosures:

Summary To Aid Analysis of Consent Order

The Federal Trade Commission has accepted subject to final approval an agreement to a proposed consent order from Batesville Casket Company (Batesville).

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns claims about the length of time Batesville's caskets can be expected to remain airtight and watertight, and thus protective, after interment.

The Commission's complaint charges Batesville with misrepresenting, through its warranties and advertising, that its caskets would ordinarily remain protective for the warranty period, when the reasonably expected protective period in most soil conditions was actually far shorter. The complaint also charges that Batesville made these long-term protective claims without a reasonable basis for them.

In addition, the complaint charges that Batesville misrepresented that the Commission had approved or endorsed the company's warranty program and product design.

The complaint alleges that the misrepresentations and the use of unsubstantiated claims are unfair and deceptive in violation of Section 5 of the Federal Trade Commission Act.

Part I of the proposed consent order would prohibit future misrepresentations and unsubstantiated claims concerning casket durability or Commission endorsement of the company's products or programs.

Part II of the order would require the company to keep records of its substantiation for durability claims, as well as any information it has that may tend to contradict the claims.

Part III of the order would require Batesville to notify its customers and the media in which it advertises that its caskets could not be expected to remain protective for the past warranty periods. Because Batesville has recently changed its warranty durations and product design, and has notified customers specifically as to which new warranty durations represent substantiated durabiltiy claims and which do not, the order would not require additional notification to those who were sent the recent notice.

Parts IV through VI of the proposed order are standard notice and reporting provisions to ensure compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Benjamin I. Berman,

Acting Secretary,

[FR Doc. 88-17116 Filed 7-28-88; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1306 and 1500

Lawn Darts; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: Lawn darts are devices intended to be used outdoors by being thrown upward and striking the ground point first. A regulation, issued in 1970 by the Food and Drug Administration under the Federal Hazardous Substances Act ("FHSA") and now administered by the Commission, currently bans lawn darts, except for those intended for adult use that (1) are labeled to warn against use by children, (2) include instructions for safe use, and (3) are not sold by toy stores or by store departments dealing predominantly in toys or other children's articles. Despite these restrictions, which are intended to

ensure that lawn darts are sold only for use as a game of skill by adults, children continue to suffer serious injuries and deaths while playing with lawn darts.

Accordingly, the Commission issued an advance notice of proposed rulemaking ("ANPR") on October 20, 1987, explaining a number of regulatory options available and asking for comment and data on the issues involved. 52 FR 38935. After considering the comments received on the ANPR and other available information, the Commission is proposing to prohibit the sale of lawn darts that have the potential for causing skull puncture injuries.[1]

DATE: Comments on this proposal should be received no later than August 29, 1988.

If requests are made to present oral comments on the proposal, an opportunity will be scheduled for 10:00 a.m. on August 9, 1988. Requests to make oral comments should be submitted to the Office of the Secretary by August 5, 1988.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6800, or delivered to the office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland. If an opportunity for the presentation of oral comments on the proposal is requested, it will be held at Room 556 at the Commission's offices at 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Elaine Tyrrell, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Commission was created in May of 1973. Prior to that time, the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1276, was administered by the Food and Drug Administration ("FDA"). Section 2(Q)(1)(A) of the FSHA, 15 U.S.C. 1261(Q)(1)(A), provides that the term "banned hazardous substance" includes "any toy, or other article intended for use by children, which is a hazardous substance." The Child Protection and Toy Safety Act of 1969 (83 Stat. 187–190) amended the FHSA to provide that any toy or other article intended for use by children may be classified as a hazardous substance if it is determined that the article presents an electrical, mechanical, or thermal hazard. 15 U.S.C 1261(F)(1)(D). Pursuant to this authority, the FDA, on November 17, 1970, proposed, among other things, to declare that lawn darts are banned toys because they present a mechanical hazard and an unreasonable risk of injury. 35 FR 17664.

The FDA received only one comment concerning the proposal to determine that lawn darts present a mechanical hazard. That comment stated that the large, outdoor-type darts are intended for use by adults as an outdoor sport or game. The comment contended that suitable labeling can be devised to inform parents or other adults of the necessity of carefully supervising children if they are to be permitted to play the game and to give other information relating to the safety of all nonplayers in the immediate area.

After considering this comment, the FDA determined in its final rule, published December 19, 1970, that "lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury, or other injury" presented a mechanical hazard within the meaning of the FHSA. 35 FR 19266. However, the final rule (as summarized below) also provided that the following types of lawn darts would not be included within the term "banned hazardous substance": Lawn darts and similar sharp-pointed articles not intended for toy use and marketed solely as a game of skill for adults, provided such articles: (i) Bear the following statement on the front of the panel of the carton and on any accompanying literature:

Warning: Not a toy for use by children. May cause serious or fatal injury. Read instructions carefully. Keep out of the reach of children.

Such statement shall be printed in a sharply contrasting color within a borderline and in letters at [least] one-quarter inch high on the main panel of the container and at least one-eighth inch high on all accompanying literature. (ii) Include in the instructions and rules clear and adequate directions and warnings for safe use including a warning against use when any person or animal is in the vicinity of the intended play or target area. (iii). Are not sold by toy stores or store departments dealing predominantly in toys and other children's articles.

A petition for judicial review of this regulation was filed by a lawn dart manufacturer, and the regulation was upheld. *R.B. Jarts, Inc. v. Richardson*, 438 F.2d 846 (2d Cir. 1971).

Since May of 1973, when the responsibility for administering the FHSA was transferred to the Commission, the Commission has periodically inspected samples of lawn dart labeling and instructions and surveyed marketing practices for lawn darts to determine whether the manufacturers, importers, and sellers of lawn darts are complying with the Commission's regulations under the FHSA.

The ban of lawn darts is codified in section 1500.18(a)(4) of Title 16 of the Code of Federal Regulations ("CFR"). The exemption quoted above for those lawn darts that have the specified labeling and instructions and that are not marketed in toy stores or in store departments dealing predominantly in children's articles is codified at 16 CFR 1500.86(a)(3).

In 1984, the Commission received reports that lawn darts were being sold in certain toy stores. As a result, the Commission's staff inspected at least 77 retail stores and found seven stores that were selling lawn darts in violation of the ban and exemption. Of the seven violative retail stores, six were toy stores, and three of these were part of the same nationwide chain. Products of four lawn dart importers had labeling violations. The retail sales and labeling violations discovered by these inspections were corrected, and the Commission issued a consumer safety alert in July 1985 warning of the hazards of letting children play with lawn darts.

In June 1987, the Commission's staff examined the labeling on lawn darts marketed by 14 firms, and products from all 14 firms were found to have labeling violations. Products of eight of the firms were considered to have serious labeling violations, *i.e.*, no required warning statement on the front panel of the package. Other labeling violations included one or more of the following: the types size of the required warning statement was smaller than that specified in the exemption, the warning statement was absent from the instructions or was not printed with a borderline as required, and the instructions lacked clear and adequate directions and warning for safe use.

In addition, Commission field investigators visited 122 retail stores around the country. Included in the 122 stores were 36 toy stores, 60 variety or department stores, and 26 sporting goods stores. Fifty-three of the stores

[1] Chairman Terrence Scanlon and Commissioner Anne Graham approved the proposal. Commissioner Carol Dawson dissented from the decision to propose this rule. Statements of the Commissioners concerning this vote may be obtained from the Office of the Secretary.

were selling lawn darts, and 18 of these were displaying the product with or in close proximity to toys or sporting goods intended primarily for children.

As a result, the Commission's compliance staff met on July 17, 1987, with importers and manufacturers of lawn darts; a representative from the Sporting Goods Manufacturers Association also attended that meeting. At the meeting, the staff discussed five voluntary actions that could be taken by the firms to help assure compliance with the exemption from the ban and to increase consumer awareness of the hazards associated with lawn darts in the hands of children. These actions were:

1. The front panel warning label should be modified to make it more conspicuous and readable. The recommended front panel warning label reads as follows:

Warning: Not a toy for use by children. May cause serious or fatal head injury.
Keep out of reach of children. Read instructions carefully.

2. Place a warning label on one fin of each lawn dart in a color that contracts with the fin. (The industry attendees at the July 17, 1987, meeting indicated that they would achieve contrast by means other than color, such as by contrasting texture.) The recommended label would state:

Warning: Not a toy for use by children. Can cause serious or fatal head injury.
Keep children away from throwing area.

3. Change the design of lawn darts to prevent modification, or include a warning against modification with the instructions. The Commission recommended the following language for warning consumers against modifying lawn darts:

Warning: Do not modify or change the lawn darts in any way.
Modification or changes can make the dart more hazardous.

4. Include information on how to display lawn darts with each shipment of lawn darts to retailers. The Commission recommended the following statement:

Important Safety Information: It is **Illegal** to sell lawn darts in toy stores or in store departments which sell toys or other articles for children.
Do Not display lawn darts in sporting goods departments near sports equipment intended primarily for children.
Promote lawn darts for **Adult Use Only.**
Children have been injured and killed by lawn darts.

5. Stop packaging lawn darts in combination sets with other games.

After the meeting on July 17, 1987, the staff wrote to all known lawn dart importers and to the known domestic manufacturer and the company that distributes its products. These letters went both to those who attended the meeting and to those who did not attend. The letters described the five voluntary actions and asked the firms to state in writing whether they were willing to take the actions requested. A total of 20 firms received letters, including additional importers of lawn darts that were identified between July and September.

Nineteen of the firms responded in writing or by telephone. Seven firms stated that they would carry out the five requests (except for the contrasting color on lawn dart fins); several of these firms requested additional slight modifications of the terms.

Two major firms stated in writing that they would carry out only the first four requests. One of these firms also stated that it was in favor of the Commission making mandatory all of the voluntary actions which were requested.

Two firms stated general support for the voluntary actions the compliance staff had requested, but did not address the specific requests. Eight firms stated that they intended to stop importing lawn darts.

On July 30, 1987, the Commission issued a news release about lawn dart injuries and deaths. In the release, the Commission provides details on the existing ban, the exemption, and the hazard and resulting injuries. The release urges consumers to keep lawn darts away from children and asks consumers to report violations of the ban or exemption to the Commission.

On October 1, 1987, the Commission met to consider what actions are appropriate to address the continuing injuries and deaths to children that occur when children play with lawn darts. By a unamimous vote, the Commission decided at its October 1, 1987, meeting to issue an ANPR indicating that the Commission might, among other actions, either require the five actions requested of industry at the July 17, 1987, meeting with the staff or ban all lawn dart and similar pointed objects usually intended for outdoor use and having the capacity for causing puncture wound injuries.

The Commission indicated that whatever action ultimately would be taken would take into account the results of a surveillance program to be conducted by the Commission's staff three months after publication of the ANPR; the object of the surveillance was to determine if the industry is in substantial compliance with the existing regulations and with the actions requested at the July 17, 1987, meeting described above. The Commission stated further that its final action would also depend upon an evaluation of whether such voluntary or mandatory standards, if enforced, could be expected to protect consumers from unreasonable risk of injuries.

The staff was further directed to vigorously enforce the current FHSA provisions on lawn darts and to issue a consumer alert annually. The Commission has recently brought two cases in U.S. District Courts against major retail chains for lawn dart violations. In one of these cases, the defendant signed a consent decree to settle the Commission's concerns about the distribution of noncomplying lawn darts. The other case is still pending.

In addition, the Commission requested the U.S. Customs Service to consider including lawn darts in the Operation Toyland program. This will enable CPSC and the Customs Service to examine incoming shipments of lawn darts.

The staff also was directed to begin immediately preparing an injury update, human factors analysis, economic cost/benefit report, possible medical evaluation of data, and other relevant data and analysis that would be needed to determine whether further regulatory action for lawn darts is appropriate.

In response to this direction, the Commission staff visited 112 retail stores to determine compliance with the current restrictions on the sale of lawn darts. Of these 112 stores, only 31 were selling lawn darts. Twenty-nine of the 31 were variety or department stores, one was a toy store, and one was a sporting goods store. Of the 31 stores selling lawn darts, 14 were in violation of lawn dart requirements. Violations consisted of displaying lawn darts for sale in a toy store or toy department (8 stores) or offering lawn darts for sale that violated labeling requirements (8 stores). Two stores were committing both types of violations.

The staff also identified 18 importers or manufacturers of lawn darts. Of these, 17 firms were distributing, or had recently distributed, lawn darts with labeling violations. Ten of these firm indicated that they do not intend to import, manufacture, or sell lawn darts in the future. Seven firms are known to intend to continue to import lawn darts.

With regard to whether the firms were willing to implement voluntarily the five actions requested at the July 17, 1987, meeting, one firm indicated that it will not comply voluntarily with the requests. Except for one firm that was undecided about whether it would sell lawn darts in combination sets with other games, the remainder or the

companies indicated that they would comply with the five requests on various, and sometimes indefinite, schedules.

The ANPR was published on October 20, 1987. 52 FR 38935 (October 20, 1987).

B. The Product and the Scope of the Rule

Lawn darts are devices that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground point first. Often, lawn darts are used in a game where the darts are thrown at a target or other feature on the ground. The types of lawn darts that have generally been available in the past and that have demonstrated their ability to cause skull puncture injuries typically have a metal or weighted plastic body, on the front of which is an elongated metal shaft, about ¼ inch in diameter, which may or may not have a pointed tip. These darts have a shaft on the rear of the body to which plastic fins are attached. These darts are about a foot in length and weigh about one quarter to one half pound. These darts are intended to stick in the ground when thrown.

Recently, the Commission has become aware of two additional types of games using devices that could fall within the general understanding of the term lawn darts. One type uses a soft, usually plastic, body with an approximately hemispherical mushroom- or tulip-shaped head of relatively large diameter that is weighted so that the large end impacts the ground. This type of "dart" is not intended to stick in the ground on impact, and the Commission's staff concludes that this type does not present a significant risk of skull puncture injuries.

The other recent type of lawn dart resembles the shape of the older type of lawn dart, but is lighter and the tip is made of a relatively soft and flexible material of about the consistency of a pencil eraser. Furthermore, the tip is mounted in a flexible base so that the tip as a whole can also flex. This type of dart is not intended to stick, nor capable of sticking, in the ground, and the staff does not believe that this type of dart presents a significant risk of skull puncture injuries. These darts are designed to be used with a target that will entrap a dart that falls on the target.

The Commission does not believe that it is feasible to describe a set of physical characteristics for darts that are capable of causing skull puncture injuries, because of the large number of combinations of weight, materials, tip diameter, tip shape, etc., that could be used to perform the function of sticking in the ground. Nevertheless, there is a common thread that connects the darts that can cause skull puncture injuries to children; all these darts are intended to stick in the ground. Conversely, the known darts that are not intended to stick in the ground are believed to be incapable of causing skull puncture injuries under reasonably foreseeable circumstances.

The Commission therefore has decided to apply the proposed rule to "lawn darts that have a rigid elongated tip and that are intended to be used outdoors and thrown into the air so that they will stick in the ground, as well as similar products for outdoor use that are thrown in the same manner and are capable of sticking in the ground." The express inclusion of both darts intended to stick in the ground and darts capable of sticking in the ground is intended to preclude arguments about subjective or unexpressed intentions.

The definition given above is not intended to include such items as arrows, horseshoes, javelins, penknives, and the like, nor is the intended to apply to indoor dart games that use a vertically-placed target, such as "English darts" or "American darts." It does cover the type of current lawn darts that is intended to stick in the ground, and it does not cover the two types of lawn "darts" described above that are not intended to stick, nor capable of sticking, in the ground.

The proposed rule does not require the repurchase of prohibited lawns darts by manufacturers, marketers, or retailers who have sold the darts to the next entity in the chain of distribution or to consumers.

C. Risk of Injury

The risk that the Commission intends to address in this proceeding is that of puncture of the skulls of children caused by lawn darts being used by children. As mentioned above, the potential for these devices to cause these types of injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves. This is because the tips do not appear sharp enought to present an obvious danger of puncture. The combined factors of weight, the rigid shaft, the speed that the dart is traveling at the time of impact, and the thickness of the child's skull at the point of impact present the risk.

The Commission's staff has predicted the potential for skull puncture injury by applying a mathematical model originally developed for bullets to estimate the probability of penetration of the skull by lawn darts with metal tips. The model estimates these penetration probabilities for various lawn dart parameters, such as tip diameter, dart weight, drop height, and skull thickness. From this model, a typical lawn dart weighing approximately ¼ lb., with a metal tip with a diameter of 0.5 cm (0.2"), and dropping from a height of 12 feet was estimated to have a probability of penetration of 37 percent for the average skull thickness of male and female children 3 years of age. It is reasonable to expect that a lawn dart would reach a height of twelve feet above a child's head during normal use. The probability of penetration increased to 92 percent for the minimum skull thickness of a three-year-old.

As discussed in Section B of this notice, the Commission has concluded preliminarily that lawn darts that are intended to stick in the ground all have the potential for skull puncture during reasonably foreseeable use or misuse.

The elimination of lawn darts that can cause skull puncture injuries can be expected to also eliminate, or greatly reduce in severity, the punctures of other parts of the body, as well as the lacerations, fractures, and other injuries, that have been associated with lawn darts in the past.

The Commission's staff estimates that about 6,700 injuries from lawn darts were treated in U.S. hospital emergency rooms between January 1978 and December 1987. This represents an average of 670 injuries per year treated in emergency rooms. Approximately 57 percent of the injuries involved the head, face, eye, or ear. Approximately 4 percent of the injured victims were hospitalized (on the average, approximately 25 per year), including all of the injuries reported as fractures. Over 75 percent of the victims were under age 15; about 50 percent of the victims were under age 10. In addition, Commission records dating back to 1970 show that at least three children have been killed by injuries associated with lawn darts. These children were 4, 7, and 13 years old.

In the 25 lawn dart injury reports for which information about the user of the lawn darts was available, the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

D. Statutory Authorities

If lawn darts as a class are deemed to be articles intended for use by children, the darts would be regulated under the provisions of the FHSA for mechanical

hazards of children's products. Sec. 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D); Sec. 30(d) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2079(d). If at least some lawn darts were deemed to be children's products, while other lawn darts might not be children's products, a regulatory proceeding to address all lawn darts could be conducted either under both the CPSA and the FHSA or under the CPSA alone, after a finding that it is in the public interest to do so as provided in Section 30(d) of the CPSA.

An article intended for use by children which has been declared by rule to be a hazardous substance is banned under section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), unless exempted. To effect a ban of lawn darts under the FHSA, the Commission would revoke the exemption at 16 C.F.R. 1500.86(a)(3) and make any necessary changes in the terms of the general ban at 16 C.F.R. 1500.18(a)(4).

The Commission is authorized, under section 7 of the CPSA, to promulgate a mandatory consumer product safety standard which sets forth certain performance requirements for a consumer product or which sets forth certain requirements that a product be marked or accompanied by clear and adequate warnings or instructions. 15 U.S.C. 2056. A performance, warning, or instruction standard must be reasonably necessary to prevent or reduce an unreasonable risk or injury. In addition, if the Commission finds that no feasible consumer product standard under section 7 would adequately protect consumers from an unreasonable risk or injury associated with lawn darts, the Commission may promulgate a rule under section 8 of the CPSA declaring some or all lawn darts to be banned products. 15 U.S.C. 2057.

The procedures and requisite findings to accomplish any of the mandatory regulatory alternatives under consideration under either or both acts are essentially the same; both acts use a three-stage rulemaking procedure. At each stage of the rulemaking, the Commission is required to consider certain topics and make specified findings, particularly about the status of voluntary standards and about the costs and benefits of the contemplated rule.

The requirements for promulgating a mandatory rule are set out in section 9 of the CPSA, 15 U.S.C. 2058, and section 3(f) of the FHSA, 15 U.S.C. 1262(f). An advance notice of proposed rulemaking ("ANPR") is the first step of a regulatory proceeding that could lead to a safety rule. As described above, this step has already taken place. The second step of the rulemaking procedure, which is accomplished by the publication of this notice, is the issuance of a proposed rule, which is followed by public comment on the proposal. All comments and submissions should be provided to the Office of the Secretary, at the address given at the beginning of this notice, no later than August 29, 1988. The third step is the issuance of a final rule.

E. Responses to the ANPR

The Commission received 11 comments on the ANPR that was published in the **Federal Register** on October 20, 1987. One was from a trade association representing lawn dart manufacturers, distributors, and retailers; one was from a major consumer organization; two were from state governments; three were from manufacturers of lawn darts; and four were from individuals. The major points raised by these comments, and the Commission's responses to those points, are discussed below.

The trade association stated its intention to develop a voluntary standard. However, for reasons discussed below in Section F of this notice, the Commission has preliminarily determined that there is no feasible standard that can adequately reduce the risk of skull puncture injuries associated with the lawn darts addressed by this proposed rule.

Two of the three manufacturers stated that the lead time given in the ANPR for the five actions that the Commission had requested of industry was not sufficient to allow for an orderly changeover. Since the Commission has preliminarily determined that these actions will not adequately reduce the risk of skull punctures, for the reasons stated in Section F of this notice, these comments are now moot.

The third manufacturer, and two of the individuals, believe that the current regulation is sufficient to address the hazard. They state that in many cases the accidents are attributable to consumer misuse and abuse. For the reasons stated in Section F of this notice, the Commission has determined that the current regulation is not sufficient to adequately reduce the risk of skull puncture injuries. The accidents that are occurring result from the type of play that youngsters predictably will engage in when playing with these types of lawn darts. While the most serious types of accidents are rare, they result from the characteristics of the product and from the known behavioral characteristics of the children who can be expected to play with them. The Commission does not agree that the deaths and serious injuries to children that are caused by the characteristics of the product itself when used in predictable ways by children can be properly dismissed as resulting from consumer abuse or misuse.

One state government Department of Consumer Protection supported making the five requested actions mandatory. However, as mentioned above, the Commission has determined that these actions will not adequately address the problem. This department also stated that the regulatory options should be coupled with ongoing enforcement of the current regulations. The Commission agrees with this comment and, as described above, has directed the staff to vigorously enforce the current regulations pending the completion of this rulemaking. This organization also urged that the Commission proceed with rulemaking under both the CPSA and FHSA, rather than under the CPSA alone. As explained below in Section F of this notice, the Commission is proposing this course in order to prohibit the sale of all lawn darts, and not only those lawn darts that the Commission can establish are intended for use by children.

The consumer organization, the second state government, and the other two individuals support a ban of lawn darts, which is the action the Commission has decided to propose.

F. Preliminary Regulatory Analysis

Introduction. The Commission has preliminarily determined that even lawn darts that arguably are intended for the use of adults are likely to be used by children at various times. Accordingly, for the reasons explained in Section D of this notice, the Commission is preparing to take action under both the FHSA and the CPSA, so as to reach all lawn darts that present a risk of skull puncture injuries to children and to eliminate potential arguments about whether any lawn darts can be validly considered to be intended for use by adults.

Under section 3(h) of the Federal Hazardous Substances Act ("FHSA") and Section 9(c) of the Consumer Product Safety Act ("CPSA"), the Commission is required to prepare a preliminary regulatory analysis containing

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection [(f)(5) of the FHSA and (a)(5) of the CPSA] was not published by the Commission as the

proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection [(f)(6) of the FHSA and (a)(6) of the CPSA] and assisted by the Commission as required by section 5(a)(3) of the Consumer Product Safety Act would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection [(f)(1) of the FHSA and (a)(1) of the CPSA]; and

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

15 U.S.C. 1261(h), 2058(c).

While the requirements under the FHSA and the CPSA are similar, Section 9 of the CPSA also requires that, for rules issued under the CPSA, the Commission shall make economic findings with respect to:

(A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule on the utility, cost, or availability of such products to meet such need; and

(D) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

15 U.S.C. 2058(f)(1).

The following discussion addresses requirements under both the FHSA and CPSA, except where noted.

Potential benefits. The potential benefits of the rule will accrue through a decrease in the deaths and injuries associated with lawn darts. While the rule is intended to address the risk of skull puncture injuries to children, the elimination of the rigid, heavy, and elongated-tipped lawn darts that can cause skull puncture injuries should also eliminate the punctures of other parts of the body and greatly reduce in severity the lacerations, fractures, and other injuries that have been associated with lawn darts in the past. Therefore, while there may be some injuries in the future from substitute products that may also be called lawn darts, for the purposes of this analysis the Commission is taking the benefits of the rule to be the complete elimination of lawn dart injuries that have been caused by the lawn darts that would be prohibited by the rule being proposed.

A recent analysis by the Commission's Directorate for Epidemiology indicates that about 670 lawn-dart-related injuries have occurred annually over the last ten years. Economic studies indicate that the average cost of these injuries was about $7,500 per occurrence. The estimated total yearly cost of injuries associated with lawn darts is about $5 million.

The Commission is aware of 3 deaths assocaited with lawn darts over the period 1970–1987. If it is assumed that other variables, such as exposure and use characteristics, have remained constant and that the Commission is aware of all such deaths, the games may present a 17 percent risk of one death in a given year. If a statistical valuation of $2 million for loss of life were assigned, lawn darts would have additional expected losses of about $300,000 per year.

Therefore, the estimated total yearly costs of death and injury associated with lawn darts are about $5.4 million. A reduction of these injuries and of the risk of death will make up the benefits accruing from the rule. Since the average useful life of a lawn dart is estimated to be ten years, and since it should take about 20 years to phase out the lawn darts that are currently in consumers' hands, a portion of the benefits of the proposed rule will phase in each year, until, after the 20 years, the full benefit of the rule will accrue each year and will continue as long as the rule is in effect.

The benefits derived would be further affected by the choice of substitute. For example, if consumers chose a risk-free lawn game as a substitute, the reduction in injury would be completely realized after the existing stocks of elongated-tipped lawn darts in consumers' hands have become worn out, been misplaced, or otherwise passed from use. However, if consumers choose a substitute with a similar or higher risk to death or injury, the expected benefits of this action would be offset.

The benefits would be to purchasing consumers and their families and friends, but would accrue disproportionately to those 15 years old or younger, since over 75 percent of injuries and 100 percent of the deaths have occurred to this age group. Both the costs and benefits associated with a prohibition on the sale of elongated-tipped lawn darts are expected to be relatively small.

Potential costs. The potential costs of the proposed rule to marketers of elongated-tipped lawn darts are the loss of future sales of a product with a demonstrated steady demand. Annual sales of these lawn darts are estimated at 1-1.5 million units, holding relatively stable in recent years. The typical retail price of a set of four lawn darts is about $5; thus, the total loss of sales will be about $5—7.5 million annually at the retail level. The intermediate and final markups of these products have been estimated at more than 50 percent of the retail price; thus, industry revenues from the sale of elongated-tipped lawn darts likely exceed $2.5 million annually. These revenues would be eliminated if those products are prohibited. However, the loss of these revenues could be largely recouped by sales of substitute products that will occupy the display and storage space previously allotted to lawn darts.

The vast majority of lawn darts sold in the U.S. are imported. However, the value of these imports is so small as to be negligible compared to total U.S. imports. There are no known U.S. exports of lawn darts. Thus, the proposed rule is expected to have no effect on U.S. trade.

The one known domestic manufacturer will bear costs associated with the disposal of molds and production processes associated with the manufacture of these lawn darts as well as foregone profit on future sales. The manufacturer could product lawn darts for export; this is considered unlikely since the firm does not now export lawn darts and is unlikely to develop overseas markets rapidly. If production machinery is adaptable to the manufacture of another product for which there is a demand, the cost effect may be minimized. If molds and machinery are scrapped, and no available substitute is produced to offset lost sales, the domestic manufacturer may incur significant economic costs.

The impact of lost sales of elongated tipped lawn darts would be the loss of net profit associated with production and marketing of these products, less any profits derived from other products marketed in their stead.

The distributional effect on marketers would depend on their share of the market and on what share they may take of the sale of substitute products. Importers and retailers will similarly be affected by the extent of the relative volumes they sell of these goods.

Costs borne by consumers will take two forms. Consumers would be unable to purchase a game which has a proven popularity, and would be induced to purchase alternate games to fill that demand. There are ready subtitutes available, at approximately the same price; however, it is not clear whether these substitutes provide a similar level of utility (enjoyment) as the products

they would replace. If consumers are compelled to purchase more costly games in order to receive the same utility as that provided by elongated-tipped lawn darts, the rule may result in increased costs to consumers. Further, there may be a loss in consumer surplus associated with the unavailability of lawn darts if consumers were willing to pay more than retail for the game in order to acquire it, thus indicating that they value the product in excess of the retail price. The extent of any lost consumer surplus is unknown, but is expected to be small.

The Commission has anecdotal information indicating that elderly persons may play lawn darts more than other typical adults do. The Commission has no information to indicate the extent to which handicapped persons may play lawn darts. Either of these groups, however, should be able to find suitable recreational substitutes for lawn darts.

The domestic manufacturer and certain marketers and retailers may be considered small businesses. The overall effect of the proposed rule on the domestic manufacturer is expected to be substantial, but other small businesses are not expected to experience significant adverse effects associated with the proposed rule. This issue is discussed further in Section G of this notice.

It is likely that the marketing firms (wholesalers and private labelers) will initially bear the costs associated with the rule. The costs, including those of retrieval and disposal of unsaleable inventories and foregone profits, would begin on the effective date, which, as discussed below, is being proposed to be 30 days after publication of the final rule and would apply to all products in the chain of distribution at that time.

The Commission expects that it will be able to consider the comments on the proposed rule and issue a final rule, if appropriate, in November or December of 1988. As described below, the Commission is proposing an effective date of 30 days after the publication of a final rule, and the rule would apply to all lawn darts in the chain of distribution on the effective date. This will minimize the potential for injuries from darts distributed before the effective date. Also, the Commission believes that at this time of year there will be fewer sets of lawn darts at the retail level or elsewhere in the chain of distribution. Furthermore, the industry will have had the opportunity not to enter into contracts for new goods pending a Commission decision, thus further reducing any inventory in the chain of distribution and other economic consequences of the rule. Therefore, the Commission believes that costs caused by inventory being held on the effective date of the rule will not be substantial.

The Commission also does not expect that the cost to retailers due to foregone profits from the sale of lawn darts subject to the rule would be substantial, since other products could be promoted in the retail space vacated by the prohibited products.

Comparison of costs and benefits. As explained above, the quantifiable benefits of the proposed rule are based on an estimated saving of the $5.4 million annual cost of deaths and injuries once lawn darts are no longer in use. This figure could be offset to the extent that consumers choose to engage in activities that involve risk during the time they would otherwise be playing lawn darts.

The quantifiable costs would consist basically of lost industry revenues, which are estimated at somewhat more than $2.5 million per year. However, the loss of these revenues can be largely recouped by the manufacture and sale of substitute items. Unquantifiable costs, discussed above, include consumers' loss of enjoyment of lawn darts.

After considering the costs and benefits of the proposed rule, the Commission preliminarily concludes that the benefits of the proposed rule will bear a reasonable relationship to its costs.

Alternatives to the rule. The Commission has determined that the proposed rule is needed because industry actions of the types discussed in Section A to address the potential hazard presented by lawn darts would not be adequate. The five actions previously under consideration are: modifications to package labels, labeling one fin of each lawn dart, inclusion of a consumer warning against modification of the lawn darts, notice to retailers on the proper display of the games, and elimination of lawn dart sales in combination sets. The cost of implementing the five steps has been estimated at $150,000 the first year, decreasing to about $100,000 thereafter. If the five voluntary steps were to be about 2 percent effective in reducing injuries, the benefits derived through injury reduction would exceed the costs associated with compliance. The Commission believes that these voluntary steps may not be adhered to by all marketers, and that this approach would not be effective in adequately reducing the risk of injury presented by these products.

In order to determine whether attempts to ensure that lawn darts will be marketed for adults, the Commission's staff analyzed information on consumer attitudes and behavior. The staff concluded that efforts to market lawn darts only for adult use may not prevent use by children, for the following reasons:

1. Selling lawn darts in stores other than toy stores, such as sporting goods departments, does not convey the message that lawn darts are for adult use only.

2. Consumers may recognize that lawn darts require motor and strategic skills similar to those required for other sports equipment designed for and/or used by children and, therefore, conclude that they are appropriate for children who have these skills.

3. Labeling lawn darts for adult use only may not convince parents that lawn darts are inappropriate for children. Parents may not consider the game particularly hazardous, especially in comparison to other products used by children.

4. It may be difficult for parents to prevent children from using lawn darts, as they are often used at large, casual gatherings with little or no supervision provided.

5. Parents sometimes have no knowledge that children are using lawn darts.

As a result of this analysis of consumer attitudes and behaviors, the staff concluded that efforts to market lawn darts for adult use only cannot be expected to completely preclude use by children. Specifically, the marketing and labeling provisions in the current regulations, either by themselves or supplemented by the five actions requested of industry by CPSC, cannot be expected to accomplish the intended purpose. Furthermore, lawn darts do not require complex skills which preclude use by children. Therefore, the Commission believes children will continue to be attracted to and play with lawn darts, even if the product is marketed only as a game of skill for adults. Accordingly, the Commission concludes that no effort to develop a voluntary standard based on these types of requirements will adequately reduce the risk associated with lawn darts.

The Commission could also promulgate the voluntary actions as a mandatory rule. The expected costs and benefits of a mandatory rule would be similar to the cost of voluntary action, assuming 100 percent compliance. This action would have the additional effect of ensuring compliance by existing marketers as well as any future entrants. However, the Commission's concerns over effectiveness, described in the preceding paragraph, would remain.

The Commission's staff also developed some performance criteria intended to help explore the potential for lawn darts to cause skull puncture injuries. These critiera involved dropping lawn darts onto a laminate constructed to approximate the puncture resistance of the skull. The Commission has not proposed these performance requirements because of the difficulty in establishing that the laminate will in fact function as an adequate indicator of the ability of a lawn dart to penetrate a child's skull. The Commission does not believe that it is feasible to develop sufficient evidence concerning the adequacy of this type of test in the near future. Also, the mathematical model originally developed for bullets has not been correlated to lawn darts to determine the accuracy of the model's predictions for this new application. Further, the model has not been tested to determine its applicability to lawn darts that have nonmetallic tips or tips that do not closely resemble the shape of bullets. Because of these difficulties, and because the Commission believes that action to eliminate the risk of skull puncture injuries is needed immediately, it concludes that performance requirements are not feasibile at this time. However, if the comments on the proposal or other information that may become available indicate that these or other performance requirements can adequately address this risk, the Commission wold reconsider this determination.

Effective date. The time allowed after promulgation for the final rule to go into effect, and the point in the chain of distribution to which the rule will be applied, will affect the extent to which the industry will experience adverse economic effects from the rule. These adverse effects could be minimized by setting an effective date that facilitates an orderly elimination of affected products from the marketplace. Such an effective date would allow for exhausting wholesale and retail inventories to reduce the number of products that would require shipment to an alternate market or which would have to be discarded. Absent sufficient lead times, manufacturers estimate the cost of compliance with the proposed rule may be substantial. However, as discussed in the next paragraph, the effect of lead time may depend on the time of the year the regulation goes into effect.

On the other hand, the longer the effective date, the more lawn darts could be sold and the greater the number of injuries or deaths which otherwise would have been prevented by an earlier effective date.

A final rule could be published as early as about October 30, 1988. The effective date could be as soon as 30 days after publication. Thus, a final rule may be effective as early as about December 1, 1988. However, if the rule were effective at this date, the firms could bear significantly increased costs because of contractual obligations to manufacturers, unless marketers took some anticipatory action. Winter and early spring historically are the periods of seasonal reorder and inventory buildup for seasonal sales of lawn darts.

As previously described, the Commission is proposing to have this rule become effective 30 days after the publication of a final rule; the rule would apply to all products in the chain of distribution on or after that date. However, the Commission has considered the potential effects of other effective dates on the industry and on possible future injuries.

If the rule were to affect only products manufactured (or imported) after the effective date, the most acute impact to marketers would occur if the effective date were during the winter and early spring period of reorder. However, in view of the probability that the Commission could take final action on the proposal in November of this year, it seems likely that marketers would delay placing such orders pending a Commission decision on the final rule. If the rule were based on first entry into commerce (first sale), marketers would be most adversely affected during the period of inventory buildup, which is early spring to midsummer. Again, marketers may curtail or delay inventory buildup in anticipation of the possibility that a final rule would apply to product in their inventory on the effective date.

G. Regulatory Flexibility Analysis

Introduction. The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires that agencies prepare and make available for public comment an initial regulatory flexibility analysis when a general notice of proposed rulemaking is published in the **Federal Register**. The analysis is required if the proposed rule may have a significant impact on a substantial number of small businesses, small organizations, and small government jurisdictions. The proposed mandatory rule for lawn darts applies to lawn darts capable of causing skull puncture injuries, and would affect all firms manufacturing, importing, or retailing these products, and may have a minor impact on some firms in the outdoor game industry that market lawn darts. Lawn darts represent about 5 percent of the total value of production of affected firms on the average, but individual firms indicate that these products represent as little as 1 percent and as much as 50 percent of gross revenue.

Reasons for consideration of agency action. Lawn darts intended for use by children are banned under the Federal Hazardous Substances Act, FHSA, at 16 CFR 1500.18(a)(4) and 1500.86(a)(3), but may continue to be sold under an exemption provision if certain warning labeling and retail display requirements are met. The Commission is concerned that, despite the existing regulation designed to discourage their use by children, lawn darts continue to be used by children. As a result, the products continue to present a risk of injury or death to children. Commission studies indicate that about 670 lawn dart-related injuries were treated in hospital emergency rooms yearly from 1978 forward; three deaths have been reported over a 17-year period.

Objective of the rule. The objective of the proposed rule is to eliminate the risk of injury or death to children posed by lawn darts. This would be accomplished by prohibiting the entry into commerce of those lawn darts which have the potential to cause skull puncture. The proposed rule would prohibit the sale of lawn darts, whether in sets of darts only or in combination with other outdoor lawn games.

Legal basis of the proposed rule. The legal basis for the proposed rule is described in Section D of this notice.

Description of the requirements of the proposed rule. The Commission is proposing to prohibit lawn darts with rigid elongated tips and that are intended to be thrown into the air so that they will stick into the ground. The proposed rule would not impose a specific design standard on these products but would eliminate current design, elongated-tipped lawn darts from the market, whether sold in combination sets or as separate games.

Categories of consumer products to which the rule will apply. The proposed rule would apply to lawn games using elongated-tipped devices commonly called "lawn darts." The rule would not apply to blunt-tipped mushroom-type (or "tulip") lawn darts, that are also currently offered for sale, but that are not considered to present a significant puncture risk to children.

Entities to which the rule would apply. In accordance with the Regulatory Flexibility Act, the Commission has considered the effect the proposed rule would have on small

entities. Of these, only small businesses would be affected; small organizations and government jurisdictions would not be affected. The proposed rule would affect importers, manufacturers, and retailers of lawn darts. Each of these business entities also markets other products which are not subject to the proposed rule.

Potential economic effects of the proposed rule. The manufacture of lawn darts is included in SIC industry classification 3949, "Sporting and Athletic Goods, not elsewhere classified," a grouping within the outdoor and athletic equipment sector. In 1982, there were 1,452 companies, operating 1,553 plants, in this grouping. The Commission has identified 20 marketers of lawn darts. One of these markets domestically-produced lawn darts; the remainder import these products from the Far East. Imports are estimated to account for the bulk of sales of these games. Five firms are considered to be the major suppliers of lawn darts. These firms account for an estimated 60 to 90 percent of total annual sales.

The Commission is aware of only one domestic producer of lawn darts; that firm's products are sold to retailers by a single domestic private labeler. The domestic manufacturer employs less than 50 workers, well within the size standard used by the Small Business Administration to describe small businesses. The firm accounts for a significant, though not the major, share of lawn dart sales. For the purpose of the RFA, the Commission is considering this company to be a small business.

The bulk of firms marketing lawn darts are importers, which at some times may distribute a diverse mix of products and at other times may concentrate on the marketing of sporting goods and games. The Commission is not aware of any importer that markets lawn darts exclusively. While several major retail chains import lawn darts directly for their retail operations, for the purpose of Regulatory Flexibility Act considerations, the Commission considers the bulk of importers to be small businesses.

Effect of the proposed rule on small entities. (1) *Producers.* The one identified domestic manufacturer of lawn darts, which produces the games under private label for use by a full-line marketer of outdoor games, reports that lawn darts account for 50 percent or more of its gross revenues. This manufacturer would experience a loss of up to 50 percent of its manufacturing revenues if it were unable to produce and market a substitute product that did not present a risk of skull puncture wounds, or if it were unable to export current design lawn darts in quantities similar to those now consumed in the U.S. market. The manufacturer reported that it also produces a "tulip" type lawn dart, but that the demand for this substitute has been relatively small. If sales of lawn darts that will not stick in the ground sufficiently offset the level of lost sales of the banned lawn darts, and if the cost and profit margin generated by the substitute were similar, there would not be a significant adverse effect on total revenues or the competitive position of the domestic manufacturer. While the Commission expects the demand for substitutes to rise, if sales of the substitute or of other items manufactured with the production capacity vacated by the lost production of lawn darts do not generate sufficient revenues, the domestic manufacturer would incur losses through foregone sales. The net loss may be greater than the proportionate loss in gross sales if the firm could not amortize overhead and other indirect costs of operation over the larger gross revenue base. It is unlikely that a foreign market for elongated-tipped lawn darts can be developed to replace all sales lost in the United States.

The proposed rule is considered likely to cause a significant adverse effect on this small business entity, but only in the short run.

(2) *Importers and distributors.* Lawn darts constitute an average of 5 percent or less of total revenues of affected importers and distributors. The proposed rule would have the effect of reducing gross revenues proportionate to the loss in sales of elongated-tipped lawn darts that is not recouped through the sale of a substitute product. Industry sources indicate that much of the demand for lawn darts is derived from a desire for an outdoor game rather than a specific demand for this product; if this perception is accurate, the Commission expects that the bulk of loss sales associated with the hazardous type of lawn game will be made up through the introduction of a substitute or the aggressive marketing of lawn darts that are not banned. A small adverse effect on importers and distributors is expected in the first year of the rule as a result of market mix adjustment. There likely would be no significant adverse effect on these entities thereafter.

The Commission concludes that the proposed rule would not significantly affect the operation or profitability of these firms.

(3) *Retailers.* Thousands of retailers sell lawn darts; many of these are small businesses. The proposed rule would eliminate one product to be offered for sale, with no measurable effect on overall sales or the profitability of retail establishments. The rule would not result in a competitive advantage, since lawn darts account for only a negligible proportion of any one retailer's sales. The Commission concludes that there will be no significant adverse effect on retailers.

Alternatives to the proposed rule. The Commission also could take other regulatory actions, including mandatory requirements for increased package labeling, a warning label on one fin of each lawn dart, notice to consumers warning against modification, informing retailers of their responsibilities under current law, and prohibiting the sale of lawn darts in combination sets. Such actions would notify adults of the danger presented by lawn darts if used by children, and would remove these games from combination sets since consumers otherwise may infer that all games in the sets are appropriate for general family use. This alternative would result in a minimal adverse effect in the year of introduction, with little cost effect thereafter. The Commission is concerned that this alternative will not be effective in reducing skull puncture injuries to children, given the easy access that children normally have to the game after it is purchased and the skill and judgment required to play the game safely. Similar effects would be expected if these actions were voluntarily adopted by the industry.

For the reasons discussed above, the Commission does not consider that a performance standard for lawn darts, whether a mathematical model or a drop-test onto a laminate, is feasible at this time.

The Commission could also use a different effective date. A Notice of Final Rulemaking could be published as early as about October 30, 1988. The effective date could be as soon as 30 days after publication of the final rule in the **Federal Register**. The effects of different effective dates are discussed in Section F of this notice.

The Commission has investigated ways of reducing the potential impact on small firms and preliminary concludes that no less burdensome alternative would adequately address the risk of injury to children.

H. Environmental Impact

Pursuant to The National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has prepared a preliminary assessment of the

environmental impact associated with the proposed mandatory rule. The assessment addresses the potential environmental effects of the proposed prohibition of the sale of lawn darts.

The proposed rule would make preexisting packaging materials unusable for their intended purpose and, absent a residual use, would necessitate destruction of these materials. The Commission anticipates that less than 10 percent of preprinted packaging would remain after the imposition of the effective date; thus, less than about 150,000 boxes and printed instructions would be destroyed. The rule would also affect existing molds for fabricating lawn darts. There is one existing domestic manufacturer of lawn darts subject to the proposed rule; if the molds cannot be adapted to accommodate production of blunt-tipped lawn darts, the existing molds likely would be destroyed. The number of individual molds involved is not believed to be substantial.

An effective date sufficient to permit the exhaustion of existing inventories of noncomplying lawn darts is expected to result in no significant increase in discarded packaging material, other printed materials, or noncomplying sets.

In the industry, molds are periodically changed because of age or design modifications. Given the relatively small number of individual printing plates and molds affected, the Commission expects that the rule will cause no significant change in the disposal of used printing plate material or used molds.

The requirements of the rule are not expected to have a significant effect on the materials used in production of packaging of lawn darts, or on the amount of type of materials discarded after the rule. Therefore, the Commisson preliminary finds that the proposed mandatory rule on lawn darts will cause no siginficant environmental effects.

I. Conclusion

For the reasons given above, the Commission preliminarily concludes that the lawn darts described in the rule proposed below present an unreasonable risk of skull puncture injuries to children from the mechanical characteristics of the darts. Further, it appears that there is no feasible consumer product safety standard that would adequately reduce this risk, and the rule proposed below is the least burdensome alternative that will adequately reduce the risk.

List of Subjects in 16 CFR Parts 1306 and 1500

Consumer protection, recreation, voluntary standards.

Therefore, under the authority of the Federal Hazardous Substances Act and the Consumer Product Safety Act, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

1. The authority citation for Part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1276.

§ 1500.86 [Amended]

2. Section 1500.86(a)(3) is removed and reserved.

3. Section 1500.18(a)(4) is revised to read as follows: (Paragraph (a) introductory text is republished).

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other children's articles presenting mechanical hazards.* Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

* * * * *

(4) Lawn darts that have a rigid elongated tip and that are intended to be used outdoors and thrown into the air so that they will stick in the ground, as well as similar products for outdoor use that are thrown in the same manner and are capable of sticking in the ground. The Commission has determined that the benefits expected from this regulation bear a reasonable relationship to its costs and that the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of skull puncture injury to children.

4. A new part 1306 is added to read as follows:

PART 1306—BAN OF HAZARDOUS LAWN DARTS.

Sec.

Authority: 15 U.S.C. 2058–2060.

§ 1306.1 Scope and application.

(a) In this Part 1306, the Commission declares lawn darts and similar products, described in § 1306.3, that are intended to stick in the ground or capable of sticking into the ground, to be banned hazardous products.

(b) Lawn darts and similar products that are articles intended for use by children and that otherwise would be covered by this ban are not covered by this ban, but are banned under the Federal Hazardous Substances Act at 16 CFR 1500.18(a)(4).

§ 1306.2 Purpose.

The purpose of this rule is to prohibit the sale of lawn darts and similar products that present an unreasonable risk of skull puncture injuries to children.

§ 1306.3 Banned hazardous substances.

Any lawn dart that has a rigid elongated tip and that is intended to be used outdoors and thrown into the air so that it will stick in the ground, and any similar products for outdoor use that is thrown in the same manner and is capable of sticking in the ground, is a banned hazardous product.

§ 1306.4 Findings.

(a) The Commission has found that the products covered by this ban are being distributed in commerce and present an unreasonable risk of injury.

(b) *The degree and nature of the risk of injury.* (1) The risk that the Commission intends to address in this proceeding is that of puncture of the skulls of children caused by lawn darts being used by children. The potential for these devices to cause these types of injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves. This is because the tips do not appear sharp enough to present an obvious danger of puncture. The combined factors of weight, the rigid shaft, the speed that the dart is traveling at the time of impact, and the thickness of the child's skull at the point of impact present the risk. The Commission has concluded that lawn darts that are intended to stick in the ground all have the potential for skull puncture during reasonably foreseeable use or misuse.

(2) The elimination of lawn darts that can cause skull puncture injuries can be expected to also eliminate, or greatly reduce in severity, the punctures of other parts of the body, as well as the lacerations, fractures, and other injuries that have been associated with lawn darts in the past. The Commission's staff estimates that about 670 injuries from lawn darts are treated in U.S. hospital emergency rooms per year. Approximately 57 percent of the injuries involved the head, face, eye, or ear. Approximately 4 percent of the injured

victims were hospitalized (on the average, approximately 25 per year), including all of the injuries reported as fractures. Over 75 percent of the victims were under age 15; about 50 percent of the victims were under age 10. In addition, Commission records dating back to 1970 show that at least three children have been killed by injuries associated with lawn darts. These children were 4, 7, and 13 years old. In the 25 lawn dart injury reports for which information about the user of the lawn darts was available, the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

(c) *Products subject to this ban.* (1) Lawn darts are devices that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground point first. Often, lawn darts are used in a game where the darts are thrown at a target or other feature on the ground. The types of lawn darts that have generally been available in the past and that have demonstrated their ability to cause skull puncture injuries typically have a metal or weighted plastic body, on the front of which is an elongated metal shaft, above ¼ inch in diameter, which may or may not have a pointed tip. These darts have a shaft on the rear of the body containing plastic fins. These darts are about a foot in length and weigh about one quarter to one half pound. These darts are intended to stick in the ground when thrown. Prior to this rule, annual sales of these lawn darts were estimated at 1–1.5 million units.

(2) The Commission has become aware of two additional general types of games using devices that could fall within the general understanding of the term lawn darts.

(i) One type uses a soft, usually plastic, body with an approximately hemispherical mushroom- or tulip-shaped head of relatively large diameter that is weighted so that the large end impacts the ground. This type of "dart" is not intended to stick in the ground on impact, and the Commission concludes that this type does not present a significant risk of skull puncture injuries.

(ii) The other type of lawn dart that the Commission does not believe presents a significant risk of skull puncture injuries resembles the shape of the older type of lawn dart, but is lighter and the tip is made of a relatively soft and flexible material of about the consistency of a pencil eraser. Furthermore, the tip is mounted in a flexible base so that the tip as a whole can also flex. This type of dart is not intended to stick, nor is it capable of sticking, in the ground. These darts are designed to be used with a target that will entrap a dart that falls on the target.

(3) The Commission does not believe that it is feasible to describe a set of physical characteristics for darts that are capable of causing skull puncture injuries, because of the large number of combinations of weight, materials, tip diameter, tip shape, etc., that could be used to perform the function of sticking in the ground. Nevertheless, there is a common thread that connects the darts that can cause skull puncture injuries to children; all these darts are intended to stick in the ground. Conversely, the known darts that are not intended to stick in the ground are believed to be incapable of causing skull puncture injuries under reasonably foreseeable circumstances.

(4) The definition for lawn darts in this rule is not intended to include arrows or horseshoes, nor is it intended to apply to indoor dart games that user a vertically-placed target, such as "English darts" or "American darts." It does not cover the two types of "darts" described above that are not intended to stick, nor capable of sticking, in the ground.

(d) *The need of the public for lawn darts, and the effects of the rule on their utility, cost, and availability.* The need of the public for lawn darts is for recreational enjoyment. Products similar to lawn darts but that are not intended to stick in the ground and are not capable of causing skull puncture injuries will continue to be available. Also, substitute recreational enjoyment can be obtained from other products. Lawn darts subject to the rule will not be available through commercial channels after the effective date of the ban.

(e) *Alternatives.* (1) The Commission considered various labeling requirements and limitations on the marketing of lawn darts that would be intended to discourage the marketing of the product to children and the use of the product by children. The Commission concluded, however, that these types of requirements would not preclude completely the use of the product by children and would not reduce adequately the risk of injury addressed by this rule.

(2) The Commission also considered the possibility of performance requirements for lawn darts to determine which lawn darts present an unreasonable risk of injury of skull penetration to children. The Commission concluded that this alternative is not feasible because of the difficulty, and length of time required, in determining whether performance requirement adequately identify the risk.

(f) *Conclusion.* The Commission finds:

(1) That this rule, including its effective date, is reasonably necessary to eliminate or adequately reduce the unreasonable risk of skull puncture wounds to children associated with lawn darts.

(2) That issuance of the rule is in the public interest.

(3) That no feasible consumer product safety standard would adequately protect the public from the unreasonable risk associated with lawn darts.

(4) That the benefits expected from this rule bear a reasonable relationship to its costs.

(5) That the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

§ 1306.5 Effective date.

This rule is effective [insert date 30 days after publication of final rule] and applies to all lawn darts in the chain of distribution on or after that date.

Dated: July 19, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

[This list will not be published in the Code of Federal Regulations.]

Letter from David Snow to Sen. Albert Gore, May 21, 1987.

Letter from David Snow, June 4, 1987.

Letter from David Schmeltzer, AED/CAL, to various persons associated with the lawn dart industry to invite them to a meeting on July 17, 1987; July 2, 1987.

Memorandum from Schmeltzer, D., AED/CA, to Noble, D., Director, OPMB, "Lawn Darts," dated July 15, 1987, with attachments.

Attachment A—Proposed Ban of Lawn Darts, **Federal Register**, Vol. 35, No. 223, November 17, 1970.

Final rule on Lawn Dart Ban and Exemption, **Federal Register**, Vol. 35, No. 246, December 19, 1970.

Attachment B—Memorandum from Karels, T.R., ECSS, to Nelson, D., CARM, "Lawn Darts—PSA #2804", dated June 22, 1987.

Attachment C—Memorandum from Kennedy, J., EPHF, to Nelson, C., CARM, "PSA 2826; Lawn darts in Combination Game Sets," July 13, 1987.

Memorandum of July 17, 1987, meeting.

Letter from David Snow to Chairman Terrence Scanlon, July 18, 1987.

Memorandum to CPSC Regional Centers from Robert G. Poth, CARM, "Request to Notify Retail Stores of Noncomplying and Questionable Law Dart Sales Practices," July 22, 1987.

Letter from David Snow to K-Mart International Headquarters, July 26, 1987.

Letter from David Schmeltzer to AEDCA, to persons invited to the July 17, 1987, meeting who did not attend; July 27, 1987.
Letter from David Schmeltzer, AED/CAL, to persons who attended the July 17, 1987, meeting, July 28, 1987.
CPSC News Release: "Lawn Darts Can Cause Serious or Fatal Head Injuries and Death", Released July 30, 1987.
Memorandum from Ray, D., and Bennett, L., ECPA, to Tyrrell, E., OPMB, "Lawn Dart Accident Costs," August 4, 1987.
Letter to David Snow from David Schmeltzer, AED Compliance and Administrative Litigation, August 6, 1987.
Letter from Marcella V. Ridenour, Dept. of Physical Education, Temple University, to John Preston, CPSC, transmitting the following material on lawn darts:
1. Patent 2,976,042 (March 21, 1961).
2. *First National Bank of Dwight v. Regent Sports Corp.*, 7th Cir. No. 85–2834 (October 22, 1986).
3. *Trial*, "Lawn darts: a dangerous game," February 1985.

Memorandum from John Preston, ESMT, to Chris Nelson, CARM, "Response to PSA Request No. 2837", August 11, 1987.
Memorandum from Warren A. Mathers, EPHF, to Christine Nelson, CARM, "PSA 2846; Lawn Darts—Develop Labeling Criteria," August 13, 1987.
Letter from David Snow to David Schmeltzer, AED/CAL, August 18, 1987.
Memorandum from Koeser, R., to Tyrrell, E.A., OPMB, "Lawn Dart Options Package", August 19, 1987.
Materials for June-July Compliance Status Briefing, August 20, 1987.
Memorandum from Ulsamer, A.G., to Tyrrell, E.A., EX-PB, "HS Recommendations on Lawn Darts", August 20, 1987.
Memorandum from Tinsworth, D., and Crigler, W., EPHA, to Tyrrell, E., EX-PB, "Lawn Dart Injury Data", August 21, 1987.
Memorandum from John D. Preston, ESMT, to Elaine A. Tyrrell, EX-PB, "ES Comments on Options Package for Lawn Darts," August 21, 1987.
Memorandum from Poth, B., CARM, to Tyrrell, E., OPMB, "Lawn Darts Option Package", August 27, 1987.
Memorandum from Dale R. Ray, ECPA, to Elaine Tyrrell, OPMB, "Lawn Darts," August 27, 1987.
Memorandum from Walton, W.W., ES, to Tyrrell, E., EXPM, "Lawn Darts Option Package", August 28, 1987.
Memorandum from Bob Poth, CARM, to Elaine Tyrrell, OPM, "Lawn Darts Option Package," September 1, 1987.
Briefing package from Elaine Tyrrell, Project Manager, to the Commission, September 10, 1987, with attachments:
Tab A—Memorandum from D. Schmeltzer, AED/CA, to Noble, D., OPMB, "Lawn Darts," with attachments, July 15, 1987.
Tab B—Memorandum from Tinsworth, D., EPHA, to Tyrrell, E., EX–PB, "Lawn Dart Injury Data," August 21, 1987.
Tab C—Memorandum from Ray, D., and Bennett, L., ECPA, to Tyrrell, E., OPMB, "Lawn Dart Accident Costs," August 4, 1987.
Tab D—CPSC News Release July 30, 1987.
Tab E—Memorandum from Poth, B., CARM, to Tyrrell, E., OPMB, "Law Darts Options Package," August 28, 1987.
Tab F—Memorandum from Ulsamer, A., to Tyrrell, E., EX–PB, HS Recommendations on "Lawn Darts," August 20, 1987.
—Memorandum from Koeser, R., to Tyrrell, E., OPMB, "Lawn Dart Options Package," August 19, 1987.
—Memorandum from Ray, D., ECPA, to Tyrrell, E., OPMB, "Lawn Darts," August 27, 1987.

Letter to John R. Fanone, Esq., from Robert G. Poth, CARM, September 11, 1987.
Commission vote sheet on lawn darts options, September 16, 1987.
CPSC staff memorandum from Douglas L. Noble, Acting AED for Compliance and Administrative Litigation, to the Commission, "Lawn Darts Options Package—Update of CPSC's Investigation and Industry's Response to Requested Voluntary Actions," with restricted attachment, September 16, 1987.
Memorandum from Paul H. Rubin, AED for Economic Analysis, to the Commission, "Lawn Darts Options Package," September 16, 1987.
Materials for lawn dart update briefing, September 17, 1987.
Transcript, Commission meeting of September 17, 1987 (43 pp.).
Petition from David A. Snow asking that the CPSC ban lawn darts (Petition HP 87–3), received in the Office of the Secretary September 23, 1987.
Memorandum from Robert G. Poth, CARM, to Elaine A.Tyrrell, Project Manager, "Enforcement Resources Associated with Options 1 & 2 of Lawn Darts Options Package of September 10, 1987," September 23, 1987.
Memorandum of Ross Koeser, Acting AEDFO, from Elizabeth Hendricks, FO, "Lawn Dart Surveillance by States," September 25, 1987.
Memorandum from OPMB, "Follow-Up Information Requested at the Briefing of September 17, 1987, dated September 28, 1987, with attachments.
Memorandum from Robert G. Poth, CARM, to Elaine Tyrrell, Project Manager, "Enforcement Resources Associated with Options 1 & 2 of Lawn Darts Options Package of September 10, 1987," September 23, 1987.
Memorandum from Dale R. Ray, ECPA, to Elaine Tyrrell, OPMB, "Project Resource Estimate," September 21, 1987.
Memorandum from Andrew G. Ulsamer, AED/HS, to Elaine Tyrrell, Project Manager, "Health Sciences Resources for Law Dart Options," September 21, 1987.
Minutes of Commission meeting, October 1, 1987.
Transcription of portion of October 1, 1987, Commission meeting (1 p.).
Statement of Commissioner Anne Graham on lawn dart decision, October 2, 1987.
Letter from James V. Lacy, General Counsel, to David Snow, October 6, 1987.
Log of telephone conversation between Douglas Noble, CPSC, and Milton Bush of the Sporting Goods Manufacturing Association, October 6, 1987.
Memo record from John Preston, ESMT, to Pat Fairall, ESMT, "Voluntary Standard for Lawn Darts," October 8, 1987.
Log of a conversation between Nick Marchica and Elaine Tyrrell, CPSC, and Milton Bush, SGMA, October 13, 1987.
Transcript of Commission meeting of October 15, 1987.
Federal Register notice, "Lawn Darts; Advance Notice of Proposed Rulemaking; Request for Comments and Data," 52 FR 38935 (October 20, 1987).
Letter from the Secretary of the Commission to David Snow, advising of the status of Petition HP 87–3, November 3, 1987.
Log of a telephone conversation between James V. Lacy, General Counsel, and Milton Bush of the Sporting Goods Manufacturers Association (SGMA), November 4, 1987.
Letter dated November 5, 1987, to James V. Lacy, General Counsel, from Milton Bush, SGMA.
Letter from James V. Lacy, General Counsel to Milton M. Bush, SGMA, November 13, 1987.
Memorandum from John Preston, ESMT, to Elaine Tyrrell, EX–PB, "ES Resources/ Tasks Concerning Rulemaking on Lawn Darts," undated.
Memorandum from D. Schmeltzer, AEDCA, to Elaine Tyrrell, OPMB, "Lawn Darts," February 5, 1988.
Briefing package from Elaine Tyrrell, OPMB, to the Commission, "Lawn Darts: Follow-Up to Advance Notice of Proposed Rulemaking (ANPR)," February 8, 1988, with attachments:
Tab A—Copy of ANPR.
Tab B—Memorandum from Tinsworth, D., EPHA, to Tyrrell, EXPM, "Lawn Dart Injuries," January 20, 1988.
Tab C—Memorandum from Deppa, S.W., and White, S., EPHF, to Tyrrell, E.A., EX–PB, "Evaluation of Lawn Dart Provision Effectiveness," January 29, 1988.
Tab D—Memorandum from Karels, T.R., ECSS, to Tyrrell, E., EX–P, "Lawn Darts," January 20, 1988.
Tab E—Memorandum from Nelson, C., CARM, to Tyrrell, E., OPMB, "Lawn Dart Compliance Survey," January 20, 1988.
Tab F—Log of meeting held by the Sporting Goods Manufacturers Association (SGMA) with industry representatives on lawn darts, December 10, 1987.
Tab G—Public comments in response to the ANPR:
A. Letter from Bush, M., Esq., Sporting Goods Manufacturers Association, December 17, 1987.
B. Comments of Consumer Federation of America, submitted by M. Fise, December 21, 1987.
C. Letter to the Editor from C. Mesneck, September 29, 1987.
D. Letter from Heslin, M., Connecticut Department of Consumer Protection, December 8, 1987.
E. Letter from Vultaggio, S., Regent Sports Corp., to D. Schmeltzer, CPSC, November 10, 1987.
F. Letter from G. Hostetler, November 16, 1987.

G. Letter from S. Coberly, November 3, 1987.
H. Letter from R. Lamontagne, November 16, 1987.
I. Letter from P. Spaeth, New York State Department of Law, to Doug Noble, CPSC, October 8, 1987.
J. Letter from C. Bouris, December 1, 1987.
K. Letter from R. Archer, Kent Sporting Goods Co., Inc., to D. Schmeltzer, CPSC, November 9, 1987.

Tab H—Memorandum from D. Shifflet, OIPA, to Noble, D., OPMB, "Lawn Dart Consumer Alert," February 2, 1988.

Additional comments on lawn darts:

Commenter and *Date*

Carl Meseck, September 29, 1987
N. Mease, October 29, 1987
H. Hatch, October 5, 1987
Rochester City Council, January 20, 1988
Consumer Federation of America, March 7, 1988
New York Department of Law, March 24, 1988
Commission vote sheet on lawn darts options, February 9, 1988.
Minutes of Commission meeting of March 2, 1988.
CPSC news release, "CPSC to Continue Its Formal Rulemaking Process on Lawn Darts," March 2, 1988.
Anne Graham, Commissioner, "Statement on Lawn Dart Decision," March 2, 1988.
Memorandum from Jack Kramer, EPHA, to Elaine Tyrrell, EXPM, "Lawn Darts: Head and Eye Injuries," March 30, 1988.
News from CPSC, "CPSC sues Sears to halt improper sale of lawn darts; Sears agrees to stop all sales," March 30, 1988.
Letter from D. Schmeltzer, AEDCA, to National Retail Merchants Association, April 19, 1988.
Commission ballot vote sheet, "Lawn Darts—Additional Option," April 21, 1988.
Memorandum from Douglas L. Noble, OPMB, to the Commission, "Lawn Darts," April 22, 1988, with attached memorandum from John Preston, ESMT, "A Test to Define the Scope of a Ban of Lawn Darts," April 21, 1988.
Report from Eric Allely, M.D., "An Approximation of the Probability of Penetration of the Human Skull by a Lawn Dart," with a cover letter, April 25, 1988.
Log of meeting of new ASTM task group for lawn darts on May 3, 1988, prepared by John Preston, ESMT.
Memorandum from Purohit, V., and Cohn, M., HSHE, "The probability of penetration of a child's skull by a lawn dart," May 16, 1988.
Letter from Jan Kinney, SGMA to Wendy Dyer, ASTM, May 16, 1988.
Minutes of Commission meeting of May 17, 1988.
Memorandum from Jack Kramer, EPHA, to Elaine Tyrrell, OPMB, "Lawn Dart Injuries," May 24, 1988.
Minutes of Commission meeting of May 25, 1988.
Statement by Commissioner Anne Graham on decision to ban lawn darts, May 25, 1988.
Statement of Chairman Terrence Scanlon on lawn darts, May 25, 1988.
Opinion of Commissioner Carole G. Dawson regarding Commission action to ban lawn darts, May 25, 1988.
Memo record from Jack Kramer, EPHA, to Elaine Tyrrell, EXPM, "Lawn Darts," May 26, 1988.
Karels, T., "Preliminary Regulatory Analyses, Economic and Environmental Assessments — Proposed Mandatory Rules on Lawn Darts," June 1988.
Karels, T., "Initial Regulatory Flexibility Analysis of a Mandatory Rule for Lawn Darts," June 1988.
Letter from David Snow to Commissioner Carol Dawson, June 9, 1988.
Memorandum from Christine Nelson, CARM to Carl Blechschmidt, OPMB, "Proposed Ban of Lawn Darts," June 28, 1988.
Vote sheet from Harleigh Ewell, OGC, to the Commission "Draft **Federal Register** Notice to Propose a Prohibition of The Sale of Lawn Darts," June 30, 1988.
Memorandum to the Commission from Carl Blechschmidt, Program Manager, "Notice of Proposed Rulemaking for Lawn Darts," June 30, 1988, with attachments:

Tab A—Memorandum from Karels, T.R., ECSS, to Blechschmidt, C.W., EXPM, "Initial Regulatory Flexibility Analysis: Lawn Darts," June 28, 1988.
—Memorandum from Karels, T.R., ECSS, to Blechschmidt, C.W., EXPM, "Preliminary Regulatory Analyses and Assessments — Lawn Darts," June 28, 1988.

Tab B—Draft Federal Register notice.

Minutes of Commission meeting, July 13, 1988.
News from CPSC, "CPSC obtains consent decree to halt improper sale of lawn darts," July 18, 1988.

In-depth Investigation Reports:

760603BEP7002
760615BEP7009
760727BEP7009
790709BEP0033
790709BEP0034
790712BEP0007
790716BEP0002
790726BEP0038
790801BEP0007
800809BEP0002
840716CBC3338
840719CBC1263
841107DAL5011
850304BEP0008
870415WES5054
870824CAA0177
870916CAA0145
871007CEN0008
871221CAA0081
871222CAA0082
880112CAA097
880318CAA0245
880321CEN0740
880330BEP0002
880401CAA0278
880406WES4004
880413CAA0288
880413CAA0289
880415CAA0302
A05478
A16275
A21284
A33558
A43934
A43935
A43936
A43938

Reported Incident File:

B880020A1
C1A0102A1
C320025A1
C4A5021A1
G4A0154A1
C635013A1
C7A0028
D450030A1
G001589
G860558A1
H190670A1
H847023
H847045
H885051A1
H891442A1
1059342
N0762792
X281330A1
X341002A1
X491009A1
X890311A1
X961003A1
X78478A1
H350192A1

Investigation of lawndart injury, June 25, 1974.

[FR Doc. 88-16643 Filed 7-28-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[LR-133-86]

Proposed Rulemaking; Returns Relating to Persons Receiving Contracts From Federal Executive Agencies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 6050M of the Internal Revenue Code ("Code"), which was added to the Code by the Tax Reform Act of 1986, requires Federal executive agencies to make a return to the Internal Revenue Service reporting the name, address, and taxpayer identification number (TIN) of each person with which the agency enters into a contract, together with any other information required by Treasury regulations. This document contains proposed rules concerning compliance with the new reporting requirements imposed by section 6050M.

DATES:

Proposed Effective Date

The regulations are proposed to be effective on the date the Treasury Decision is published in the **Federal Register** and are proposed to apply to contracts of Federal executive agencies obligating more than $25,000 entered into on or after October 1, 1988, or for which the amount obligated is increased by more than $25,000 on or after that date.

Dates For Comments And Requests For A Public Hearing

Written comments and requests for a public hearing must be mailed by August 29, 1988.

ADDRESS: Send comments or requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-133-86], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone (202) 566-3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document proposes regulations to be added to the Income Tax Regulations (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) under section 6050M of the Internal Revenue Code of 1986. These proposed rules provide the needed guidance for complying with the provisions of section 6050M, which was enacted by section 1522 of the Tax Reform Act of 1986 (Pub. L. 99–514; 100 Stat. 2085).

Explanation of Provisions

Section 6050M requires the head of every Federal executive agency to file an information return with the Internal Revenue Service setting forth the name, address and TIN of each person with which that agency enters into a contract, as well as any other information prescribed under Treasury regulations. The information returns filed under section 6050M will be used as a source of information to collect delinquent Federal tax liabilities of persons who enter into contracts with Federal executive agencies.

In addition to the information specifically required by section 6050M, the proposed rules require other information that will facilitate the collection of delinquent Federal tax liabilities to be reported to the Internal Revenue Service. Included in the category of additional items are the expected date of completion of the contract as determined under any reasonable method (such as the expected contract delivery date under the contract schedule) and the total amount obligated under the contract action.

The proposed rules define the term "contract" to mean an obligation of a Federal executive agency to make payment of money (or other property) to a person in return for the sale of property, the rendering of services, or other consideration. The term "contract", however, does not include a license granted by a Federal executive agency, an obligation of a contractor (other than a Federal executive agency) to subcontractor, a debt instrument of the United States Government or of a Federal agency, or an obligation of a Federal executive agency to lend money, lease propoerty to a lessee, or sell property.

Pursuant to the authority of section 6050M (d), it is proposed that contracts or contract actions for which the amount obligated is $25,000 or less do not have to be reported. Because the propose of section 6050M is to provide the Internal Revenue Service with a source of information for collection, certain categories of contracts that will be of minimal use for this purpose are proposed to be excluded from the reporting requirements. Contracts with another Federal governmental unit or with a foreign, state, or local government (or an agency or instrumentality thereof) would not have to be reported. Additionally, no reporting would be required for any contract the terms of which provide that all amounts payable under the contract by any Federal executive agency will be paid within the 120 days following the date of the contract action, and for which it is reasonable to expect that all amounts will be so paid.

For contracts entered into on or after October 1, 1988, (or with respect to which there are contract actions required to be reported on or after that date) it is proposed that the information required to be reported to the Internal Revenue Service under section 6050M must be reported on a quarterly basis (calendar quarters). Generally, it is proposed that the information with respect to contracts entered into during a calendar quarter must be submitted on magnetic media to the Service on or before the last day of the calendar month following the quarter. A special reporting rule permitting the use of paper reporting on Form 8596 is provided for those Federal executive agencies that reasonably expect to enter into fewer than 250 contracts to be reported for a calendar year. To the extent permitted in future guidance relating to section 6050M, those Federal executive agencies that would be required to use magnetic media would be permitted to submit more than one return per quarter where each separate submission covers all of the contracts and contract actions required to be reported for the quarter for one or more readily identifiable operating functions of the Federal executive agency.

If a Federal executive agency reports all the information that the Internal Revenue Service requires with respect to one or more contracts to the Federal Procurement Data System, it is proposed that the agency may elect to have the Director of the Federal Procurement Data Center make, on its behalf, the return required with respect to all such contracts.

These rules are proposed to apply to Federal executive agencies with respect to their contracts (and their contract actions treated as contracts under paragraph (e) of the regulations) entered into on or after October 1, 1988. The Internal Revenue Service proposes to reserve on the issue of reporting by Federal executive agencies regarding their contracts (and their contract actions treated as contracts under paragraph (e) of the regulations) entered into before October 1, 1988.

The reporting requirements proposed in this document are slightly different from those set forth in Notice 87–1, which was published in Internal Revenue Bulletin 1987–1, dated January 5, 1987. To the extent there is a difference, the rules proposed in this document, which are less burdensome than those in Notice 87–1, would be controlling, if adopted.

Special Analyses

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the rules provided herein are interpretative. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Comments and Requests For a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Thomas J. Kane of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both in matters of substance and style.

List of Subjects

26 CFR Part 1.6001–1—1.6109–2

Income taxes, Administration and procedures, Filing requirements.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * § 1.6050M–1 also issued under 26 U.S.C. 6050M.

Par. 2. A new § 1.6050M–1 is added to read as follows:

§ 1.6050M–1 Information returns relating to persons receiving contracts from certain Federal executive agencies.

(a) *General rule.* Except as otherwise provided in paragraph (c) of this section, the head of every Federal executive agency or his or her delegate shall make an information return to the Internal Revenue Service reporting the following information with respect to each contract entered into by that Federal executive agency:

(1) Name and address of the person with whom the contract is made ("contractor");

(2) Contractor's TIN and, if the contractor is a member of an affiliated group of corporations that flies its Federal income tax returns on a consolidated basis, the name and TIN of the common parent of the affiliated group;

(3) The date of the contract action;

(4) The expected date of completion of the contract as determined under any reasonable method, such as the expected contract delivery date under the contract schedule;

(5) The total amount obligated under the contract action;

(6) Any other information required by Forms 8596 and 8596A and their instructions, or by any other administrative guidance issued by the Internal Revenue Service (such as a revenue procedure).

See paragraph (e) of this section relating to the manner in which to report increases in amounts obligated under existing contracts. See paragraph (d)(5) of this section for special rules for agencies that submit contract information to the Federal Procurement Data Center.

(b) *Definitions.* The following definitions apply for purposes of this section—

(1) *Federal executive agency.* The term "Federal executive agency" means—

(i) Any executive agency (as defined in 5 U.S.C. 105) other than the General Accounting Office;

(ii) Any military department (as defined in 5 U.S.C. 102); and

(iii) The United States Postal Service and the Postal Rate Commission.

(2) *Contract*—(i) *General rule.* The term "contract" means an obligation of a Federal executive agency to make payment of money (or other property) to a person in return for the sale of property, the rendering of services, or other consideration. The term "contract" includes, for example, such an obligation arising from a written agreement executed by the agency and the contractor, an award or notice of award, a job order or task letter issued under a basic ordering agreement, a letter contract, an order that becomes effective only upon written acceptance or performance, or a bilateral increase in amount obligated of a type described in paragraph (e) of this section.

(ii) *Exceptions.* For purposes of this section, the term "contract" does not include—

(A) A license granted by a Federal executive agency;

(B) An obligation of a contractor (other than a Federal executive agency) to a subcontractor;

(C) A debt instrument of the United States Government or a Federal agency, such as a treasury note, treasury bond, treasury bill, savings bond, or similar instrument; or

(D) An obligation of a Federal executive agency to lend money, lease property to a leasee, or sell property.

(iii) *Special rule for certain minority contracts administered by the Small Business Administration.* Any agreement entered into by the Small Business Administration ("SBA") as "prime contractor" on behalf of a procuring agency which is a Federal executive agency pursuant to the administration of section 8(a) of the Small Business Act (15 U.S.C. 637(a)) shall not be treated as a contract of the procuring agency for purposes of this section.

(iv) *Certain schedule contracts.* For purposes of this section—

(A) A Federal Supply Schedule Contract entered into by the General Services Administration,

(B) An automated Data Processing Schedule Contract entered into by the General Services Administration, or

(C) A schedule contract entered into by the Veterans Administration on behalf of one or more Federal executive agencies is not a "contract" to be reported by the General Services Administration or the Veterans Administration at the time of execution. Instead, an order placed by a Federal executive agency, including the General Services Administration or the Veterans Administration, under such a schedule contract is a "contract" for purposes of this section.

(v) *Blanket purchase agreements.* For purposes of this section, the term "contract" does not include a blanket purchase agreement between one or more Federal executive agencies and a contractor. Instead, an order placed by a Federal executive agency under the terms of a blanket purchase agreement is a "contract" for purposes of this section.

(3) *Contractor.* The term "contractor" means any person who enters into a contract with a Federal executive agency.

(4) *Person and TIN.* The terms "person" and "TIN" are defined in sections 7701(a) (1) and (41), respectively.

(c) *Exceptions to information reporting requirements.* The following do not need to be reported pursuant to this section:

(1) Any contract or contract action for which the amount obligated is $25,000 or less;

(2) Any contract with a contractor who, in making the agreement, is acting in his or her capacity as an employee of a Federal executive agency (*e.g.*, any contract of employment under which the employee is paid wages subject to the withholding provisions contained in Chapter 24 of Subtitle C);

(3) Any contract between a Federal executive agency and another Federal governmental unit (or agency or instrumentality thereof);

(4) Any contract with a foreign government (or any agency or instrumentality thereof);

(5) Any contract with a state or local governmental unit (or any agency or instrumentality thereof);

(6) Any contract with a person who is not required to have a TIN (see, for example, § 301.6109–1(g));

(7) Any contract the terms of which provide that all amounts payable under the contract by any Federal executive agency will be paid on or before the 120th day following the date of the contract action, and for which it is

reasonable to expect that all amounts will be so paid.

(d) *Filing requirements*—(1) *Frequency and time for filing.* The information returns required by this section with respect to contracts of a Federal executive agency entered into or after October 1, 1988, must be filed on a quarterly basis for the calendar quarters ending on the last day of March, June, September and December. Except as provided in paragraph (d)(5) of this section, the returns for contracts entered into during a calender quarter must be filed on or before the last day of the month following that quarter.

(2) *Form of reporting*—(i) *General rule concerning magnetic media.* The information returns required by this section with respect to contracts of a Federal executive agency for each calendar quarter shall be made in one submission (or in multiple submissions if permitted by paragraph (d)(4) of this section). Except as provided in paragraph (d)(2)(ii) of this section, the required return shall be made on magnetic media (within the meaning of § 301.6011–2) in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service for the filing of such returns under section 6050M.

(ii) *Magnetic media exception for low-volume filers.* Any Federal executive agency that on any October 1 has a reasonable expectation of entering into, during the one year period beginning on that date, fewer than 250 contracts that are subject to the reporting requirements under this section may make the information returns required by this section for each quarter of that one year period on the prescribed paper Form 8596 under penalties of perjury in accordance with the instructions accompanying such form.

(3) *Place of filing*—(i) *Returns on magnetic media.* Information returns made under this section on magnetic media shall be filed with the Internal Revenue Service at the National Computer Center, Martinsburg, West Virginia 25401, in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service relating to the filing of returns under section 6050M.

(ii) *Form 8596.* Information returns made on Form 8596 shall be filed with the Internal Revenue Service at the location specified in the instructions for that form.

(4) *Special rule concerning multiple returns.* To the extent permitted in any revenue procedure or other guidance relating to the filing of information returns under this section, a Federal executive agency which files information returns under this section on magnetic media may make more than one magnetic media submission for any quarter, if each submission for that quarter contains all of the information required by paragraph (a) of this section for one or more departments, branches, bureaus, agencies, or other readily identifiable operating functions (such as a geographic region) of the Federal executive agency.

(5) *Special rules for agencies reporting to the Federal Procurement Data Center*—(i) *Election to have the Director of the Federal Procurement Data Center make return on behalf of agency.* If, in complying with the requirements of the Federal Procurement Data System (FPDS) (as established under the authority of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 401 *et seq.*), a Federal executive agency submits to the Federal Procurement Data Center (FPDC) all the information with respect to one or more contracts required to be reported by paragraph (a) of this section, that Federal executive agency may, in lieu of making a return directly to the Internal Revenue Service with respect to those contracts, elect to have the Director of the FPDC (or his or her delegate) make the required return with respect to all of those contracts on its behalf. In order to make this election for contracts entered into during a calendar quarter, the head of a Federal executive agency (or his or her delegate) shall attach to its submission to the FPDC for that quarter a signed statement to the effect that (A) the Director of the FPDC (or his or her delegate) is authorized on the agency's behalf to make the return required by 26 CFR 1.6050M–1 for that quarter, and (B) the information provided by the agency for use by the FPDC in making that return is declared, under the penalties of perjury, to be, to the best of his or her knowledge and belief, true, correct, and complete. If the election is made, the Director of the FPDC (or his or her delegate) shall, on the electing agency's behalf, make the return required by paragraph (a) of this section with respect to the contracts to which the election applies.

(ii) *Time, manner, and place of filing.* The Director of the FPDC (or his or her delegate) must—

(A) Make the return on or before the earlier of—

(*1*) 45 days following the date that the contract information is required to be submitted to the FPDC, or

(*2*) 90 days following the end of the calendar quarter for which the election is made, except that, if that calendar quarter ends September 30, 105 days following the end of that quarter, and

(B) Comply with paragraphs (d) (2)(i) and (3)(i) of this section, relating to form and place of filing.

(iii) *Contracts reported directly to the Internal Revenue Service.* Even if the election is made, all information with respect to any particular contract required to be reported under paragraph (a) of this section must be reported directly to the Internal Revenue Service by the electing agency if that information is not submitted to the FPDC. An electing agency shall not make a direct return to the Internal Revenue Service of the contract information subject to the election.

(e) *Special rules relating to increases in amount obligated.* If, through the exercise of an option contained in a basic or initial contract or under any other rule of contract law, express or implied, the amount of money or other property obligated under the contract is increased by more than $25,000, then that action shall be treated as the entering into of a new contract with respect to which the information required by paragraph (a) of this section is to be reported to the Internal Revenue Service for the calendar quarter in which the increase occurs.

(f) *Effective date*—(1) *Contracts entered into on or after October 1, 1988.* This section applies to each Federal executive agency with respect to (i) its contracts entered into on or after October 1, 1988, and (ii) its contract actions occurring on or after October 1, 1988, that are treated as new contracts under paragraph (e) of this section.

(2) *Contracts entered into before October 1, 1988.* [Reserved]

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * *
§ 301.6050M–1 is also issued under 26 U.S.C. 6050M.

Par. 4. A new § 301.6050M–1 is added to read as follows:

§ 301.6050M–1 Information returns relating to persons receiving contracts from certain Federal executive agencies (temporary).

For provisions relating to the requirements of returns of information relating to persons receiving contracts from certain Federal executive agencies,

see § 1.6050M–1 of this chapter (Income Tax Regulations).

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–17134 Filed 7–27–88; 11:19 am]

BILLING CODE 4330–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Automatic Emergency-Parking Brakes for Rubber-Tired, Self-Propelled Electric Face Equipment; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule for automatic emergency-parking brakes for rubber-tired, self-propelled electric face equipment in 30 CFR Part 75.

DATE: Written comments on the proposed rule for automatic emergency-parking brakes must be received on or before August 29, 1988.

ADDRESS: Send comments to Office of Standards, Regulations and Variances; MSHA; Room 631, Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On March 1, 1988, MSHA published a proposed safety standard that would require automatic emergency-parking brakes on rubber-tired, self-propelled electric face equipment used underground coal mines (53 FR 6512). The automatic emergency/parking brakes described in the proposal engage when there is a loss of power to such equipment, and could be activated by the equipment operator in an emergency situation. The brakes also act automatically as a parking brake when the equipment is intentionally deenergized. The standard was proposed under section 101 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 811).

On June 16, 1988, MSHA published in the **Federal Register** (53 FR 22502) a Notice of Public Hearings which stated that the record would remain open until July 29, 1988 for the submission of post hearing comments. Due to requests from the mining community, MSHA is extending the comment period to August 29, 1988. All interested parties are encouraged to submit comments prior to this date.

Dated: July 21, 1988.

Patricia W. Silvey,

Director, Office of Standards Regulations and Variances.

[FR Doc. 88–17007 Filed 7–28–88; 8:45 am]

BILLING CODE 4510–43–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–312, RM–6127 and RM–6135]

Radio Broadcasting Services; Pearl and Magee, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action requests comments on two petitions for rule making. The petitions are mutually exclusive. Colon Johnson requests the allotment of FM Channel 230A to Pearl, Mississippi. There is a site restriction 7.1 kilometers (4.4 miles) northeast of the community, at coordinates 32–15–07 and 90–03–41. Airwaves Company proposes the allotment of Channel 230A to Magee, Mississippi. The allotment of Channel 230A at Magee is contingent on the grant of a license to Station WXLT, Channel 231C2, McComb, Mississippi. Should Channel 230A be allotted to Magee, the opening of a window for the filing of applications will be delayed until the grant of a covering license for the Macomb Station's constuction permit. The coordinates for Channel 230A at Magee are 31–52–18 and 89–43–54.

DATES: Comments must be filed on or before Agust 26, 1988, and reply comments on or before September 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Colon Johnson, 20 Nelson Circle, Jackson, Mississippi 39212

Mr. Bob R. Kidd, Airwaves Company, P.O. Box 976, Rayvile, Louisiana 71269

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–312, adopted May 25, 1988, and released July 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory FlexibilityAct of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte contact.*

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–17111 Filed 7–28–88; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 53, No. 146
Friday, July 29, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88-110]

Conference on Scientific Issues Related to Transgenic Plants

AGENCIES: Animal and Plant Health Inspection Service, USDA; Environmental Protection Agency; Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS), the Environmental Protection Agency (EPA), and the Food and Drug Administration (FDA) are jointly sponsoring a conference on scientific issues associated with the development of transgenic plants intended to be used for food and other commercial purposes. This conference will provide an opportunity for participants from governments, academia, industry, and consumer/environmental groups to discuss the current scientific issues regarding such plants.

DATES: The conference will be held September 7–9, 1988, in Annapolis, Maryland.

FOR FURTHER INFORMATION CONTACT: Terry L. Medley, Director, Biotechnology and Environmental Coordination Staff, APHIS, USDA, 6505 Belcrest Road, Federal Building, Room 406, Hyattsville, Maryland 20782, Area Code (301) 436–7602; Office of Toxic Substances, TSCA Assistance Office, (TS–799), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Area Code (202) 554–1404; James Maryanski, Biotechnology Coordinator, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFF–334), 200 C Street, SW., Washington, DC 20204, Area Code (202) 426–8950.

SUPPLEMENTARY INFORMATION:

Background

Plant scientists have a distinguished history of developing new agricultural crops through classical methods of plant breeding and selection. In addition to traditional methods, scientists are using recent advances such as recombinant DNA and cell fusion to develop new varieties of agricultural crops. Recently, field tests have been conducted on certain genetically modified (i.e., transgenic) plants that have been engineered to be insect or disease resistant or to be tolerant to herbicides. These field tests have been limited in size and scope and have been conducted for the purpose of obtaining efficacy data prior to large scale planting. In addition, agricultural research programs are under way to improve the nutritional quality of food crops and to develop commercial crops with other desirable characteristics.

Because of the rapid progress of science and the public focus on biotechnology, the United States Department of Agriculture via the Animal and Plant Health Inspection Service, the Environmental Protection Agency, and the Food and Drug Administration are jointly sponsoring a conferece on scientific issues associated with transgenic plants that are intended to be used for food and other commercial purposes. The conference will provide an opportunity for participants from government, academia, industry, consumer and environmental groups to discuss the current scientific issues regarding such plants.

The conference format will include presentations by scientific experts in the various fields related to research and development of transgenic plants. Small interactive work group sessions will provide an opportunity for participants to further discuss the scientific issues associated with these plants.

Attendance will be limited to available space. Notices of the meeting have been sent to prospective participants representing industry, academia, and consumer and environmental interest groups. However, a limited number of openings have been reserved for other interested persons with similar expertise. Interested persons should contact one of the persons listed under **"FOR FURTHER INFORMATION CONTACT."** Summaries of the proceedings from the conference will be available after the conference and may be obtained by contacting one of the persons listed under **"FOR FURTHER INFORMATION CONTACT."**

The following are examples of issues that will be addressed at the conference.

1. What kinds of transgenic plants are being developed, and what techniques are being used in their development?

2. What aspects of the techniques of molecular biology may raise issues such as the possibility of transfer of genetic material to unintended hosts?

3. What issues should be addressed in assessing possible effects on human health?

4. What genetic alterations in the plant might lead to the creation or introduction of new pests or to enhanced susceptibility to existing pests?

5. What isues should be addressed in assessing the effects on the environment of transgenic plants?

Dated: July 19, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

Dated: July 21, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances, Environmental Protection Agency.

Dated: July 26, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–17232 Filed 7–28–88; 8:45 am]
BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Bureau of Export Administration.

Title: Numerical Control Units, Numerically Controlled Machine Tools, Dimensional Inspection Machines, Direct Numerical Control Systems, Specially Designed Assemblies, and Specially Designed Software.

Form Number: Agency—EAR 376.11; OMB–0694–0024 (formerly 0625–0152).

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 132 respondents; 66 reporting hours. Average hours per response-one-half hour.

Needs and Uses: When a license application is received to export numerically controlled items to the People's Republic of China or Communist-bloc countries, certain technical information on the transaction must be provided. The licensing officer needs this information so that he/she can be certain that the item to be exported has no military or nuclear end-uses.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 21, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–17123 Filed 7–28–88; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: International Trade Administration.

Title: Foreign Buyer Program: Application, Exhibition Data, and Evaluation.

Form Numbers: Agency—ITA–4014P, 4015P, and 4102P, OMB—0625–0151.

Type Of Request: Extension of the expiration date of a currently approved collection.

Burden: 6,600 respondents; 1,382 reporting hours.

Average Hours Per Response: ITA–4014P—10 minutes; ITA–4015P—10 minutes; ITA–4102P—3 hours.

Needs And Uses: The International Trade Administration (ITA) runs the Foreign Buyer Program (FBP) to encourage foreign buyers to attend selected domestic trade shows in high export potential industries and to facilitate contact between U.S. exhibitors and foreign visitors. The application is the vehicle used by a potential show organizer to provide (1) his experience, (2) ability to meet the special conditions of the Foreign Buyer Program and (3) information about the domestic trade show such as number of U.S. exhibitors and percentage of net exhibit space occupied by U.S. companies vis-a-vis non-U.S. exhibitors. The exhibitor data form is completed by U.S. exhibitors participating in a FBP domestic trade show and used to list the firm and its product in an Export Interest Directory which is distributed worldwide for use by Foreign Commercial Officers in recruiting delegations of foreign buyers to attend the show. The exhibitor evaluation is sent to U.S. exhibitors after the show to determine the results of ITA's efforts to bring together foreign buyers and U.S. firms.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion; annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 21, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88–17073 Filed 7–28–88; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: International Trade Administration.

Title: COMMERCIAL NEWS USA/ Export Product Promotion.

Form Numbers: Agency—ITA–4063P, OMB—0625–0061.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 2,200 respondents; 917 reporting hours.

Average Hours Per Response: 25 minutes.

Needs And Uses: The International Trade Administration (ITA) publishes the COMMERCIAL NEWS USA (CNUSA) which promotes U.S. firms' products in overseas markets. The application form is the vehicle used (1) by U.S. firms to provide information on the general new and/or industry-specific products which it wants promoted overseas; (2) to determine if the products meet program criteria, and (3), to request the results of each company's publicity in CNUSA one year after publication.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 21, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-17074 Filed 7-28-88; 8:45 am]

BILLING CODE 3510-CW-M

Export Administration

[Docket No. 7108-01, 7108-02]

Actions Affecting Export Privileges; Anton Elzer, Individually and d/b/a Development and Consultant, Elzer ECO AB

Summary

Pursuant to the June 23, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, Anton Elzer, with an address at Avesgarde 15, S-417 Gothenburg, Sweden, is denied for a period of twenty (20) years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations (15 CFR Parts 368-369).

Order

On June 23, 1988, the Administrative Law Judge entered his recommended Decision and Order in the above-referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Date: July 25, 1988.

Paul Freedenberg,

Under Secretary for the Bureau of Export Administration.

Decision and Order

Appearance for Respondent: Anton Elzer (pro se), Avesgarde 15, S-417 44 Gothenburg Sweden.

Appearance for Agency: Joan L. MacKenzie, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, Washington, DC 20230.

Preliminary Statement

On August 14, 1987, the Office of Export Enforcement (OEE), United States Department of Commerce (Agency), issued a charging letter to Respondent Anton Elzer individually and doing business as Development and Consultant Elzer ECO AB (hereinafter referred to as "Elzer"). The charging letter alleges that Respondent violated §§ 387.3, 387.4, 387.5, and 387.6 of the Export Administration Regulations (15 CFR Parts 368-399), (the Regulations), issued pursuant to the Export Administration Act of 1979 (50 U.S.C. 2401-2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act).

Respondent filed an answer to the initial charging letter which was received by this office on August 31, 1987. Pursuant to § 388.14 of the Regulations, this matter is adjudicated on the record without a hearing. Both Agency Counsel and Respondent made written submissions to the record, which closed on December 19, 1987.

Background

The scheme to divert U.S. technology to the U.S.S.R. appears to have been directed by Goran Josberg, individually and doing business as Globe Metals, ("Josberg"), who has been a denied party since December 1983. His *modus operandi* has been to use other willing partners such as Respondent Elzer to obtain goods for his Soviet customers and to engage in coverup schemes to hide the transactions. A former employee of Josberg, Lennert Appelberg, told the Department of Commerce's Export Control Attaché in meetings on April 24, 1985 and about May 3, 1985 that he was a "front" man for Josberg. According to Appelberg, Josberg often traveled to the U.S.S.R. and negotiated with the Soviets for delivery of the desired U.S. technology. Appelberg's duties were to then the U.S. technology for Josberg and Globe Metals to divert to the East Bloc. Appelberg stated that Josberg bragged openly about the fact that he has been able to divert large quantities of U.S. technology through Sweden and other countries since 1982 or 1983, even though he was on the table of denied parties.

Another employee of Josberg, Rolf Carrick, provided a specific example of how Josberg operated. According to Carrick, Appelberg bought a computer for Josberg, for ulitimate sale to Josberg's Soviet customer. Josberg then paid a Swedish lawyer a fee to answer inquiries on the end-use of the computer, to the effect that he intended to use it for word-processing, when the lawyer had no intention to buy the computer at all. Thus, while Josberg directed which goods to buy for his Soviet customers, he remained behind the scene. The evidence shows that Elzer knowingly played the same kind of role as Appelberg and the lawyer in Sweden, to obtain the WAS 3000s for Josberg's Soviet customers in the two transactions involved in this case, while Josberg directed the operations from the shadows.

Facts

The evidence shows that Elzer participated in a conspiracy to order a U.S.-origin WAS 3000 airstream modulator, attempted to conceal by a paper diversion through Singapore, and transshipped it through Sweden for reexport to the U.S.S.R.

In the first transaction, Elzer ordered a high intensity WAS 3000 airstream generator with spare parts (WAS 3000) for Josberg from the U.S. manufacturer in Huntsville, Alabama, on April 15, 1983. He submitted with his order a Swedish Import Certificate dated April 15, 1983. The import certificate states that he was importing the WAS 3000 to an end-user in sweden, not diverting it to another destination.

The manufacturer submitted the import certificate with its export license application. Based on the information provided in the export license application, including the Swedish import certificate, the Department of Commerce issued, a validated export license (No. A707644), issued on about July 23, 1983, authorizing the export of the WAS 3000 system to Elzer, who was listed as consignee of ultimate destination.

The manner in which Elzer ordered the WAS 3000 is evidence of a conspiracy. First, there is no apparent reason why Josberg could not have ordered the WAS 3000 himself for import into Sweden, except that it was consistent with his usual mode to keep his participation secret. Second, although it appears that Elzer ordered the WAS 3000 for Josberg, he did not provide Josberg's or Globe Metal's name as the consignee, which is also consistent with Josberg's pattern of secrecy. More important, however, is that neither Elzer nor Josberg could have obtained a validated license to ship the WAS 3000 to the U.S.S.R., its true ultimate destination, because it was prohibited for national security reasons from being exported to the U.S.S.R. Thus obtaining the WAS 3000 from the United States on the pretext that sweden was the country of ultimate destination was necessary to the overall plan of shipping it to the U.S.S.R.

About a month after Elzer was notified by the manufacturer on August 23, 1983 that the WAS 3000 would arrive

in Sweden about October 1, 1983, and before the actual delivery of the WAS 3000 to Sweden, Elzer initiated correspondence with the manager of Allinson, Ltd. in Singapore. This implemented the paper transfer of the WAS 3000 to Allinson. The file reflects that Allinson, Ltd. was a front corporation established by Elzer and Josberg and others to conceal the conspirators' participation in the sale of the WAS 3000 to the U.S.S.R. Early in 1983, Elzer engaged in correspondence with Josberg and others about establishing offshore trading companies which would be concealed. The participants were concerned that there be a chinese partner, but under such an arrangement that company ownership could not be traced.

In fact, Elzer and a Chinese partner (Chew) established Allinson, each owning half the shares in the company, in 1983 in Hong Kong, with a branch office in Singapore. Elzer made attempts to hide the ownership of the company. The manager and sole employee of the Singapore office held Elzer's shares. According to Chew, Elzer was given the title of technical consultant in exchange for his financial participation, a fact which Elzer used repeatedly to try to distance himself from Allinson. Elzer consistently has maintained that his role as consultant has insulated his liability for the actions of Allinson. His attempts at concealment were unsuccessful.

Elzer was apprently the acting force behind establishing and owning Allinson, and transferring the goods through it. Though he or his company may never have directly shipped the WAS 3000 to the U.S.S.R., Respondent cannot claim clean hands, where he solicited, conspired with, and acted in concert with others to obtain and arrange for the unauthorized reexport of such goods to the U.S.S.R., intentionally violating the Regulations. When Elzer was asked about his participation in the establishment of Allinson in Hong Kong and Singapore he refused to answer any questions stating that Allison was an independent company. It is clear from the evidence, however, that Elzer was a driving force behind the establishment of Allinson, and was a half owner. Furthermore, the only firms Allinson represented from its inception in 1983 to October 1985 are those belonging to the three participants, and all its transactions were conducted in cash. The conclusion that Allinson was a front company used to hide the participation of Elzer in the sale of the WAS 3000 is inescapable.

In the course of Elzer's transactions with Allinson concerning the WAS 3000, the manufacturer shipped the WAS 3000 from the United States to Elzer at his post office address, on or about september 30, 1983. Elzer arranged to have the goods delivered to the duty free port in Gothenburg, rather than his post office box or to his business address, which was an office in his home. The goods were unloaded in the duty free port in Gothenburg on or about October 18, 1983. On or about October 25, 1983, Elzer transferred the WAS 3000 from Gothenburg to Wright and Olsen at the duty free port in Stockholm, Josberg's place of business.

Elzer's version of this delivery has been inconsistent. He initially stated in his answers that the WAS 3000 was delivered to his company's address in Gothenburg. He now claims that the goods arrived directly in the duty free port of Gothenburg, and denies that he instructed the local agent to deliver the goods to the duty free port instead of his address. Because the goods were addressed to Elzer's post office box, Elzer must have instructed the local agent to leave the goods in the duty free port until transshipment arrangements were made.

It is logical to infer that Elzer wanted the goods delivered to the duty free port instead of to himself or to Josberg in Sweden proper because he knew that the goods were to be transshipped out of Sweden, and by keeping them in duty free ports, taxes would not have to be paid. The evidence shows that this was the case. Elzer states that the WAS 3000 went from duty free port to duty free port because the sales price included no taxes. Taxes would have been paid if Elzer had the goods delivered within Sweden, and then sold the goods to Josberg, as he has repeatedly claimed. Instead, Elzer arranged to have the goods transhipped through Sweden and it appears that he never intended to ship the WAS 3000 into Sweden. Therefore Elzer's statement in his Import Certificate is a false representation of material fact in violation of section 387.5 of the Regulations.

Josberg subsequently sold and shipped the WAS 3000 to Promashimport in the U.S.S.R., a regular customer of Globe Metals. While Elzer denies that he ever knew that the goods were intended to be shipped to the U.S.S.R., the evidence belies this denial. When the Department of Commerce's Export Control Attache interviewed Elzer concerning the WAS 3000 system on or about May 10, 1985, Elzer admitted that he had known Josberg for many years, that he knew that the WAS 3000s were in the U.S.S.R., and that he knew he was in trouble. The evidence indicates that Josberg's primary business was with the U.S.S.R. He bragged openly to his associates about being able to divert U.S. technology to the U.S.S.R. through Sweden. Because of Elzer's long time association with Josberg and their complicity in establishing and using Allinson, Elzer's assertion that he knew nothing of Josberg's intent to export the goods to the U.S.S.R. is simply not credible. Particularly in the absence of another viable explanation. Elzer's knowledge that the goods were for Josberg's Soviet customer is inferred from his long time and confidential association with a denied party and known diverter to the U.S.S.R. In participating in this reexport of the WAS 3000 to the U.S.S.R. without the required authorization, Elzer knew or had reason to know of the violations of the Regulations.

In the second transaction, Elzer, as consultant to Allinson, solicited Helmut Keck, individually and doing business as OTC Mess-und Videotechnik GmbH, ("Keck"), to obtain the WAS 3000 for him on the representation that West Germany was the country of ultimate destination, and then shipped the goods to the U.S.S.R. Elzer inquired about ordering another WAS 3000 for Josberg in about April 1984. The manufacturer asked Elzer to complete an ITA–629P form providing information about the ultimate end user, as required by the Regulations. Elzer and Josberg declined to provide the form and Elzer did not place an order. Elzer, as consultant to Allinson, then asked Keck on or about April 24, 1984, to obtain the WAS 3000 for him, and about May 24, 1984, Keck placed an order with the manufacturer for a WAS 3000 airstream modulator with spare parts.

Elzer denies that he solicited Keck to order this WAS 3000 for him, but the evidence demonstrated otherwise. Elzer was a long time business associate, consultant and friend of Keck, and Elzer has admitted using Keck as a front in another transaction. And clearly, Allinson had asked Keck to obtain a WAS 3000 for Josberg before Keck ordered it from the U.S. manufacturer. That the only business conducted by Allinson, Ltd. in Singapore was the sale of the two WAS 3000s reflects the nature of this "front" established by Respondent Elzer. The packing slip for the WAS 3000 on April 24, 1984, and Keck confirmed this order on May 14, 1984, ten days before Keck ordered the WAS 3000 from the manufacturer.

Keck supplied the U.S. exporter with a West German Import Certificate No. 728167. The Department of Commerce issued an export license authorizing

shipment of the goods to Keck in West Germany, and these goods were shipped from the United States to Hamburg on or about October 12, 1984. On about October 25, 1984, Keck made "delivery" of the WAS 3000 to Elzer, as consultant to Allinson, although the goods had not left West Germany.

Elzer transferred the goods from Hamburg to Nurminen Oy, a freight forwarding company in Helsinki, Finland, on about October 24, 1984. Elzer's position on whether he shipped the goods to Nurminen Oy is inconsistent. He stated clearly and emphatically in 1985 that he, and not Keck, shipped the goods to Finland. In more recent documents, he denies any involvement in this transfer. Elzer's earlier version of the facts is the most credible, and that, as in the first transaction, he took the responsibility to ship the WAS 3000 to his customer's (Josberg's) freight forwarder, this time being Nurminen Oy in Finland.

Elzer shipped the WAS 3000 to Globe Metals, Moscow, U.S.S.R., on October 26, 1984. He now denies that he had any involvement with this shipment, even though his name appeared on the documents as the shipper, asserting that his name was falsely used. The fact that the goods were shipped to Nurminen Oy considered with the evidence of complicity among Elzer, Keck, and Josberg supports a strong inference that Elzer was responsible for the shipment to the U.S.S.R. His denial, in the absence of any evidence, is simply not believable. By participating in the shipment of the WAS 3000 to Nurminen Oy, Elzer knew or had reason to know that it was on its way to the U.S.S.R. destination. Despite his protestations to the contrary, the evidence, establish that Respondent Elzer was an active participant in both diversion schemes from the outset and knew or had reason to know that the export to the U.S.S.R. was without the authorization required by the regulation.

Conspiracy is inherently secretive by nature, and is often proved only by circumstantial evidence. "Inferential proof may be controlling where the offense charged is so inherently secretive in nature as to permit the marshalling of only circumstantial evidence." *United States v. Pelfrey,* 822 F.2d 628, 632 (6th Cir. 1987). As another Circuit Court has stated:

> For it is most often true, especially in broad schemes calling for the aid of many persons, that after discovery of enough to show clearly the essence of the scheme and the identity of a number participating, the identity and the fact of participation of others remain undiscovered and undiscoverable. Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence, the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all its details or of the participation of others.

United States v. Donsky, 825 F.2d 746, 753 (3d Cir. 1987), citing *Blumenthal v. United States,* 332 U.S. 539, 556–7 (1947). It is also well-settled that each conspirator does not have to know all of the details of the conspiracy or participate in every phase of the scheme. *See, e.g., United States v. Carter,* 760 F.2d 1568 (11th Cir. 1985).

The sum total of the evidence and the inferences to be drawn, clearly demonstrate an illegal conspiracy in which Elzer played an active role.

Conclusion

Based on the evidence in this record I find that Elzer conspired with others on two occasions to acquire U.S.-orign WAS 3000 airstream modulatros on the false representation that Sweden or Germany was the country of ultimate destination, and then reexported those goods through Allinson, Ltd. in Singapore to the Union of Soviet Socialist Republics (U.S.S.R.) without the reexport authorizations required by the Department of Commerce. The evidence and attendant circumstances demonstrates that Allinson, Ltd. was a "front" company established by the Respondent Elzer and others to conceal the conspirators' participation in the sale of the WAS 3000s to the U.S.S.R.

Each and all of the overt acts set forth in the charging letter of August 14, 1987 have been established and found as have the seven violations of the Regulations alleged.

From the above findings, I conclude that an Order denying Respondents' U.S. export privileges for a period of twenty years from the date a final order becomes effective should be entered in this proceeding.[1] The final order in these proceedings will constitute the final administrative disposition and action, on these charges, against Respondents.

Order

I. For a period of 20 years from the date of the final Agency action, Respondent: Anton Elzer, individually and doing business as Development and Consultant Elzer ECO AB, Avesgarde 15, S–417 44 Gothenburg, Sweden; and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

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

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing,

[1] I do not concur in Agency counsel's suggestion of an "indefinite" denial period. The practice, started over a decade ago, of fixing definite periods of years appears to be a better approach. It will have the effect of clearing the denied parties list without reopening the proceeding. A decade or so ago the list was cluttered with permanent denials from a generation before.

shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. 2412(c)(1)).

Hugh J. Dolan,

Administrative Law Judge.

Date: June 23, 1988.

[FR Doc. 88-17148 Filed 7-28-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Children's Hospital-Boston et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 7(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 88-178. *Applicant:* Children's Hospital, Boston, MA 02173. *Instrument:* Electron Microscope, JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL. Ltd., Japan. *Intended use:* See notice at 53 FR 20153, June 2, 1988. *Instrument Ordered:* October 14, 1987.

Docket No. 88-185. *Applicant:* Geisinger Clinic, Danville, PA 17822-2600. *Instrument:* Electron Microscope, Model JEM-1200/EX/DP/DP. *Manufacturer:* JEOL. Ltd., Japan. *Intended Use:* See notice at 53 FR 20153, June 2, 1988. *Instrument Ordered:* March 9, 1988.

Docket No. 88-193. *Applicant:* Tufts University School of Medicine, Boston, MA 02111. *Instrument:* Electron Microscope with Accessories, Model EM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 53 FR 19983, June 1, 1988. *Instrument Ordered:* July 9, 1987.

Docket No. 88-197. *Applicant:* The University of Tulsa, Tulsa, OK 74104. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Hitachi, Japan. *Intended Use:* See notice at 53 FR 19983, June 1, 1988. *Instrument Ordered:* January 27, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-17149 Filed 7-28-88; 8:45 am]

BILLING CODE 3510-DS-M

Northwestern University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 88-078. *Applicant:* Northwestern University, Evanston, IL 60208. *Instrument:* Mass Spectrometer System, Model VG70-259SE. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 53 FR 4866, February 16, 1988. *Reasons for This Decision:* The foreign instrument provides: (1) FAB and thermospray capabilities, (2) resolution to 50 000, and (3) a scan rate of 0.1 second per decade. *Advice Submitted By:* The National Institutes of Health, June 30, 1988.

Docket No. 88-094. *Applicant:* U.S. Department of the Interior, National Fisheries Contaminant Research Center, Columbia, MO 65201. *Instrument:* Gas Chromatograph/Mass Spectrometer/Data System, Model VG 70-250S. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 53 FR 9958, March 28 1988. *Reasons for This Decision:* The foreign instrument provides: (1) Linked scanning MS/MS under data system control, (2) resolution to 50 000, (3) a scan rate to 0.1 second per decade, and (4) FAB and thermospray ionization. *Advice Submitted By:* The National Institutes of Health, June 30, 1988.

Docket No. 88-105. *Applicant:* University of Colorado, Denver, CO 80262. *Instrument:* Gas Chromatograph/Mass Spectrometer, Model TS-250. *Manufacturer:* VG Tritech, United Kingdom. *Intended Use:* See notice at 53 FR 12446, April 14, 1988. *Reasons for This Decision:* The foreign instrument provides: (1) A scanning rate of 0.1 second per decade with switching times of 50 milliseconds and (2) selected ion recording with mass differentials as large as a factor of ten. *Advice Submitted By:* The National Institutes of Health, June 30, 1988.

Docket No. 88-109. *Applicant:* University of California, San Francisco, CA 94143-0446. *Instrument:* Four Sector Tandem Mass Spectrometer, Model MS50TC. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* See notice at 53 FR 15101, April 27, 1988. *Reason for This Decision:* The foreign instrument provides: (1) Tandem 4-sector geometry, (2) mass range to 10 000 at 8 kV, (3) resolution to 100 000, and (4) FAB capability. *Advice Submitted By:* The National Institutes of Health, June 30, 1988.

Docket No. 88-147. *Applicant:* Department of Commerce, NOAA, Ann Arbor, MI 48105. *Instrument:* Stable Isotope Ratio Mass Spectrometer with Accessory, Model VG PRISM. *Manufacturer:* VG Instruments, Inc., United Kingdom. *Intended Use:* See notice at 53 FR 15101, April 27, 1988. *Reasons for This Decision:* The foreign instrument provides: (1) A guaranteed internal precision of 0.006% for 75 bar μ1 samples (STP) of CO_2, (2) an externally adjustable triple Faraday collector, and (3) an automatic cold-finger microvolume inlet. *Advice Submitted By:* The National Institutes of Health, June 30, 1988.

Docket No. 88–167. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* Borehole Seismometer Array. *Manufacturer:* Compagnie Generale De Geophysique, France. *Intended Use:* See notice at 53 FR 18329, May 23, 1988. *Reasons for This Decision:* The foreign instrument provides simultaneous seismic measurements at four levels and stores the data in digital format for up to three months. *Advice Submitted By:* The National Oceanic and Atmospheric Administration, July 1, 1988.

Docket No. 88–174. *Applicant:* University of Michigan, Ann Arbor, MI 48109–2125. *Instrument:* Motion Analysis System, Model WATSMART. *Manufacturer:* Northern Digital, Inc., Canada. *Intended Use:* See notice at 53 FR 18330, May 23, 1988. *Reasons for This Decision:* The foreign instrument provides measurements derived from multiple position markers with a data acquisition rate to 10 000 markers per second. *Advice Submitted By:* The National Bureau of Standards, July 11, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health, National Bureau of Standards, and National Oceanic and Atmospheric Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–17150 Filed 7–28–88; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University; for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. The application may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 88–146R. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* Beam Tester, Model Number HST13. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of April 27, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–17151 Filed 7–28–88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Services, NOAA, Commerce.

The Pacific Fishery Management Council at its July 13–14, 1988, meeting adopted recommendations contained in the final report of its Limited Entry Committee. Among the recommendations, one was that the Pacific Council should provide direction on unresolved issues. Therefore the Council elected to establish an ad hoc committee to develop opinions on unresolved issues and to respond to comments of the Council's advisory committees. The ad hoc committee will convene a public meeting on August 9, 1988, at 10 a.m., at the National Marine Fisheries Service, Northwest Regional Office Conference Room, 7600 Sand Point Way, NE., Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Dated: July 22, 1988.

Ann D. Terbush,

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

[FR Doc. 88–17153 Filed 7–28–88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GMT) will convene a public meeting on August 10, 1988, at 8 a.m., at the California Department of Fish and Game, 411 Burgess Drive, Menlo Park, CA. The GMT will begin preparation of the annual stock assessment and fishery evaluation document, continue preparation of draft Amendment #4 to the fishery management plan, and review harvest projections for sablefish, widow rockfish, yellowtail rockfish, and other species. Other issues related to groundfish fishery management may be discussed also. The public meeting will adjourn on August 12.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW., First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Date: July 22, 1988.

Ann D. Terbush,

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

[FR Doc. 88–17154 Filed 7–28–88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 29, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 1 and April 22, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 10555 and 53 FR 13310) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1988:

Janitorial/Custodial, 911th Tactical Airlift Group (AFRES), Greater Pittsburgh International Airport, Pittsburgh, Pennsylvania
Litter Pick-Up, Edwards Air Force Base, California.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88–17142 Filed 7–28–88; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1988 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: August 29, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodities

Shirt, Woman's
8410–01–224–6081, 8410–01–224–6082, 8410–01–224–6084,
8410–01–224–6085, 8410–01–224–6086, 8410–01–224–6087,
8410–01–224–6088, 8410–01–224–6089, 8410–01–224–6076,
8410–01–224–6091, 8410–01–224–6092, 8410–01–224–6093,
8410–01–224–6094, 8410–01–224–6095, 8410–01–224–6096,
8410–01–224–6100, 8410–01–105–2503, 8410–01–224–6101,
8410–01–224–6102, 8410–01–224–6103, 8410–01–224–6104,
8410–01–224–6106, 8410–01–105–2506, 8410–01–224–6108,
8410–01–224–6109, 8410–01–224–6110, 8410–01–224–6111,
8410–01–224–6112, 8410–01–104–7954, 8410–01–224–6113,
8410–01–104–7955, 8410–01–224–6114, 8410–01–224–6115,
8410–01–105–2510, 8410–01–224–6116, 8410–01–224–6117,
8410–01–224–6118, 8410–01–224–6119, 8410–01–224–6120,
8410–01–104–7958, 8410–01–224–6121, 8410–01–104–7959,
8410–01–224–6122, 8410–01–224–6123, 8410–01–105–2514,
8410–01–224–6124, 8410–01–105–2515, 8410–01–224–6125,
8410–01–224–6126, 8410–01–224–6127, 8410–01–224–6128,
8410–01–104–7962, 8410–01–224–6129, 8410–01–224–6130,
8410–01–224–6131, 8410–01–105–2519, 8410–01–224–6132,
8410–01–105–2520, 8410–01–224–6133, 8410–01–105–2521,
8410–01–224–6134, 8410–01–105–2522, 8410–01–105–2524,
8410–01–224–6139, 8410–01–105–2525, 8410–01–224–6140,
8410–01–224–6078, 8410–01–105–2526, 8410–01–224–6135,
8410–01–105–4713, 8410–01–224–6136, 8410–01–105–2497,
8410–01–224–6137, 8410–01–224–6138, 8410–01–224–6141,
8410–01–224–6142, 8410–01–105–2499, 8410–01–105–2530,
8410–01–105–2534, 8410–01–224–6075, 8410–01–224–6077,
8410–01–224–6078, 8410–01–224–6079, 8410–01–224–6080,
8410–01–224–6083, 8410–01–224–6090, 8410–01–224–6097,
8410–01–224–6098, 8410–01–224–6099, 8410–01–224–6105,
8410–01–224–6107, 8410–01–104–7947, 8410–01–104–7948,
8410–01–104–7949, 8410–01–104–7950, 8410–01–104–7951,
8410–01–104–7952, 8410–01–104–7953, 8410–01–104–7956,
8410–01–104–7957, 8410–01–104–7960, 8410–01–104–7961,
8410–01–105–2494, 8410–01–105–2495, 8410–01–105–2496,
8410–01–105–2498, 8410–01–105–2500, 8410–01–105–2501,
8410–01–105–2502, 8410–01–105–2504, 8410–01–105–2507,
8410–01–105–2508, 8410–01–105–2509, 8410–01–105–2511,
8410–01–105–2512, 8410–01–105–2513, 8410–01–105–2516,
8410–01–105–2517, 8410–01–105–2518, 8410–01–105–2523,
8410–01–105–2527, 8410–01–105–2528, 8410–01–105–2529,
8410–01–105–2531, 8410–01–105–2532, 8410–01–105–2533.

Services

Janitorial/Custodial, U.S. Army Reserve Center, Lock Haven, Pennsylvania
Janitorial/Custodial, Lycoming Memorial USARC, 1605 Four Mile Drive, Williamsport, Pennsylvania.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88–17143 Filed 7–28–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Patent Licenses; Pennwalt Corp.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; Pennwalt Corp.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to Pennwalt Corporation, a revocable, nonassignable, partially exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,469,967, entitled "Single-Side Connected Transducer," issued September 4, 1984; inventor: William R. Scott.

This license will be granted unless within 60 days from the date of this notice written objections to this grant along with supporting evidence, if any, are received by the Office of the Chief of Naval Research (Code OOCCIP), Arlington, VA 22217–5000.

DATE: July 29, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 North Quincy

Street, Arlington, VA 22217-5000, telephone (202) 696-4001.

Date: July 26, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 88-17106 Filed 7-28-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

Liquids Transportation Task Group, Coordinating Subcommittee On Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Tuesday, August 23, 1988, 9:30 AM.

Place: Stapleton Plaza Hotel, Arapahoe Room, 3333 Quebec Street, Denver, CO.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss pipeline survey and progress on individual assignments.

Tentative Agenda

—Opening remarks by Chairman and Government Cochairman
—Discuss the pipeline survey
—Review progress on individual assignments
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 AM and 4:00 PM Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 88-17185 Filed 7-28-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP87-479-000; CP87-480-000; Docket No. CP85-437-000, et al., Docket No. CP85-552-000, et al.

Wyoming-California Pipeline Co., et al., Final Environmental Impact Report Statement and Notification of Schedule for Public Meetings

July 25, 1988.

Notice is hereby given that the Federal Energy Regulatory Commission (FERC) and the California State Lands Commission (SLC) have available a Joint Draft Supplement to the Final Environmental Impact Report/Statement (FEIR/S) which was made available in December 1987 for the then various proposals of transport natural gas from various sources outside California to the Bakersfield, California area for use in enhanced oil recovery (EOR) and related cogeneration projects.

Background

During 1985, three applications were filed with the Commission to serve the EOR market. Specifically, Kern River Gas Transmission Company (Kern River) proposed to build an 837-mile pipeline (Docket No. CP85-552-000); Mojave Pipeline Company (Mojave) proposed to build a 389-mile pipeline (Docket No. CP85-437-000); and El Dorado Interstate Transmission Company (El Dorado) proposed to build a 381-mile pipeline (Docket No. CP85-625-000).[1] The Commission's "Notice of Intent To Prepare a Draft Environmental Impact Statement" for these proposals was published in the **Federal Register** on August 23, 1985 (50 FR 34,174) and supplemented on December 13, 1985, and May 19 and June 30, 1986 (50 FR 50,941, 51 FR 18,357 and 23,579). These notices identified that the SLC was working with the FERC Staff to produce a joint environmental impact report/statement (EIR/EIS). During February 1986, six scoping meetings were announced and subsequently held at Albuquerque, New Mexico; Flagstaff, Arizona; Barstow and Bakersfield, California; Heber City, Utah; and Las Vegas, Nevada (51 FR 3,402). An additional scoping meeting was held in Grand Junction, Colorado in July 1986 (51 FR 23,580) to discuss an alternative associated with the Mojave proposal. The Draft EIR/EIS was released and noticed in the **Federal Register** on January 23, 1987 (52 FR 2,584). Public meetings to receive comments on the Draft EIR/EIS were announced and subsequently held during the week of March 23, 1987 in Bakersfield and Barstow, California; Las Vegas, Nevada; and Salt Lake City, Utah (52 FR 6,379). The FEIR/S for the Kern River/Mojave projects was released to the public on December 18, 1987, and noticed in the **Federal Register** on December 24, 1987 (52 FR 48,753). Formal evidentiary hearings began at the FERC on September 9, 1987 before Administrative Law Judge Isaac D. Benkin and are ongoing. The FEIR/S was placed into this evidentiary hearing with accompanying FERC staff testimony on December 24, 1987.

On August 4, 1987, Wyoming-California Pipeline Company (WyCal) filed an application with the FERC to transport natural gas from various sources outside of California to the same Bakersfield, California area for use in EOR and related cogeneration projects. On December 14, 1987, the FERC issued a Notice of Intent to Prepare a Supplement to the FEIR/S in order to analyze the WyCal project and stated that the Supplement would address only those aspects of the WyCal project not previously addressed in the FEIR/S for the Kern Rier and Mojave projects.

The proposed WyCal pipeline deviates from Kern River's proposal at the northern end of the project from Opal to Evanston, Wyoming for approvimately 54 miles. From that point on, except as noted below, WyCal proposes to follow the very same right-of-way (ROW) which Kern River proposed from a point approximately 5 miles east of Evanston, Wyoming to Kern River's proposed milepost (MP) 491 where it would intersect with the East Las Vegas System Alternative route identified in the FEIR/S. WyCal would follow the very same ROW examined along this alternative to Piute Junction, California where it would interconnect

[1] The El Dorado application was subsequently dismissed from the FERC proceeding on October 20, 1987. While the FEIR/S examines portions of the El Dorado route as an alternative, it is no longer a competitor to Mojave, Kern River, or WyCal.

with the route proposed by Mojave. WyCal then proposes to follow the exact same ROW which Mojave proposed both east to Topock, Arizona and west to Bakersfield, California. Since the proposed WyCal project is on the very same ROW proposed by both Kern River and Mojave in many areas, a significant amount of work has already been completed relevant to the environmental impact caused by the construction and operation of the pipeline. The Supplement was therefore structured in such a way as to tier or build upon the FEIR/S issued in December 1987.[2] The Draft Supplement issued pursuant to this notice only addresses those areas of the WyCal project which deviate from the Mojave and Kern River proposals and the East Las Vegas route alternative previously analyzed in the FEIS. Deviations of compressor site locations is also examined in the Draft Supplement.

Commenting of the Draft Supplement

Copies of this Draft Supplement are available for review in the FERC Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, and at the SLC, 1807 13th Street, Sacramento, CA 95814. Approximately 1,300 copies of this Draft Supplement have been sent to the public, all parties to the FERC proceeding, and federal, state, and local officials, and are available in limited quantities at the above addresses. Copies of the FEIR/S issued in December 1987 are extremely limited in number and it is suggested that those in need of viewing a copy contact a Bureau of Land Management U.S. Forest Service field office or local university or library. Additional copies will be made available until supplies are exhausted, with library requests given priority. Copies are also available for viewing at both the FERC and SLC. Copies are also available by purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; telephone (703) 487–4650.

Anyone wishing to do so may file comments on the Draft Supplement no later than September 12, 1988. The Commission intends to issue a Final Supplement in October 1988. Therefore, comments received after September 12, 1988 will not be considered nor addressed in the Final Supplement. Staff will be extremely stringent about this. Comments should be sent to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. *The scope of the comments must be limited to issues discussed in the Draft Supplement. Comments on issues covered in the FEIR/S published in December 1987, will not be addressed in the Final Supplement, i.e., the comment for old issues is closed.* Additional information about the project is available from Mr. Robert Arvedlund, FERC Project Manager, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, telephone (202) 357–9091, or Ms. Mary Griggs, SLC Project Manager, telephone (916) 322–0354. *A copy of all comments should also be sent to Mr. Arvedlund.*

Public Meetings Notice

Two public meetings will be held to receive comments on the Draft Supplement. Mr. Arvedlund should be contacted for details. The meetings will begin promptly at 7:00 p.m. at the following locations:

Monday, August 22, 1988—Board Room of the Clark County, School District Education Center, 2832 East Flamingo Road, Las Vegas, NV.

Tuesday, August 23, 1988—State Office Building Auditorium, (immediately behind the State Capitol Building), 500 North State Street, Salt Lake City, Utah.

Claire T. Dedrick,

Executive Officer, SLC.

Lois Cashell,

Acting Secretary, FERC.

[FR Doc. 88–17177 Filed 7–28–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88–580–000, et al.]

United Gas Pipeline Co., et al.; Natural Gas Certificate Filings

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

1. United Gas Pipeline Company

[Docket No. CP88–580–000]

July 22, 1988.

Take notice that on July 14, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP88–580–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Arco Oil and Gas Company (Arco). United explains that service commenced June 1, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–4643. United explains that the peak day quantity would be 15,450 dekatherms, the average daily quantity would be 15,450 dekatherms, and that the annual quantity would be 5,639,250 dekatherms. United explains that it would receive natural gas for Arco's account at points of receipt in the state of Texas. United states that it would redeliver the gas for Arco's account at an existing interconnection between United and Mobile Gas Service Company in Mobile County, Alabama or an existing interconnection between United and International Paper Company in Jackson County, Mississippi.

Comment date: September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88–572–000]

July 22, 1988.

Take notice that on July 13, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511 Houston, Texas 77252 filed in Docket No. CP88–572–000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7(c) of the Natural Gas Act, all as more set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Chevron USA Inc., (Chevron), a producer. Tennessee explains that service commenced June 16, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88–4655–000. Tennessee further explains that the peak day quantity would be 77,000 dekatherms, the average daily quantity would be 104 dekatherms, and that the annual quantity would be 37,960 dekatherms. Tennessee explains that it would receive natural gas for Chevron's account in the states of Louisiana, Texas, and Offshore Louisiana. Tennessee further explains that, it would redeliver natural gas for the account of Chevron in the states of Louisiana and Mississippi. It is indicated that the location of the ultimate delivery points of the gas are in the states of Indiana, Pennsylvania, Louisiana, Ohio, and New York.

[2] The tiering process is encouraged in Section 1502.20 of the Council on Environmental Quality Regulations implementing the National Environmental Policy Act.

Comment date: September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipeline Company

[Docket No. CP88-582-000]

July 22, 1988.

Take notice that on July 14, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP88-582-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Midcon Marketing Corporation (Midcon). United explains that service commenced May 1, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4642. United explains that the peak day quantity would be 206,000 dekatherms, the average daily quantity would be 206,000 dekatherms, and that the annual quantity would be 75,190,000 dekatherms. United explains that it would receive natural gas for Midcon's account at points of receipt in the state of Louisiana. United States that it would redeliver the gas for Midcon's at an existing interconnection between United and Tennessee Gas Pipeline Company in Ouachita Parish, Louisiana.

Comment date: September 6, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP88-581-000]

July 25, 1988.

Take notice that on July 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-581-000 a prior notice request pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on an interruptible basis on behalf of MidCon Marketing Corporation (MidCon), a marketer of natural gas, under the certificate issued in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United States that it proposes to transport on an interruptible basis pursuant to a gas transportation agreement dated March 23, 1988, a maximum daily quantity of 51,500 MMBtu of natural gas, and that service commenced May 1, 1988, as reported in Docket No. ST88-4646, pursuant to § 284.223(a) of the Commission's Regulations. United further states that the average day and annual quantities would be 51,500 MMBtu and 18,797,500 MMBtu, respectively.

Comment date: September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP88-577-000]

July 25, 1988.

Take notice that on July 14, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-577-000 a request, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide interruptible transportation service for Mobile Natural Gas, Inc. (Mobil) under Tennessee's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated May 23, 1988, it proposes to transport natural gas for Mobile, a producer/marketer, from points of receipt located in the states of Texas and Louisiana to points of delivery located in the state of Louisiana. Tennessee further states that the peak day quantities would be 100,000 dekatherms, the average daily quantities would be 5,705 dekatherms, and the annual quantities would be 2,082,325 dekatherms. Finally, Tennessee advises that service under § 284.223(a) commenced June 2, 1988, as reported in Docket No. ST88-4715 on June 29, 1988.

Comment date: September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP88-579-000]

July 25, 1988.

Take notice that on July 14, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-579-000, a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for Tenngasco Corporation (Tenngasco), a marketer, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that pursuant to an interruptible transportation agreement dated May 18, 1988, it proposes to transport natural gas for Tenngasco from points of receipt located in the states of Texas and Louisiana to points of delivery located in the States of Texas, Louisiana and Mississippi.

United further states that the peak day quantities would be 432,600 MMBtu, the average daily quantities would be 432,600 MMBtu and that the annual quantities would be 157,899,000 MMBtu. Service under § 284.223(a) commenced June 1, 1988, as reported in Docket No. ST88-4644, filed July 7, 1988.

Comment date: September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP88-585-000]

July 25, 1988.

Take notice that on June 15, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-585-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation for Energy Marketing Exchange, Inc. (EME), under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport, on an interruptible basis, up to a maximum of 102,600 dekatherms of natural gas per day for EME, a marketer of natural gas, from various receipt points located in Louisiana, Mississippi, Texas, Pennsylvania, New Jersey, New York and Ohio, Offshore Texas and Offshore Louisiana, to various delivery points off Tennessee's system located in multiple States. Tennessee states that the location of the ultimate delivery point(s) of the gas is the States of Pennsylvania, Massachusetts, Ohio, Illinois, New Hampshire, New York and New Jersey. Tennessee anticipates transporting, on an average day, 991 dekatherms and an annual volume of 361,715 dekatherms.

Tennessee states that the transportation of natural gas for EME commenced May 18, 1988, as reported in Docket No. ST88-4238, for a 120-day period pursuant to § 284.223(a)(1) of the

Commission's Regulations and the blanket certificate issued to Tennessee in Docket No. CP87–115–000. Tennessee proposes to continue this service in accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. K N Energy, Inc.

[Docket No. CP88–583–000]

July 25, 1988.

Take notice that on July 14, 1988, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP88–583–000 a request pursuant to §§ 157.205 and 157.211(a) of the Regulations under the Natural Gas Act [18 CFR 157.205 and 157.211(a)] to allow construction and operation of sales taps for the delivery of gas to end users under authorization issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N states that it proposes the construction and operation of sales taps to various end users located along its jurisdictional pipelines. K N further states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on K N's peak day and annual deliveries.

Customer and Location of Tap

Resident/Occupant 88–45, Gene Henke, NW/4 Sec. 20–T2N–R19W, Harlan Co., NE

Resident/Occupant 88–46, Gerald K. Kreifels, NE/4 Sec. 2–T10N–R4W, York Co., NE

Resident/Occupant 88–47, Kenneth Unruh, SW/4 Sec. 16–T26S–R18W, Edwards Co., KS

Resident/Occupant 88–48, Larry McGinley, NW/4 Sec. 2–T13N–R39W, Keith Co., NE.

Comment date: September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Paiute Pipeline Company

[Docket No. CP88–569–000]

July 25, 1988.

Take notice that on July 12, 1988, as supplemented on July 18, 1988, Paiute Pipeline Company (Paiute), P.O. Box 98510, Las Vegas, Nevada 89193–8510, the successor to the facilities and operations of Southwest Gass Corporation (Southwest) which are subject to the Commission's jurisdiction, filed a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a high pressure mainline sales tap and appurtenant facilities to enable Paiute to provide a sale to Southwest Gas Corporation-Northern Nevada (Southwest-Northern Nevada), an entity which Paiute indicates is a newly-created distribution affiliate of Southwest, for resale to the East Washoe Valley residential area (Washoe Valley), an existing residential area not presently served by Southwest, under the authorization issued in Docket No. CP84–739–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request whch is on file with the Commission and open to public inspection.

Paiute proposes to establish a sales tap to be located in Section 25, Township 16 North, Range 19 East, MDB&M, Washoe County, Nevada. Paiute states that the tap would be used to provide up to 500 Mcf of natural gas per day and 63,000 Mcf per year to meet Priority 1 requirements. Paiute estimates the cost of the tap would be approximately $28,390.

Paiute also states that service to Southwest-Northern Nevada for resale to Washoe Valley would be rendered under Paiute's Rate Schedule G–1. Paiute asserts that it has sufficient capacity available to provide for the proposed deliveries without any detriment or disadvantage to any of its existing customers. Paiute also asserts that the proposed sale would be within Paiute's certificated entitlements.

Comment date: September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. El Paso Natural Gas Company

[Docket No. CP88–568–000]

July 25, 1988.

Take notice that on July 12, 1988, El Paso Nutural Gas Company (El Paso), P.O. Box 1492, El Paso Texas, 79978, filed in Docket No. CP88–568–000 pursuant to § 157.205 of the Regulation under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade the Mobile Tap located in Maricopa County, Arizona, to a meter station in order to permit the measurement and delivery of certain volumes of the natural gas to Southwest Gas Corporation (Southwest) for resale to consumers in the Town of Mobile, Arizona, and environs, all as more fully set forth in the request on file with the Commission and open for public inspection.

El Paso states that it is advised by Southwest that the requested volumes of natural gas will be utilized to serve additional commercial space heating and firm industrial natural gas requirements for consumers located near the Town of Mobile, and environs, in Maricopa County, Arizona. It is stated that initial deliveries of natural gas are requested to begin in the third quarter of 1988. The estimated cost of the metering facilities is $110,387.

Comment date: September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88–563–000]

July 25, 1988.

Take notice that on July 11, 1988, Northern Natural Gas Company Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP88–563–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (EGM), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport 100,000 MMBtu of natural gas per day for EGM pursuant to the provisions of Northern's Rate Schedule IT–1 Northern states that construction of facilities would not be required to provide the proposed service.

Comment date: September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. Panhandle Eastern Pipe Line Company

[Docket No. CP88–588–000]

July 25, 1988.

Take notice that on July 15, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–588–000 a request pursuant to § 157.205(b) and 284.223 of the Regulations under the Natural Gas Act for authorization to provide a transportation service for Western Gas Processors, Ltd. (Western), a marketer, under the certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Panhandle states that it proposes to transport natural gas for Western from various receipt points located in Texas, Oklahoma, Kansas, Colorado, Wyoming, Illinois, Louisiana, Offshore Texas, Offshore Louisiana, and Canada to delivery points located in Converse and Campbell Counties, Wyoming, pursuant to a transportation agreement with Western dated May 1, 1988. Panhandle further states that the maximum daily and annual quantities that it would transport for Western pursuant to the referenced agreement would be 10,000 dekatherms and 2,920,000 dekatherms, respectively.

Panhandle indicates that in a filing made with the Commission in Docket ST88-4120, it reported that transportation service for Western commenced on May 1, 1988 under the 120-day automatic authorization provisions of § 284.233(a).

Comment date: September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

13. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-561-000]

July 25, 1988.

Take notice that on July 11, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-561-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Tejas Power Corporation, a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 40,000 MMBtu/day for Tejas Power Corporation from two: (2) points of receipt offshore Texas to two (2) points of delivery in Warton County, Texas. Northern states that construction of facilities would not be required to provide the proposed service.

Comment date: September 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

14. Southern Natural Gas Company

[Docket No. CP88-575-000]

July 26, 1988.

Take notice that on July 13, 1988, Southern Natural Gas Company (Southern) filed in Docket No.CP88-575-000 an application under section 7(b) of the Natural Gas Act requesting authorization to abandon transportation of gas for direct sale to United States Steel Corporation, a Division of USX Corporation (USS), all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern states that Southern, as seller, and USS, as buyer, are parties to a direct sales contract dated May 14, 1982, providing for the sale and purchase of natural gas for use in operations at USS steel mills located in Jefferson County, Alabama. It is stated that Southern was initially authorized to provide service for USS on October 6, 1942, and was further authorized to transport and deliver to USS the present volumes of firms and interruptible gas for direct sale to USS by order dated October 29, 1969. Southern states that on June 1, 1988, Southern accepted its blanket certificate issued on May 6, 1988, in Docket No. CP88-316-000. Southern states that USS desires to cancel its direct sales contract with Southern along with the accompanying transportation and has requested, in lieu of the firm sales service, that Southern provide it with firm transportation service under Southern's Rate Schedule FT. It is stated that Southern and USS have entered into a transportation agreement dated June 23, 1988, providing for firm transportation service for a term ending December 31, 1999, and year to year thereafter which service will be implemented under Southern's blanket certificate pursuant to § 284.221 *et seq.* of the Commission's Regulations under the NGA. Southern therefore requests abandonment of the transportation of gas for direct sale to USS effective July 1, 1988, to coincide with the commencement of firm transportation. Southern does not propose to abandon any of its pipeline facilities in conjunction with the abandonment of this transportation service, it is stated.

Comment date: August 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

15. Panhandle Eastern Pipe Line Company

[Docket No. CP88-547-000]

July 26, 1988.

Take notice that on July 7, 1988, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-547-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Consolidated Fuel Corporation (Consolidated), a marketer, under the certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to transport up to 100,000 dt per day on an interruptible basis on behalf of Consolidated pursuant to a transportation agreement dated May 3, 1988, among Applicant and Consolidated. Applicant states that it would receive gas from various existing points of receipt on its system in Texas, Offshore Louisiana and Canada. Applicant states that it would then transport and redeliver subject gas, less fuel used and unaccounted for line loss to Columbia Gas Transmission Corporation (Columbia), in Darke and Lucas Counties, Ohio, for purchase by various local distribution companies.

Applicant states that the estimated daily and estimated annual quantities would be 24,000 dt and 8,760,000 dt, respectively. It is further stated that service under § 284.223(a) commenced on June 1, 1988, as reported in Docket No. ST88-4509. Applicant indicates that the service would continue until terminated by either party upon a 30 day written notice. Applicant proposes to charge Consolidated a rate pursuant to Applicant's currently effective Rate Schedule PT. No new facilities are proposed herein.

Comment date: September 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

16. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-595-000]

July 26, 1988.

Take notice that on July 20, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-595-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Exxon Corporation (Exxon), a producer, under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated July 15, 1988, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas on an interruptible basis for Exxon from points of receipt in Texas

listed in Appendix "A" of the agreement to numerous redelivery points in Iowa, Illinois, Minnesota, South Dakota, Oklahoma and Texas, also listed in Appendix "A". The transportation service would involve interconnections between Northern and various transporters and would be subject to the rates effective under Northern's Rate Schedule IT-1.

Northern further states that the estimated average daily and annual quantities would be equivalent to 75,000 MMBtu and 36,500,000 MMBtu, respectively. Northern advises that service has commenced under the provisions of § 284.223(a) as reported in Docket No. ST88-4277.

Comment date: September 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

17. High Island Offshore System

[Docket No. CP88-591-000]

July 26, 1988.

Take notice that on July 19, 1988, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88-591-000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to transport natural gas, on an interruptible basis, for Elf Aquitaine Inc.; Ampolex (Texas) Inc.; Case-Pomeroy Oil Corp.; and, Felmont Oil Corporation (Shippers), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

HIOS states that it has entered into several transportation agreements to provide interruptible transportation service for a primary term of five years continuing year to year thereafter for the Shippers from Block 376, West Cameron Area, offshore Louisiana (Block 376) and Block A-343, High Island Area, offshore Texas (Block A-343) up to the maximum daily volume set forth below:

Shipper	Volumes (Mcf)	Point of receipt
Elf Aquitaine, Inc	3,917	Block 376.
Ampolex (Texas) Inc	1,142	Do.
Case-Pomeroy Oil Corp.	500	Do.
Felmont Oil Corp	853	Do.
Elf Aquitaine, Inc	5,600	Block A-343.

HIOS indicates that all the volumes from Block 376 qualify for the short haul rate under HIOS' Rate Schedule IT and that the long haul rate would apply to the gas volumes from Block A-343. HIOS proposes to charge the Shippers 9.69 cents per Mcf for the long-haul transportation and 4.90 cents per Mcf for the short-haul transportation under its Rate Schedule IT for interruptible transportation service.

HIOS states that all the gas would be delivered at the interconnection of the facilities of HIOS and U-TOS or the facilities of HIOS and ANR Pipeline Company at Block 167, West Cameron Area, Offshore Louisiana.

Comment date: August 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

18. Distrigas Corporation Distrigas of Massachusetts Corporation

[Docket No. CP88-587-000]

July 26, 1988.

Take notice that on July 15, 1988, Distrigas Corporation (Distrigas) and Distrigas of Massachusetts Corporation (DOMAC), Two Oliver Street, Boston, Massachusetts, 02109, filed an "Abbreviated Application for Issuance of Amendment of Certificate of Public Convenience and Necessity and Abandonment Authority, and Effectuation of Certain Tariff Revisions," pursuant to sections 7(c) and 7(b) of the Natural Gas Act and the applicable regulations thereunder, all as more fully set out in the Application which is on file with the Commission and available for public inspection.

Distrigas and DOMAC request authorization for a major restructing of their services in order to permit them to offer a broad range of flexible, market responsive LNG services to existing and new customers, including interstate pipelines, local distribution companies and end-users. The restructured services are designed to implement Distrigas' revised LNG contract with Sonatrach, through its wholly-owned subsidiary Sonatrading Amsterdam B.V., for which amended import authorization is being sought before the Economic Regulatory Administration (ERA) in ERA Docket No. 88-37-LNG. That contract provides for the sharing of market risk through a 37/63 percent revenue sharing arrangement.

To implement that contract, Distrigas and DOMAC propose to offer interstate pipelines, local distribution customers and end-user customers a variety of market responsive LNG services at negotiated prices. Distrigas and DOMAC note that their market area is characterized by intensive gas-to-gas and interfuel competition. Distrigas and DOMAC submit that their services and prices will be determined and constrained by the competitive forces of the market place, and that a competitive market will assure rates and end results that satisfy the "just and reasonable" pricing structures of the Natural Gas Act.

Distrigas and DOMAC have agreed with all their historic customer to settlements which, when final, will result in the abandonment of all prior service obligations so that customers can avail themselves of the new array of proposed services. Rather than employing cost-of-service rates, Distrigas and DOMAC propose to rely soley on rates negotiated for various types of services with interested customers. Distrigas and DOMAC submit that they will rely on their ability to provide efficient, competitive service options to attract customers. Distrigas and DOMAC claim that only if the revenues generated in a competitive market exceed their costs will they be able to earn profit.

The major elements of the proposed service restructuring are as follows:

1. *Firm Vapor Sales Services.* DOMAC requests authority to offer firm sales of LNG in vapor form to interstate pipelines, LDC's and end-users under Rate Schedule FVSS (Firm Vapor Sales Service). Under the proposal, customers may reserve the right to firm vapor service by making a negotiated prepayment to DOMAC to assure certain rights to LNG and thereafter pay only a negotiated commodity rate for volumes actually purchased. The price, term and all other conditions of service will be negotiated between individual customers and DOMAC.

2. *Firm Liquid Sales Services.* DOMAC requests authority to sell LNG in liquid form to interstate pipelines, LDC's and end-users under Rate Schedule FLSS (Firm Liquid Sales Service). Customers may negotiate with DOMAC a prepayment to assure service under various delivery conditions. The prive, quantity, and other terms of the service with actual purchase of liquid to be at negotiated commodity rates would also be negotiated.

3. *Combination Firm Vapor and Firm Liquid Service.* DOMAC proposes to offer a combination of firm liquid and firm vapor service reflecting the same flexible market-based terms proposed for separate firm vapor and firm liquid service.

4. *Interruptible Sales Services.* DOMAC proposes to offer flexible, market based interruptible sales services for LNG in liquid or vapor form. Terms and conditions for interruptible LNG sales will be freely negotiated between DOMAC and individual customers. Interruptible service will be offered to any interested party.

5. *Boil-Off Service.* DOMAC proposes to revise the boil-off sales service historically provided to Boston Gas under Rate Schedule BO-2 to assure

that the price is competitive with Boston Gas' other alternatives and to promote more efficient operations at the DOMAC's Terminal.

6. *Back-Up Sales Service.* DOMAC proposes to sell certain quantities of LNG in liquid and vapor form to Boston Gas for a period of three (3) years, limited to LNG that Applicants otherwise have not sold. The sales will be at Boston Gas' avoided commodity cost of gas less $0.01 per MMBtu.

7. *Storage Service.* DOMAC proposes to continue providing storage service to historical storage customers, but under revised terms giving DOMAC more flexibility in managing storage facilities. Boston Gas has negotiated such terms and DOMAC thus seeks Commission certificate of a continuation of Boston Gas' storage service under these revised terms.

Distrigas and DOMAC state that the proposed service restructuring is in the public convenience and necessity and that all requisite authorizations should be issued on an expedited basis such that authority will be in place to permit service to commence on or before October 1, 1988. This date would be coincident with the date requested in the amendment of import authorization before the ERA in Docket No. 88–37–LNG.

Distrigas and DOMAC request expedited Commission approval of their Application as no customers, historic or new, will be adversely affected, bound or otherwise obligated by such approval.

Comment date: August 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

19. Trunkline Gas Company

[Docket No. CP88–589–000]

July 26, 1988.

Take notice that on July 15, 1988 Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–589–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Superior Natural Gas Corporation (Superior), a marketer, under Trunkline's blanket certificate issued in Docket No. CP88–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Trunkline requests authority to transport up to 10,000 dt. per day on an interruptible basis on behalf of Superior pursuant to a transportation agreement dated June 1, 1988, between Trunkline and Superior (Agreement). It is stated that the Agreement provides for Trunkline to receive gas from various existing points of receipt on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas. It is explained that applicant will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to (1) Acadian Gas Pipe Line System (Acadian), in St. Mary Parish, Louisiana, (2) Columbia Gulf Transmission Company (Columbia Gulf), in St. Mary Parish, Louisiana, (3) Louisiana Intrastate Gas Corporation (Louisiana Intra), in St. Mary Parish, Louisiana, (4) Southern Natural Gas Company (SNG), in St. Mary Parish, Louisiana and (5) Texas Eastern Transmission Corporation (TETCO), in Beauregard Parish, Louisiana for use by various interstate pipelines, intrastate pipelines and end-users.

Trunkline further states that the estimated daily and estimated annual quantities would be 5,000 dt. and 1,825,000 dt., respectiviely. Service under § 284.223(a) commenced on June 1, 1988, as reported in Docket No. ST88–4305.

Comment date: September 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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

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

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–17178 Filed 7–28–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–218–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 26, 1988.

Take notice that ANR Pipeline Company ("ANR") on July 15, 1988 tendered for filing certain tariff sheets as a part of its FERC Gas Tariff Original Volume No. 1–A.

ANR states that the above referenced tariff sheets are being filed to reflect the present operating and contracting practices of ANR and to establish a transportation service request form in conformance with the Commissions Order No. 497. Such tariff sheets are submitted by ANR without prejudice to any further submittal of tariff sheets following Commission action on ANR's request for rehearing of Order No. 497.

ANR has respectfully requested that the Commission grant all waivers necessary to permit this filing to become effective July 14, 1988.

ANR states that copies of the filing were served upon all of its Volume No. 1–A customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 or protest on or before August 2, 1988. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-17179 Filed 7-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-218-001]

ANR Pipeline Co.; Proposed Change in FERC Gas Tariff

July 26, 1988.

Take notice that on July 18, 1988, ANR Pipeline Company ("ANR") tendered for filing as part of Original Volume No. 1-A of its FERC Gas Tariff an original and six copies of Substitute Original Sheet No. 167.

ANR states that Substitute Original Sheet No.167 is being filed to replace Original Sheet No. 167 which was submitted to the Commission on July 15, 1988 in ANR's Order No. 497 related filing in Docket No. RP88-218-000. It is stated that Original Sheet No. 167 contained an inadvertent error and should be discarded.

ANR respectfully requests that the Commission grant all waivers necessary to permit this filing to become effective July 14, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 or protest on or before August 2, 1988. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-17180 Filed 7-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-505-000]

Canal Electric Co.; Notice of Filing

July 25, 1988.

Take notice that on July 1, 1988, Canal Electric Company (Canal) tendered for filing a Power Contract which implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the Capacity Acquisition Commitment for Seabrook Unit No. 1 (Supplement No. 1 to Canal's Rate Schedule FERC No. 21). Such Power Contract provides the terms and conditions pursuant to which Canal will sell and its customers Cambridge Electric Light Company and Commonwealth Electric Company will purchase and pay for 100% of the output of Seabrook Unit No. 1 plus the transmission costs associated therewith. The estimated revenues to Canal under this Power Contract for Period I (the twelve month period ending December 31, 1987) are approximately $223,734. Canal proposes an effective date of September 1, 1988 and requests that its filing be suspended for no more than one day.

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, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 1, 1988. 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-17181 Filed 7-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-115-004]

Texas Gas Transmission Corp.; Notice of Filing

July 26, 1988.

Take notice that on July 15, 1988, Texas Gas Transmission Corporation (Texas Gas) filed Substitute Original Sheet No. 10 to its FERC Gas Tariff, Original Volume No. 2-A, proposed to be effective November 1, 1988.

Texas Gas states that the purpose of this filing is to replace Substitute Original Sheet No. 10, previously filed, which was incorrectly headed "Original Volume No. 1."

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before August 2, 1988. 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-17182 Filed 7-28-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-29-003, 3 et al.]

Transcontinental Gas Pipe Line Corp. et al.; Filing of Pipeline Refund Reports and Refund Plans

July 26, 1988.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before August 15, 1988. Copies of the respective

filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

Filing date	Company	Docket No.
June 17, 1988	Transcontinental Gas Pipe Line Corp.	TA86-3-29-003
June 29, 1988	National Fuel Gas Supply Corp.	RP85-93-004
July 5, 1988	Algonquin Gas Transmission Co.	RP72-110-046
July 8, 1988	Granite State Gas Transmission	RP73-17-014

[FR Doc. 88-17183 Filed 7-28-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3421-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 11, 1988 through July 15, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. DS-COE-A36407-WA, Rating EC1, Chehalis River Flood Control Project, South Aberdeen and Cosmopolis, Design Modifications, Implementation, Grays Harbor County, WA.

Summary

EPA is concerned that there will be a net loss of 2.77 acres of wetlands as a result of the proposed project. EPA recommended that the Corps consider construction of additional floodwalls for a portion of the project (rather than the proposed levee fill) as a means of reducing wetland loss.

ERP No. DS-UPS-C81011-NY, Rating LO, Manhattan General Mail Facility Complex Development, Additional Alternative Analysis Study, Implementation, New York City, New York County, NY.

Summary

EPA's review of this document has determined that previous concerns about carbon monoxide concentrations underneath a proposed platform have been addressed. Accordingly, EPA has no objections to the implementation of the proposed project.

Final EISs

ERP No. F-CVOE-K21001-CA, Tierrasanta Community (formerly Camp Elliott) Remedial Action Alternatives for Conventional Explosive Ordnance Items, San Diego County, CA.

Summary

EPA asked the Army to provide it a copy of the Record of Decision when it is issued.

ERP No. F-COE-K36086-AZ, Clifton Flood Damage Reduction Plan, Implementation, San Francisco River, Greenlee County, AZ.

Summary

EPA's review of the final EIS has been completed and the project found to be satisfactory. No formal comments were made to the agency.

ERP No. F-FHW-D40223-MD, MD-28 Improvements, MD-124 to I-270 Funding and 404 Permit, Montgomery County, MD.

Summary

EPA feels this document satisfactorily addresses the potential short and long term impacts of the proposed project, as well as discuss mitigation measures for adverse impacts that may occur.

Dated: July 26, 1988.

William D. Dickerson,

Deputy Dirctor, Office of Federal Activities.

[FR Doc. 88-17187 Filed 7-28-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3421-8]

Environmental Impact Statements; Notice of Availability of Weekly Receipts

Responsible Agency

Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 18, 1988 Through July 22, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880233, Draft, EPA, AK, Diamond Chuitna Coal Project, Development and Construction, NPDES Permit and Section 10 and 404 Permits, Beluga Region, Upper Cook Inlet, AK, Due: September 12, 1988, Contact: Rick Seaborne (206) 442-8510.

EIS No. 880234, Final, COE, UT, Upper Jordan River Flood Control Plan, Jordan Narrows to 2100 South Street, Implementation, Mill Creek, Salt Lake County, UT, Due: August 28, 1988, Contact: Jeff Groska (916) 551-1860.

EIS No. 880235, Draft, GSA, IL, Chicago Downtown Federal Office Building Construction, Implementation, Cook, DuPuge, Lake, Kane, Will and McHenry Counties, IL, Due: September 12, 1988, Contact: Matthew Kling (313) 353-5610.

EIS No. 880236, Final, FRC, WA, Rock Island Hydroelectric Project No. 943, Operating License Renewal, Columbia River, Chelan County, WA, Due: August 28, 1988, Contact: Alan Mitchnick (202) 376-9611.

EIS No. 880237, Final, NOA, NH, New Hampshire Coastal Program, Ocean, Harbor, and Great Bay Areas, Approval, Funding, Due: August 28, 1988, Contact: Kathryn Cousins (202) 637-5152.

EIS No. 880238, DSuppl, FRC, AZ, CA, UT, TX, NM, CO, WY, NV, Mojave, Kern River, El Dorado and Transwestern Natural Gas Pipeline Project, Construction, Operation and Maintenance, Licenses and 404 Permit, Alternative Modifications, AZ,

CA, WY, NV, UT, TX, NM, CO. Due: August 28, 1988. Contact: Mary Griggs (916) 322–0354.

EIS No. 880239, Draft, BLM, CA, Death Valley and Joshua Tree National Monuments Boundary Adjustments, Transfer of Land Between the Bureau of Land Management and the National Park Service, California Desert District, Inyo and Riverside Counties, CA. Due: October 27, 1988. Contact: Gerald Hillier (714) 351–6349.

EIS No. 880240, Draft, COE, SC, Gills Creek Flood Control Plan, Implementation, Richland County, SC. Due: September 12, 1988. Contact: Jim Woody (803) 724–4259.

Dated: July 26, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–17186 Filed 7–28–88; 8:45 am]

BILLING CODE 6560–50–M

Intent To Prepare an Environmental Impact Statement for the Development and Operation of an EPA Environmental Research Facility in Edison, NJ

AGENCY: U.S. Environmental Protection Agency (EPA), Office of Research and Development.

ACTION: Preparation of an Environmental Impact Statement (EIS) for the proposed renovation of existing building(s) to provide an environmental research facility, located in Edison, New Jersey, to research, develop, and demonstrate innovative technologies for the abatement of contamination of soil, air, water, or other media.

Purpose: In accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency has identified a need to prepare an Environmental Impact Statement (EIS) on the proposed research and development facility, and therefore publishes this Notice of Intent pursuant to Title 40, Code of Federal Regulations (CFR), § 1501.7 (40 CFR 1501.7).

FOR FURTHER INFORMATION CONTACT: Mr. James J. Yezzi, Jr., Project Officer, U.S. Environmental Protection Agency, Releases Control Branch, Woodbridge Avenue, Edison, New Jersey 08837, Telephone: (201) 321–6703.

SUMMARY:

1. Background

The Superfund Amendments and Reauthorization Act of 1986 authorized the EPA to establish a research, development, and demonstration program to promote the development and use of innovative technologies that provide alternatives to landfilling. One goal of this program is the establishment of a facility where the research, development, and demonstration of innovative technologies can be undertaken. EPA's Office of Research and Development (ORD) has funded the development of such a facility.

2. Proposed EPA Action

The ORD Office of Environmental Engineering and Technology Demonstration's Risk Reduction Engineering Laboratory proposes to develop and operate an Environmental Research Facility. The proposed project will entail the renovation of two interconnected buildings and the improvement of an adjacent 110-acre portion of the federally-owned property located on Woodbridge Avenue in Edison, New Jersey.

The Facility will serve the needs of the EPA in its mission to research, develop, and promote the commercialization of innovative hazardous waste treatment technologies. These technologies will assist in the rapid and cost effective resolution of the nation's hazardous waste problems. Treatment technologies to be developed and demonstrated at the Facility will support the Superfund Innovative Technology Evaluation Program, established jointly by the EPA's Office of Research and Development and Office of Solid Waste and Emergency Response. Additionally, the Facility will bring together governmental, academic, and industrial organizations engaged in the study and mitigation of hazardous substances.

The types of technologies to be tested and evaluated may include physical, chemical, thermal, and biological treatment processes. Evaluations of such technologies under strictly controlled conditions will establish the reliability, cost effectiveness, and optimum range of performance of each technology.

The design and operation of the Facility will incorporate a full range of environmental controls to protect the public and the environment. All required Federal, State, and municipal permits will be obtained for the Facility.

3. Issues to be addressed in the EIS

a. Potential impacts on health and safety.

b. Potential impacts on the surrounding environment, including flora and fauna, cultural resources, air and water quality, and environmentally sensitive areas.

c. Procedures for material handling.

d. Measures to be used during emergency situations (fire, etc.).

e. Evaluation of the following categories of alternatives for environmental soundness, cost effectiveness, and implementability:

1. No action.

2. Leasing an existing building at an alternate location.

3. Construction of the facility at an alternate location.

4. Proposed action: See item 2 above.

4. Public Participation in the EIS Process

Participation by regulatory agencies, interested organizations and the general public is encouraged. In order to develop the scope of the EIS, the EPA will conduct a public meeting on Sept. 22, 1988, at 7:30 p.m., in the Council Chambers of the Edison Township Municipal Building, 100 Municipal Blvd., Edison, New Jersey. During the scoping meeting, participants can comment upon the scope of the EIS, reasonable alternatives that should be considered, anticipated environmental impacts, and actions that might be taken. Participation at the scoping meeting is not contingent upon the advance submission of written materials or a formal notification of intent to participate. However, participants are encouraged to do so. If attendance at the scoping meeting is not possible, written comments on scoping issues may be sent within 45 days of the date of this notice to the EPA contact person named above.

Copies of preliminary information will be made available for public review, prior to the meeting, at the Edison Main Library (201–287–2298), 340 Plainfield Avenue, Edison, New Jersey, or upon request to the EPA contact person named above. For additional information, contact the EPA contact person named above, or Mr. John Grun, Director of Health and Human Resrouces, Edison Township Division of Health (201–287–0900, Ext. 291).

5. Timing

The EPA expects to issue a draft Environmental Impact Statement (EIS) for public review and comment within five (5) months. The draft EIS will be published in the **Federal Register**, and will be available for a 45 day public review and comment period.

6. Requests for Copies of the Draft EIS

Interested parties are requested to submit their names and address to the EPA contact person named above for inclusion on the distribution list for the draft EIS and related public notices.

Responsible Official John H. Skinner for Thomas R. Hauser, Director, Risk Reduction Engineering Laboratory Mgr.

Dated: July 20, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-17188 Filed 7-28-88; 8:45 am]

BILLING CODE 6560-50-M

[AMS-FRL-3421-6]

Public Notice of Agreement Between Environmental Protection Agency and National Highway Traffic Safety Administration on Joint Consultation Process

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice is for the purpose of notifying the public that the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) have jointly agreed to a Memorandum of Understanding (MOU) which establishes a consultation process between the two agencies whereby pending rulemaking and other policy and regulatory documents of mutual concern will be exchanged and discussed on a regular basis. The agreement is to assure that each agency solicits the viewpoints of the other agency when developing rules or other policy which have potential impact on the programs of the other agency. The MOU in its entirety is included in the appendix to this notice.

FOR FURTHER INFORMATION CONTACT: John Cabaniss, U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street SW., Washington, DC 20460, Telephone: (202) 382-7647 or FTS 382-7647.

Date: July 25, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

Appendix—Memorandum of Understanding

The Environmental Protection Agency (EPA) and the National Highway Traffic Safety Adminsitration (NHTSA) agree to establish a consultation process, the details of which are contained herein, whereby pending rulemaking and other policy and regulatory documents of mutual concern will be exchanged and discussed on a regular basis.

The purpose of this agreement is to assure that each agency solicits the viewpoints of the other agency when developing rules or other policy which have potential impact on the programs of the other agency.

To this end, NHTSA and EPA each agree to meet at least once per calendar quarter, at a time and location mutually agreeable, to discuss rulemaking and other activities of concern.

Further, EPA agrees to the following actions:

(1) Identify as early as possible, for purposes of raising for discussion at the quarterly meetings discussed above, actions under consideration which have potential impact on NHTSA's motor vehicle programs. Projects shall be identified, if possible, in the planning stage.

(2) Send to NHTSA for review and comment all draft rulemaking notices which may impact NHTSA's motor vehicle safety, fuel economy, theft, or other motor vehicle related program. Such rulemaking will not be limited to those initiated by EPA's Office of Mobile Sources, but will also include actions under consideration in other EPA offices. Draft rulemaking notices which affect NHTSA's programs shall be sent to NHTSA no later than the time they are sent to the Office of Management and Budget (OMB).

(3) Prior to issuance of a proposed rulemaking identified in accordance with item (2) above, EPA shall consider and accommodate NHTSA's comments, where appropriate, consistent with the Clean Air Act or other laws.

(4) Discuss at the quarterly meetings the progress in addressing any concerns raised by NHTSA about any EPA proposal.

(5) Consider and accommodate, where appropriate, consistent with the Clean Air Act or other laws, any additional NHTSA comments in subsequent EPA decisions regarding the rulemakings under discussion.

(6) Send to NHTSA for review and comment the draft final rule no later than the time it is sent to OMB.

(7) Prior to issuance of the final rule, EPA shall consider and accommodate NHTSA's comments, where appropriate, consistent with the Clean Air Act or other laws.

Likewise, NHTSA agrees to the following actions:

(1) Identify as early as possible, for purposes of raising for discussion at the quarterly meetings discussed above, actions under consideration which have potential impact on EPA's programs or which require EPA action (such as review of Environmental Impact Statements). Projects shall be identified, if possible, in the planning stage.

(2) Send to EPA for review and comment all draft rulemaking notices which may impact any of EPA's programs. Draft rulemaking notices which affect EPA's programs shall be sent to EPA no later than the time they are sent to the OMB.

(3) Prior to issuance of a proposed rulemaking identified in accordance with item (2) above, NHTSA shall consider and accommodate EPA's comments, where appropriate, consistent with NHTSA's statutes.

(4) Discuss at the quarterly meetings the progress in addressing any concerns raised by EPA about any NHTSA proposal.

(5) Consider and accommodate, where appropriate, consistent with NHTSA's governing statutes, any additional EPA comments in subsequent NHTSA decisions regarding the rulemakings under discussion.

(6) Send to EPA for review and comment the draft final rule no later than the time it is sent to OMB.

(7) Prior to issuance of the final rule, NHTSA shall consider and accommodate EPA's comments, where appropriate, consistent with NHTSA's governing statutes.

This agreement becomes effective upon the date of signature.

For NHTSA:

Diane K. Steed,

Administrator.

Date: April 29, 1988.

For EPA:

Lee M. Thomas,

Administrator.

Date: June 21, 1988.

[FR Doc. 88-17115 Filed 7-28-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 213-010972-001.

Title: Three Lines' Far East-Atlantic Coast Space Charter and Sailing Agreement.

Parties:

Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Yamashita-Shinnihon Steamship Co., Ltd. ("YSL")

Synopsis: The proposed amendment would substitute Nippon Liner System, Ltd., as a party to the agreement in place of YSL effective as of October 1, 1988.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 26, 1988.

[FR Doc. 88-17152 Filed 7-28-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

CNBC Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CNBC Bancorp., Inc.*, Chicago, Illinois; to engage *de novo* through its subsidiary, CNBC Development Corporation, Chicago, Illinois, in making real estate development loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-17080 Filed 7-28-88; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consumation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island; to retain control of 100 percent of the voting shares of Fleet/Norstar New York, Inc., Providence, Rhode Island, and thereby indirectly acquire Norstar Bank of Upstate New York, Albany, New York, Norstar Bank, Hempstead, New York, Norstar Bank, N.A., Buffalo, New York; and Norstar Bank of Central New York, Syracuse, New York. In connection with this application, Fleet/Norstar New York, Inc, has applied to become a bank holding company.

In addition, Fleet/Norstar New York, Inc., Providence Rhode Island, also proposes to acquire Norstar Leasing Services, Inc., Albany, New York, and thereby engage in equipment leasing and commerical lending pursuant to § 225.25 (b)(1) and (b)(5); Norstar Auto Lease, Inc., Albany, New York, and thereby engaged in automobile leasing pursuant to § 225.25(b)(5); Norstar Investment Advisory Services, Inc., Rochester, New York, and thereby engage in portfolio management and investment advices pursuant to § 225.25(b)(4); Norstar Trust Company, Rochester, New York, and its wholly-owned subsidiary, Norstar Trust Company of Florida, National Association, Naples, Florida, and thereby engage in trust and financial management services pursuant to § 225.25(b)(3); Norstar Mortgage Corporation, Westbury, New York, and thereby engage in the origination and servicing of residential mortgage loans and the provision of related advisory services pursuant to § 225.25 (b)(1) and (b)(4); Chapdelaine & Co. Government Securities, Inc., New York, New York,

and thereby act as a broker of government securities on behalf of other brokers who are principal dealers in such securities purusant to § 225.25(b)(16); Norlife Reinsurance Company, Phoenix, Arizona, and thereby act as a reinsurer of credit life, credit accident health insurance and mortgage life and mortgage accident and health insurance sold in connection with extensions of credit to consumers pursuant to § 225.25(b)(8); Adams, McEntree & Co., Inc., New York, New York, and thereby engage in the sale of underwriting of state and municipal securities and brokerage of certain mutual fund shares pursuant to § 225.25(b)(16); Altman, Brown & Everett, Inc., Albany, New York, and thereby engaged in employee benefits consulting services pursuant to Board Orders dated June 19, 1985, and August 19, 1986; Norstar Brokerage Corporation, New York, New York, and its wholly-owned subsidiary, NB Clearing Corporation, New York, New York, and thereby engage in retail discount brokerage services pursuant to § 225.25(b)(15); and Norstar Servics, Inc., Albany, New York, and thereby engage in providing data processing services to affiliates of the parent comany and, in the past, to third persons pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-17081 Filed 7-28-88; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Banking Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 18, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island, and Fleet Bancorp of New Hampshire, Inc., Nashua, New Hampshire; to acquire 100 percent of the voting shares of Fleet Bank of New Hampshire, Nashua, New Hampshire, a *de novo* bank. In connection with this application, Fleet Bancorp of New Hampshire, Inc. has also applied to become a bank holding company. Comments on this application must be received by August 12, 1988.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Greenwood National Corporation*, Greenwood, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Greenwood National Bank, Greenwood, South Carolina, a *de novo* bank. Comments on this application must be received by August 17, 1988.

2. *Washington Bancorporation*, Washington, DC; to acquire 100 percent of the voting shares of The Washington Bank (of Maryland), Baltimore, Maryland, a *de novo* bank.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Pasco Financial Corporation*, Dade City, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Pasco, Dade City, Florida.

2. *Soperton Naval Stores, Inc.*, Soperton, Georgia; to become a bank holding company by acquiring up to 47.3 percent of the voting shares of The Bank of Soperton, Soperton, Georgia.

3. *SouthTrust of Florida, Inc.*, St. Petersburg, Florida, and SouthTrust Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of SouthTrust Bank of Sarasota County, Sarasota, Florida, a *de novo* bank.

4. *Sunset Commercial Corporation*, Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Sunset Financial Corporation, Miami, Florida, and thereby indirectly acquire Sunset Commercial Bank, Miami, Florida.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Exchange Bancorp, Inc.*, Chicago, Illinois; to acquire 100 percent of the voting shares of Exchange Bank of Lake County, Vernon Hills, Illinois, a *de novo* bank.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoeing, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Midwest Bankshares, Inc.*, formely Farmers and Merchants Insurance Agency, Inc., Colby, Kansas; to acquire 87.5 percent of the voting shares of First Belleville Bancshares, Inc., Belleville, Kansas, and thereby indirectly acquire First National Bank in Belleville, Belleville, Kansas.

Board of Governors of the Federal Reserve System, July 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-17082 Filed 7-28-88; 8:45 am]

BILLING CODE 6210-01-M

Guaranty Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1988.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Guaranty Bancshares, Inc.*, Mt. Pleasant, Texas; to acquire Computer SIGNET, Mt. Pleasant, Texas, and thereby engage in providing to others financially related data processing and data transmission services, facilities, and data bases; or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in Northeast Texas.

Board of Governors of the Federal Reserve System, July 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-17083 Filed 7-28-88; 8:45 am]

BILLING CODE 6210-01-M

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 August 12, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Dr. James M. Hill, IV*, Coconut Grove, Florida; to acquire an additional 2.88 percent of the voting shares of Cardinal Bancshares, Inc., Lexington, Kentucky.

2. *Mickey W. Taylor*, Yakima, Washington; to acquire an additional 2.88 percent of the voting shares of Cardinal Bancshares, Inc., Lexington, Kentucky.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. **Mary Robertson**, Maryville, Tennessee; to retain 0.8 percent, and to acquire an additional 3.4 percent of the voting shares of Twin Cities Financial Services, Inc., Maryville, Tennessee, and thereby indirectly acquire Citizens Bank of Blount County, Maryville, Tennessee.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Jeral Venoy Miller*, to acquire control of Cattleman's Bancshares, Inc., Gordon, Texas.

2. *Klaus Peter Ulrich*, Kingwood, Texas; to acquire 100 percent of the voting shares of Sun Belt Bancshares Corp., Conroe, Texas, and thereby indirectly acquire National Bank of Conroe, Conroe, Texas.

Board of Governors of the Federal Reserve System, July 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-17084 Filed 7-28-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: JULY 11, 1988 AND JULY 22, 1988

Name of acquiring person, name of acquiring person, name of acquired entity	PMN No.	Date terminated
Masco Industries, Inc., Durakon Industries, Inc., Durakon Industries, Inc	88-1931	07/11/88
Cincinnati Bell Inc., Vanguard Technologies International, Inc., Vanguard Technologies International, Inc	88-1970	07/11/88
Silicon Systems, Inc., American Telephone & Telegraph Co., AT&T Technologies, Inc	88-1975	07/11/88
Continental Cablevision, Inc., R.E. Turner, Turner Broadcasting System, Inc	88-1978	07/11/88
Petrofina S.A., Tenneco Inc., Tenneco Oil Co	88-1979	07/11/88
Gerald Carrus, Infinity Broadcasting Corp., Infinity Broadcasting Corp	88-1980	07/11/88
Michael A. Wiener, Infinity Broadcasting Corp., Infinity Broadcasting Corp	88-1981	07/11/88
Amax, Inc., Kaneb Services, Inc., Kaneb Energy Partners, Ltd	88-1987	07/11/88
AMR Corp., Simmons Airlines, Inc., Simmons Airlines, Inc	88-1995	07/11/88
John W. Kluge, Empire Hotel/Lincoln Center Associates, Empire Hotel/Lincoln Center Associates	88-2000	07/11/88
Evered Holdings PLC, Fidler, Inc., Fidler, Inc	88-2001	07/11/88
Roxboro Investments (1976) Ltd., The Manitowoc Co., Inc., The Manitowoc Co., Inc	88-1907	07/12/88
Roy J. Rose, Steven A. Altman, Sun Runner Marine, Inc	88-1948	07/12/88
The Henley Group, Inc., Marmon Holdings, Inc. (Pritzer family), Union Tank Car Co	88-1997	07/12/88
National Data Corp., Chemical Banking Corp., Chemical Banking Corp	88-2010	07/12/88
FlightSafety International, Inc., UAL Corp., United Airlines Services Corp	88-1866	07/13/88
Maxwell Foundation, International Business Machines Corp., Science Research Associates, Inc	88-1867	07/13/88
Archer-Daniels-Midland Co., Midwest Processing Co., Midwest Processing Co	88-1874	07/13/88
Sonat Inc., Kaneb Services, Inc., UPE and 50% interest in two subs	88-1880	07/13/88
Secom Co., Ltd., Med-Trans, Med-Trans	88-1944	07/13/88
Kelso Investment Associates III, L.P., Arkansas Best Corp., Arkansas Best Corp	88-1973	07/13/88
Kelso Investment Associates III, L.P., Arkansas Best Corp., Arkansas Best Corp	88-1974	07/13/88
Kelso Investment Associates III, L.P., Best Acquisition Corp., Best Acquisition Corp	88-1976	07/13/88
Agip S.p.A., Steuart Investment Co., Steuart Petroleum Co	88-1863	07/13/88
Chargeurs S.A., Prouvost, S.A., Plusa, Inc	88-1639	07/14/88
Acadia Partners, L.P., URM Investors Inc., URM Investors Inc	88-1956	07/14/88
The Talbex Group PLC, Mr. Marshall S. Cogan, Victoreen, Inc	88-1989	07/14/88
Chloride Group PLC, Altus Corp., Altus Corp	88-1765	07/15/88
General Electric Co., Roger Penske, Hertz Penske Truck Leasing, Inc	88-1890	07/15/88
Roger S. Penske, General Electric Co., Gelco Corp	88-1891	07/15/88
Newell Co., Vermont American Corp., Vermont American Corp	88-1910	07/15/88
Michael Wayne, Durakon Industries, Inc., Durakon Industries, Inc	88-1930	07/15/88
Brierley Investments Ltd., Steego Corp., Steego Corp	88-1942	07/15/88
The Wharf (Holdings) Ltd., Aer Lingus P.L.C., 14 subsidiaries of AE	88-1991	07/15/88
Michael G. DeGroote, Willett, Inc., Willett, Inc	88-2015	07/15/88
Catholic Healthcare West, Dominican Santa Cruz Hospital, Dominican Santa Cruz Hospital	88-2018	07/15/88
Co-operative Eka Corp., Clarendon Group Ltd., CG America Corp	88-2031	07/15/88
American Exploration Co., Tesoro Petroleum Co., Tesoro Petroleum Corp. & Tesoro Natural Gas Co	88-2032	07/15/88
MLGA Fund I, L.P., Dorton Broadcasting, Inc., Dorton Broadcasting, Inc	88-2034	07/15/88
Eli S. Jacobs, National Felt Co., National Felt Co	88-2036	07/15/88
Television South plc, MTM Entertainment, Inc., MTM Entertainment, Inc	88-2038	07/15/88
Integrated Resources, Inc., Bizerian Partners Limited Partnership 1, Career Systems Development Corp	88-2058	07/15/88
World International (Holdings) Ltd., Aer Lingus, plc, 14 subsidiaries of AE	88-2060	07/15/88
Jean-Michel Tivoly, Litton Industries, Inc., Litton Industrial Automation Systems, Inc	88-1804	07/16/88
Sears Roebuck & Co., Eric Lorentzen, Levolor Lorentzen, Inc	88-1839	07/18/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: JULY 11, 1988 AND JULY 22, 1988—Continued

Name of acquiring person, name of acquiring person, name of acquired entity	PMN No.	Date terminated
Millipore Corp., New Brunswick Scientific Co., Inc., Biosearch, Inc	88-1899	07/18/88
Gandalf Technologies Inc., Case Group PLC, Case Group PLC	88-1929	07/18/88
The Clayton & Dubilier Private Equity Fund II Ltd. Partnership, Robert Rosenkranz, Hyponex Corp	88-1959	07/18/88
Bowthorpe Holdings plc, David H. Kennington, Thermalloy Investment Co	88-1963	07/18/88
Ford Motor Co., Fomento Proa, S.A. de C.V., Carplastic, S.A. de C.V	88-1985	07/18/88
The Clayton & Dubilier Private Equity Fund Ltd. Partnership, SRH Acquisition Corp., SRH Acquisition Corp	88-2006	07/18/88
AMR Corp., Command Airways, Inc., Command Airways, Inc	88-2045	07/18/88
Household International, Inc., Beverly Hills Savings, Beverly Hills Savings	88-2055	07/18/88
Cox Enterprises, Inc., Stuart Arnold d.b.a. Trade Publications, Stuart Arnold d.b.a. Trade Publications	88-1977	07/19/88
American Cyanamid Co., Ideal Industries, Conap, Inc	88-1992	07/19/88
Aktiebolaget Volvo, Ford Motor Co., Park Ridge Corp	88-1993	07/19/88
Morgan Stanley Group Inc., FH Acquisition Corp., FH Acquisition Corp	88-2011	07/19/88
The Morgan Stanley Leveraged Equity Fund II, L.P., FH Acquisition Corp., FH Acquisition Corp	88-2012	07/19/88
The Morgan Stanley Leveraged Equity Fund II, L.P., Fort Howard Corp., Fort Howard Corp	88-2013	07/19/88
Lucas Industries plc, Epsco, Inc., Epsco, Inc	88-2028	07/19/88
NYNEX Corp., AGS Computers, Inc., AGS Computers, Inc	88-2044	07/19/88
W.D. Co., Inc., Maverick Management Partnership, Joseph Horne Co., Inc	88-2030	07/20/88
Mrs. Lea Knurr Sternberg, The May Department Stores Co., The May Department Stores Co., May Florida division	88-1859	07/21/88
Sumitomo Electric Industries, Ltd., S.&W. Berisford PLC, High Voltage Engineering Corp., (Judd wire division)	88-1898	07/21/88
Henkel KGaA, The Clorox Co., The Clorox Co	88-1932	07/21/88
IMI plc, R. Scott Schafler, Conax Buffalo Corp	88-1940	07/21/88
R.L. Polk & Co., National Demographics & Lifestyles Inc., National Demographics & Lifestyles Inc	88-1958	07/21/88
Basf Aktiengesellschaft, Flexible Products Co., Flexible Products Co	88-1994	07/21/88
McKechnie plc, Donald McCourtney, McCourtney Plastics Inc	88-1998	07/21/88
Michael D. Dingman, The Henley Group, Inc., Henley Manufacturing Corp	88-2003	07/21/88
Daishowa Paper Mfg. Co., Ltd., Reed International P.L.C., Reed Canadian Holdings Ltd., Reed Lignin Inc	88-2029	07/21/88
Apache Corp., Apache Corp. (controlling partner of APC), Apache Petroleum Co., L.P	88-2043	07/21/88
Michael D. Dingman, The Pullman Co., The Pullman Co	88-2059	07/21/88
FFL Partners, Cala Foods, Inc., Cala Foods, Inc	88-2062	07/21/88
Johnson Controls, Inc., Hoover Ikeda, Inc., Hoover Ikeda, Inc	88-1968	07/22/88
Mark IV Industries, Inc., Armtek Corp., Armtek Corp	88-2002	07/22/88
Richard R. Kelley (Hotel Operating Co. of Hawaii, Ltd.), Luther Damon Gadd, Luther Damon Gadd	88-2007	07/22/88
General Accident Fire & Life Assurance Corp., p.1.c., NZI Corporation Ltd., NZI Corporation Ltd	88-2033	07/22/88
Ikeda Bussan Co., Ltd., Hoover Ikeda, Inc., Hoover Ikeda, Inc	88-2050	07/22/88
Arabian Investment Banking Corp. (INVESTCORP) EC, Nestle S.A., Carnation Co., Southern California dairies division	88-2057	07/22/88
Mr. Yasuji Hatano (Kokusai Motorcars Co. Ltd.), Hemmeter Investment Co., Hemmeter Investment Co	88-2064	07/22/88
Marley plc, Webster Brick Co., Inc., Webster Brick Co., Inc	88-2070	07/22/88
Knight-Ridder, Inc., Lockheed Corp., Dialog Information Services, Inc	88-2071	07/22/88
Inter Pacific Equity Ltd., Robert E. Black Trust, E.E. Black, Ltd	88-2073	07/22/88
Freeport-McMoran, Inc., Community Federal Savings & Loan, Community Investing & Development Corp	88-2085	07/22/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-17117 Filed 7-28-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 22, 1988.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package).

Food and Drug Administration

1. Reporting and Recordkeeping Requirements for Electronic Products under Pub. L. 90-602-General Requirements—0910-0025—The purpose of the Radiation Control for Health and Safety Act is to protect the public from unnecessary exposure to radiation from electronic products. To carry out this responsibility, FDA must collect certain information from the manufacturers and dealer/distributors about the electronic products they sell and install. This request contains several types of information collections and recordkeeping requirements. Respondents: Business or other for-profit, small business or organizations. Number of Respondents: 1,601; Frequency of Response: On Occasion; Estimated Annual Burden: 1,385,691 hours.

OMB Desk Officer: Shannah Koss-McCallum

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package).

1. Interim Final Regulations for the Administration for Native Americans—New—These interim regulations establish the procedures and criteria by which ANA will make a five-year demonstration grant to either one agency in the State of Hawaii or native Hawaiian organization to manage a revolving loan fund. Respondents: State or local governments, Non-profit institutions; Number of Respondents: 1; Frequency of Response: 11; Estimated Annual Burden: 510 hours.

OMB Desk Officer: Shannah Koss-McCallum

Health Care Financing Administration

1. Outpatient Rehabilitation Provider Cost Report—0938-0037—The HCFA-2088 is completed by outpatient physical therapy provides outpatient speech pathology providers, and comprehensive outpatient Rehabilitation Facilities. It allows HCFA to reimburse providers for services rendered to medicare beneficiaries. Respondents: State or local governments/Business or other for-profit. Number of Respondents: 600; Frequency of Response: Annually; Estimated Annual Burden: 83,400 hours.

2. PRO Reporting Forms—NEW—PROs are authorized to review inpatient and outpatient services for quality of care provided and to eliminate unnecessary, unreasonable and inappropriate care to Medicare beneficiaries, these forms are used to record results of reviews. Respondents: Business or other for-profit; Number of Respondents: 54; Frequency of Response: Occasionally; Estimated Annual Burden: 8,910 hours.

3. Hospital Provider of Long Term Care Services (Swing-Bed) Survey Report Form—9038-0485—This survey form is an instrument used by the State agency to record data collected in order to determine compliance with individual conditions of participation and report it to the Federal government. Respondents: Individuals or households, State or local governments. Number of Respondents: 53; Frequency of Response: 14.26; Estimated Annual Burden: 378 hours.

OMB Desk Officer: Shannah Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-1238
FSA: 202-245-0652
SSA: 301-965-4149
OS: 202-245-6511
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk

Officer designated above at the following address: OMB Reports Management Branch New Executive Officer Building, Room 3208 Washington, DC 20503.

ATTN: Shannah Koss-McCallum.

Date: July 26, 1988.

James V. Oberthaler,

Deputy Assistant Secretary, Information Resources Management.

[FR Doc. 88-17133 Filed 7-28-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 88F-0236]

Bionox Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bionox Corp., has filed a petition proposing that the food additive regulations be amended to provide for the safe use in contact with food an aqueous sanitizing solution containing sodium, calcium, or postassium hypochlorite; citric acid; sodium citrate; and *alpha*-[*para*-(1,1,3,3-tetramethylbutyl)phenyl]-*omega*-hydroxypoly(oxyethylene), containing 9 to 10 moles of ethylene oxide.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 8B4050) has been filed by Bionox Corp., 6890 East Loma del Bribon, Tucson, AZ 85715, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use in contact with food of an aqueous sanitizing solution containing sodium, calcium, or potassium hypochlorite; citric; sodium citrate; and *alpha*-[*para*-(1,1,3,3-tetramethylbutyl)phenyl—*omega*-hydroxypoly(oxythylene), containing 9 to 10 moles of ethylene oxide.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 22, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-17146 Filed 7-28-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0097]

Revised Chapter in Regulatory Procedures Manual; Perishable Foods, Including Fresh Fish and Seafood and Fresh Produce; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised Regulatory Procedures Manual (RPM), Chapter 9-73, "Perishable Foods, Including Fresh Fish and and Seafood and Fresh Produce." This chapter provides FDA districts with guidance for uniform handling of sampled import shipments of these products. Under these procedures, importers would be required to maintain temporary control over all imported perishable food products which FDA has sampled, but which are not suspected to violate the Federal Food, Drug, and Cosmetic Act. Such control must last at least until 5 p.m. local time on the day following FDA sample collection, unless released earlier by the agency. Agreements by importers to retrieve sampled lots that are distributed and later found violative by FDA will no longer be required, because redelivery bonds will remain in force until FDA's analyses are completed and sampled lots are formally released.

EFFECTIVE DATE: Revised RPM Chapter 9-73 will be effective on September 27, 1988.

ADDRESS: Regulatory Procedures Manual Chapter 9-73 "Perishable Food Products, Including Fresh Fish and Seafood and Fresh Produce" is available for public examination at, and written requests for single copies may be sent to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your request.).

FOR FURTHER INFORMATION CONTACT: James C. Lyda, Office of Regulatory Affairs (HFC-131), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-443-6553.

SUPPLEMENTARY INFORMATION: Experience shows that importers can temporarily maintain control of perishable foods without spoilage and that many FDA sample analyses can be completed within 24 to 32 hours of sample collection. Shipments can be controlled by importers either at the point of entry or they may proceed intact to some inland point where they would be held. A temporary delay in final distribution of FDA-sampled lots increases the likelihood that any violative shipments will not be distributed to consumers.

Revised RPM Chapter 9–73 requires that FDA districts modify the Notice of Sampling directing importers to maintain temporary control of shipments of perishable food products sampled by FDA that are not suspect. Importers must hold, intact, FDA-sampled suspect shipments, pending results of FDA's sample analysis. In revising RPM Chapter 9–73, FDA concluded that it is no longer necessary to require a written agreement by importers that they will retrieve shipments later found violative by FDA analyses. Distribution of products that are not suspect into retail channels may take place at the discretion of the importer at the time specified when FDA has not completed analyses. Redelivery bonds, however, remain in force until shipments are formally released. FDA intends to recommend to the U.S. Customs Service that a penalty of three times the value of unrecovered product be assessed when a shipment is found violative and recall is necessary. In addition, other regulatory action may be initiated by FDA to remove violative products that have been distributed.

Dated: July 20, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–17145 Filed 7–26–88; 3:50 pm]

BILLING CODE 4160–01–M

Health Care Financing Administration

[HSQ-158-N]

Medicare Program; Peer Review Organization Contracts; Solicitation of Statements of Interest from In-State Organizations

AGENCY: Health Care Financing Administration (HCFA), HSS.

ACTION: General notice.

SUMMARY: This notice, in accordance with section 4092 of the Omnibus Budget Reconciliation Act (OBRA) of 1987, gives six months advance notice of the dates when contracts with out-of-State Utilization and Quality Control Peer Review Organizations (PROs) end. It also specifies the period of time in which in-State organizations may submit statements of interest so that they may receive Requests for Proposals (RFPs) and compete for those contracts. The areas currently affected are Alaska, Idaho, Maine, Vermont and the District of Columbia.

DATE: Statements of interest must be received at the appropriate address as provided below no later than 5:00 p.m. EST on August 19, 1988.

ADDRESS: Statements of interest must be submitted to: William J. Tate, Health Care Financing Administration, OMB, Room 389 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

FOR FURTHER INFORMATION, CONTACT: Michael Rappaport, (301) 966–6893.

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No 97-248) amended Part B of Title XI of the Social Security Act (Act) by establishing the Utilization and Quality Control Peer Review Organization (PRO) program.

PROs currently review certain health care services funded under Title XVIII of the Act (Medicare) and, in the future will also be responsible for review of the medical care which is reimbursed under other Federal programs, to determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and are of a quality which meets professionally recognized standards. Congress created the PRO program in order to redirect, simplify and enchance the cost-effectiveness and efficiency of the peer review process.

In June of 1984, HCFA began awarding contracts to PROs. We currently maintain 54 PRO contracts with organizations that provide medical review activities for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam and American Samoa. In accordance with section 1153 of the Act, the organizations that are eligible to contract as PROs have satisfactorily demonstrated either that they are: (1) Physician-sponsored organizations that are composed of a substantial number of the licensed doctors of medicine or osteopathy practicing medicine or surgery in the respective review area and who are representative of the physicians practicing in the area; or (2) physician access organizations that

have available, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties. In addition, the organization must not be a health care facility, health care facility association, or a health care facility affiliate, and must have a consumer (a Medicare beneficiary) on its governing board.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) includes provisions that impose new requirements on the Secretary with respect to contracts with PROs. Section 4092 of OBRA amends section 1153 of the Act by adding a new subsection (i) that prohibits the Secretary from renewing the contract of any PRO that is not an in-State organization without first publishing in the **Federal Register** a notice announcing when the contract will expire. This notice must be published no later than six months before the date of expiration, and must specify the period of time during which an in-State organization may submit a proposal for the contract. If one or more qualified in-State organizations submit a proposal within the specified period of time HCFA may not automatically renew the contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract. We note that the conference agreement accompanying the legislation specifically removed the Senate amendment requirement that the Secretary give *additional* consideration to any qualified in-State organization in the contract competition process.

These requirements are effective with contracts scheduled for renewal on or after August 1, 1988. For purposes of renewal under section 4092, the statute defines an in-State organization as one which has its primary place of business in the State in which review will be conducted (or, which is owned by a parent corporation, the headquarters of which is located in such State).

We previously published a notice on March 11, 1988 (53 FR 7976) which was subsequently amended on April 1, 1988 (53 FR 10565), that identified eleven review areas for which PRO contracts were held by out-of-State organizations. These areas were Alaska, American Samoa and Guam, the District of Columbia, Delaware, Idaho, Kentucky, Maine, Nebraska, South Carolina, and Wyoming. The March 31st notice requested statements of interest for the areas of Delaware, Kentucky, Nebraska, South Carolina, and Wyoming. The areas currently affected by this notice are the District of Columbia, Alaska, Maine, Vermont, and Idaho.

We intend to implement these changes in the most equitable manner, and will therefore apply this new procedure in any state where doubt exists with respect to the "in-State" status of the incumbent PRO. In addition, rather than requiring an in-State organization to submit a fully developed contract proposal at the time of this notice, we will ask only that the organization demonstrate that it meets the definition of an in-State organization and that it is otherwise an eligible organization in accordance with section 1153 of the Act. If we receive one or more qualified statements of interest, we will conduct a full and open competition in the acquisition of medical review services for that PRO area. All eligible in-State organizations and other potential sources will be furnished with a Request for Proposal (RFP) as part of the competitive contracting process. We are following this two-step procedure to assure the integrity of the competitive bidding process.

Additionally, section 4091 of OBRA permits the Secretary to provide for extensions of existing PRO contracts to provide for a staggered period of contract expiration dates and to permit adequate time to complete contract renewal negotiations. We will extend PRO contracts under the authority of this section to provide an opportunity for an orderly transition. Specifically, we intend to extend the PRO contracts in Alaska, the District of Columbia, Maine, and Vermont, which were originally scheduled to expire on October 31, 1988; and Idaho, which was originally scheduled to expire on September 30, 1988, through March 31, 1989.

II. Provisions of the Notice

This notice announces that current contracts (including intended extensions) between HCFA and out-of-State PROs responsible for review in Alaska, Idaho, Maine, Vermont, and the District of Columbia, will expire on March 31, 1989. Interested organizations in these areas may submit statements of interest in those contracts. The statements must be received by HCFA no later than August 19, 1988, and, in its statement of interest, the organization must furnish materials that demonstrate that it meets the definition of an in-State organization. Specifically, the organization must have its primary place of business in the State in which review will be conducted (or, it must be one which is owned by a parent corporation the headquarters of which is located in that State). In its statement, each interested organization must further demonstrate that it meets the following requirements:

A. Be either a physician sponsored or a physician access organization.

1. Physician sponsored organization.

i. The organization must be composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area and who are representative of the physicians practicing in the area.

ii. The organization must not be a health care facility, health care facility association, or health care facility affiliate.

iii. In order to meet the requirements of A.1.i and A.1.ii., an organization must be composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to demonstrate that it meets this criterion, an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area; or, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, then the organization must demonstrate in its statement of interest, through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician access organization.

i. The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties.

ii. The organization must not be a health care facility, health care facility association, or health care facility affiliate.

iii. An organization meets the requirements of A.2.i. and A.2.ii. if it demonstrates that it has available to it at least one physician in every generally recognized specialty; and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

B. Have a consumer (that is, a Medicare beneficiary) on its governing board.

If one or more organizations meet the above requirements, and submit statements of interest in accordance with this notice, HCFA will consider those organizations to be potential sources for the contracts (identified above) that are expiring on March 31, 1989. These organizations will be furnished with an RFP and will be considered in full and open competition for the PRO contract to provide medical review services for that State.

III. Regulatory Impact Statement

This notice merely announces the dates when contracts with various out-of-State Peer Review Organizations expire, and the period of time in which in-State organizations may file statements of interest. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined and the Secretary certifies that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

IV. Information Collection Requirements

This notice contains information collection requirements that have been approved and assigned Control Number OMB 0938–0526 by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

(Sec. 1153 of the Social Security Act (42 U.S.C. 1320c–2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: June 23, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88–17079 Filed 7–28–88; 8:45 am]

BILLING CODE 4120–01–M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 52, No. 163, pp 31818–31819, dated Monday, August 24, 1987 and **Federal Register**, Vol. 52, No. 155, pp 29889–29890, dated Wednesday, August 12, 1987) is amended to reflect the organizational changes within the Office of the Actuary and the Bureau of Data Management and Strategy (BDMS). The changes are being made in order to consolidate the responsibility for managing HCFA's statistical data systems with BDMS.

The specific amendment to Part F. is described below

- Section FH.20.B.2., Office of Medicaid Cost Estimates (FHG2), is deleted and replaced with a new functional statement to read as follows:

2. Office of Medicaid Cost Estimates (FHG2).

Provides cost estimates of the Medicaid program and any proposed legislative changes in the program. Creates and maintains a State-by-State data base relating to the low income population, their health use, and incurred and expected costs. Develops descriptive information detailing and projecting the effect of changes in the economy or national health care system on the Medicaid program. Develops annual Medicaid program budget requirements for the President's budget preparation and presentation, including the Congressional justification. Prepares long-range program cost estimates, determines gross rates of program cost changes, and revises data requirements for future program costs. Prepares cost estimates for legislative and regulatory proposals affecting Medicaid benefits. Provides actuarial consultation to other HCFA components, States, or outside organizations.

- Section FH.20.B.2.b., the Division of Medicaid Statistics (FHG22) is deleted in its entirety. This Division is being transferred to the Office of Statistics and Data Management in the Bureau of Data Management and Strategy.
- A new Section FH.20.D.4.e., Division of Medicaid Statistics (FHE77), is added to read as follows:

e. Division of Medicaid Statistics (FHE77).

Collects annual (HCFA–2082) Medicaid program statistical reports for State Medicaid agencies. Works with State Medicaid agencies to correct errors and collect missing information. Conducts consistency checks across data bases to verify the validity of submitted data and makes corrections to current and historical data to produce accurate statistics. Publishes annual Medicaid statistics in various HCFA publication series and produces statistical tables for use by HCFA managers in administering the Medicaid program. Collects special project statistics (i.e., Early and Periodic Screening, Diagnosis, and Treatment and sterilization) to be used by HCFA personnel to administer or monitor special Medicaid programs. Responds to Medicaid data requests from HCFA staff, other agencies in the Department of Health and Human Services, the Executive Office of Management and Budget, Members of Congress, other Federal departments, State agencies, public and private higher education institutions and individual researchers. Provides statistical consultation to other components of HCFA concerning the Medicaid program. Designs and develops the computerized mechanisms for collecting person-based Medicaid data. Collects individual eligibility, provider, and claims data from State automated-data systems. Processes these data to verify the accuracy of the data consistent with development standards. Provides technical assistance to the States in the development and submittal of these data and maintains ongoing contact with State agencies to maintain a high quality of data submitted. Designs, develops, and maintains a system for computerizing and making available to all components the Medicaid program characteristics data contained in State Medicaid Plans. Designs and develops computer systems to utilize the data collected for statistical and actuarial purposes. Provides technical assistance to other components of HCFA in the development and use of these statistical data as they relate to specific program areas.

Date: June 30, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88–17078 Filed 7–28–88; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

Amended Notice of Meeting; Advisory Committee to Director

Notice is hereby given of a change in the schedule of the meeting of the Human Fetal Tissue Transplantation Research Panel scheduled for September 14–16, 1988, to be held at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland, that was published in the **Federal Register** on June 29, 1988, [53 FR 24500].

This panel was to have accepted public testimony from organizations according to the instructions specified in the notice on the late afternoon of September 14 and morning of September 15, but these times have been changed. The panel will now accept testimony

from organizations on the late afternoon of September 14 and late afternoon of September 15.

Dated: July 19, 1988.

James B. Wyngaarden,

Director.

[FR Doc. 88-17102 Filed 7-28-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Notice of Meeting of the Cancer Biology-Immunology Contracts Review

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, September 26, 1988, Guest Quarters Hotel, Calvert Conference Room, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on September 26 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 26 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A Woods, Executive Secretary, Cancer Biology-Immunology Contracts Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496-7153) will furnish substantive program information.

Dated: July 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-17098 Filed 7-28-88; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Notice of Meeting of the Cancer Center Support Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, National Institutes of Health, August 11-12, 1988, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on August 11, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on August 11, from approximately 9:30 a.m. to 6:00 p.m. and August 12, from 8:30 a.m. until adjournment 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, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301-496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301-496-9767) will furnish substantive program information.

Dated: July 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-17099 Filed 7-28-88; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research; Notice of Meeting of the National Advisory Council for Nursing Research

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Center for Nursing Research, September 15-16, 1988, Building 37, Conference Room 6-B-23, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on September 15, from 9 a.m. to 1:30 p.m. and on September 16 from 8:30 a.m. to adjournment. Agenda items to be discussed will include the NCNR Director's Report, National Advisory Council for Nursing Research Biennial Report, Trajectory for Research Training and Career Development, Nurse Scientist Award Program, Nursing Research Centers, First Awards, and Report of Meeting of Advisory Committee to the Director, NIH.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d)) of Pub. L. 92-463, the meeting will be closed to the public on September 15 from 1:30 p.m. to completion of the review, discussion, and evaluation of individual grant applications. The 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.

Mrs. Ruth K. Aladj, Executive Secretary, National Advisory Council for Nursing Research, National Institutes of Health, Building 31A, Room 1E08, Bethesda, Maryland 20892, (301) 496-0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: July 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-17104 Filed 7-28-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 8-9, 1988, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on September 8 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6),

Title 5, U.S.C. 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. on September 8 to adjournment on September 9 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. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Frances A. Pitlick, Director, Division of Extramural Affairs, Westwood Building, Room 7A–17, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–17103 Filed 7–28–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, September 19–20, 1988, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on September 19 from 8:30 a.m. to 9:30 a.m. in Building 31, Room 2A03.

The Council meeting will be open to the public on September 19 from 9:30 am. until 5:00 p.m. The agenda includes a report by the Director, NICHD, and a presentation by the Mental Retardation and Developmental Disabilities Branch, Center for Research for Mothers and Children. The meeting will be open on September 20 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on September 19 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 20 from 8:30 a.m. to completion of 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, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Council Secretary, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: July 19, 1988

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 88–17100 Filed 7–28–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on Septermber 22 and 23, 1988, Bethesda Hyatt Regency, Cartier-Tiffany Conference Room, Bethesda, Maryland.

This meeting will be open to the public on September 22, from 8:30 a.m. to 11:30 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 22 from 11:30 a.m. to 6:00 p.m., and on September 23 from 8:30 a.m. until adjournment, 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, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496–7301 will provide a summary of the meeting, roster of council members. Dr. Elke Jordan, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 953, Bethesda, Maryland 20892, Telephone: 301, 496–7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13–821, Biophysics and Physiological Sciences; 13–859, Pharmacological Sciences; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of Disease Research; and 13–880, Minority Access to Research Careers [MARC])

Dated: July 19, 1988

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 88–17101 Filed 7–28–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits 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.*):

Applicant: New York Zoological Society, Bronx, NY, PRT–727954.

The applicant requests a permit to reexport one wild caught female St. Vincent parrot (*Amazona guildingii*), imported in 1984 from Jersey Wildlife Preservation Trust, Jersey, Channel Islands, to Loro Parque, Tenerife, Canary Islands, for propagation.

Applicant: Ernest L. Johnson, Immokalee, FL, PRT–729767.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. Mike Cawood,

Gannahoek, Mortimer, C.P., Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: San Diego Zoological Society, San Diego, CA, PRT-729790.

The applicant requests a permit to import one pair of captive/hatched golden-shouldered (=hooded) parakeets (*Psephotus chrysopterygius*) from Tierpark Berlin, Berlin, East Germany, for the purpose of exhibition, education, and propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: July 25, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-17159 Filed 7-28-88; 8:45 am]

BILLING CODE 4310-AN-M

Bureau of Land Management

[CA-060-08-4410-03]

The Monuments; Draft Environmental Impact Statement; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (DEIS) concerning the transfer of certain lands under the jurisdiction of the BLM to the National Park Service's Death Valley and Joshua Tree National Monuments.

DATE: Comments on the DEIS are being accepted until October 27, 1988.

ADDRESS: For further information contact: Gerald E. Hillier, District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management is considering the transfer of five parcels of public lands currently managed by the Bureau to the Death Valley and Joshua Tree National Monuments. The purpose of the additions is to adjust the boundaries of the monuments so that they are more manageable, and so that natural areas and ecosystems currently bisected by the boundary are managed under a single jurisdiction.

On May 19, 1988, the Western Regional Office of the National Park Service proposed to the California State Office of the BLM that five parcels of land currently under BLM jurisdiction be transfered to the Joshua Tree and Death Valley National Monuments. The parcels, and the acreage of each, follow:

Parcel 1

North Death Valley, on the extreme north end of Death Valley National Monument, 84,389 acres. This area is a topographic extension of Death Valley, and its transfer would enhance its manageability.

Parcel 2

Hunter Mountain, on the western boundary of Death Valley National Monument, 26,687 acres. Inclusion of this parcel in the monument would bring all of Hunter Mountain under the jurisdiction of a single agency.

Parcel 3

Pyramid Peak, on the eastern boundary of Death Valley National Monument, 14,268 acres. A more definable monument boundary would be established and the entirety of Red Ampitheater and Pyramid Peak would be brought within the monument.

Parcel 4

Greenwater Valley, on the eastern boundary of Death Valley National Monument just south of Pyramid Mountain, 117,505 acres. Transfer of the large Greenwater Valley Parcel would bring the entire Black Mountain watershed within the monument, and would establish a readily-identifiable road as the monument's eastern boundary.

Parcel 5

Pinto Basin, on the southern boundary of Joshua Tree National Monument, 4,480 acres. This proposed BLM wilderness area is topographically related to adjacent Monument lands.

About 24 percent of the land proposed for transfer is classified by the BLM's California Desert Conservation Area Plan as either multiple use class M (moderate use) or class I (intensive use). The management of these lands after the transfer would not necessarily be in conformance with the Desert Plan. "If a proposed action is not in conformance, and warrants further consideration before a plan revision is scheduled, such consideration shall be through a plan amendment" (43 CFR 1610.5-3). As a result, a plan amendment is necessary and is being considered through the DEIS.

Five alternatives are considered in detail by the DEIS. These include the following:

Alternative A

Park Service proposal.

Alternative B

Modified Greenwater Valley parcel (excluding a highly mineralized area in the Ibex Hills).

Alternative C

Eagle Mountains Alternative (an additional 25,000 acres proposed for transfer adjacent to the Pinto Basin parcel).

Alternative D

Modified Pyramid Peak parcel. Includes an additional portion of BLM's Funeral Mountains wilderness study area.

Alternative E

No action (lands would not be transfered, but would continue to be managed by BLM under the guidance of the California Desert Conservation Area Plan).

In addition, a highly mineralized area around Crater in the North Death Valley parcel would not be transfered if a mitigation measure considered by the DEIS was implemented.

The preferred alternative is to transfer the parcels to the Park Service. Two of the parcels (Hunter Mountain and Pinto Basin) would be transfered as proposed. Three would be transfered with boundaries modified as a result of the findings of the EIS (North Death Valley, Pyramid Peak, and Greenwater Valley). A total of 210,970 acres would be transfered.

Six public hearings will be held during the public review. The locations and dates follow:

Date, Time, and Location

September 19, 1988, 10:00 a.m. and 7:00 p.m., Holiday Inn, Riverside, Riverside, California

September 20, 1988, 7:00 p.m., Rodeway Inn, Palm Springs, California

September 21, 1988, 7:00 p.m., Carriage Inn, Ridgecrest, California

September 27, 1988, 7:00 p.m., Stathain Hall, Lone Pine, California

September 28, 1988, 7:00 p.m., Hurlbut-Rook Community Center, Tecopa, California

Comments on the DEIS should be submitted to the following address. Use of any other address may result in comments not being processed: California Desert District, Bureau of Land Management, ATTN: Monuments EIS, 1695 Spruce Street, Riverside, CA 92507.

A limited number of copies of the DEIS are available upon written request at the same address.

Dated: July 21, 1988.

Wes Chambers,

Acting District Manager.

[FR Doc. 88-17240 Filed 7-28-88; 8:45 am]

BILLING CODE 4310-40-M

[OR-010-08-4322-02:GP8-198]

Lakeview District Grazing Advisory Board; Change in Date of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a change in meeting date of the Lakeview District Grazing Advisory Board.

SUMMARY: The meeting scheduled for August 4, 1988 of the Lakeview District Grazing Advisory Board, published in the **Federal Register** June 14, 1988, has been changed to September 12, 1988. The meeting is open to the public and will begin at 10:00 a.m. in the Lakeview District conference room at 1000 South Ninth Street, Lakeview, Oregon.

The purpose of the meeting is to discuss the Board's recommendations on the Warner Lakes Plan Amendment for Wetlands and Associate Uplands and a discussion of the GAO Riparian Study.

DATE: September 12, 1988; 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Renee Synder, Public Affairs Officer, (503) 947-2177.

July Nelson,

District Manager.

[FR Doc. 88-17071 Filed 7-28-88 8:45 am]

BILLING CODE 4310-33-M

[NV-930-08-4212-14; N-42554]

Realty Action; Battle Mountain District, Tonopah Resource Area; Esmeralda County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; modified competitive sale of Federal land in Esmeralda County, NV.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale through modified competitive bidding procedures under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719) at no less than the appraised fair market value:

Mount Diablo Meridian

T. 3 S., R. 35 E.,
Sec. 22, E½NE¼NE¼SE¼.
A parcel of land containing 5 acres.

General Information

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent to these lands, upon publication in the **Federal Register**, of a termination of the segregation, or 270 days from the date of publication of this notice, whichever comes first.

The sale will be held at a later date.

The aprraised fair market value will also be available at a later date, but not less than 30 days before the sale.

The lands are proposed to be offered by sealed bid, utilizing modified competitive bidding procedures. The adjacent landowner has waived his preference right in favor of the proponent of the sale. The proponent, Larimore H. Albert, will be given a preference right to purchase the parcel by meeting the high bid.

Conveyance of the available mineral interests will occur simultaneously with the sale of the lands. A successful bid for the lands will constitute an application for conveyance of those mineral interests.

The sale is consistent with the Bureau's planning system and the Esmeralda-Southern Nye Resource Management Plan. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The land will not be offered for sale for at least 60 days after the publication of this Notice in the **Federal Register.**

The lands are within the White Wolf Grazing Allotment. The lessee has been given the requisite two-year notification.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Oil and gas, together with the right to prospect for, mine, and remove these minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Battle Mountain District Office.

The sale will be subject to the following right-of-way of record: NEV-051579, Valley Electric Association powerline.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

July 15, 1988.

Michael C. Mitchel,

Acting District Manager, Battle Mountain District.

[FR Doc. 88-17085 Filed 7-28-88; 8:45 am]

BILLING CODE 4310-HC-M

INTERSTATE COMMERCE COMMISSION

[Docket No. MC-F-19154]

Capitol Bus Co.—Pooling—Greyhound Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed pooling application.

SUMMARY: By application filed April 29, 1988, Capitol Bus Company (Capitol) and Greyhound Lines, Inc. (Greyhound), jointly request approval of a pooling arrangement under 49 U.S.C. 11342(a) to pool portions of their services, in the form of an agreement to coordinate schedules, between Syracuse, NY and Harrisburg, PA, and between Harrisburg, PA and Washington, DC. Under the proposed pooling arrangement, Capitol and Greyhound will coordinate schedules over the route between Syracuse and Washington serving the intermediate points of Baltimore, MD, York, Harrisburg, Wilkes-Barre and Scranton, PA and Binghamton, NY. Capitol and Greyhound will place a 5-year freeze on unilateral changes in the number or share of schedules operated over all or any segment of the involved route. The carriers will eliminate two duplicating schedules, one of Capitol's and one of Greyhound's, in each direction between Harrisburg and Washington. The agreement will limit Greyhound's use of

the Trailways logo on the route north of Harrisburg and the carriers will make some minor adjustments in schedule times to coordinate with Greyhound's through service.

By entering into a service pooling agreement, the carriers seek to increase the number of passengers per bus and spread their schedules more evenly through the day. The petitioners do not intend to pool revenues or to share expenses arising from operations of the schedules governed by their agreement. If other intercity bus carriers operating between the pooled points wish to be included in the service pooling agreement, Capitol and Greyhound are prepared to negotiate their participation.

DATES: Comments on the proposed agreement may be filed with us in the form of verified statements on or before August 29, 1988. Petitioners' rebuttal statements are due on or before September 19, 1988.

ADDRESSES: Send verified statements to:

(1) Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioners' representations:

S. Berne Smith, William A. Chestnutt, P.O. Box 1166, Harrisburg, PA 17108

George W. Hanthorn, Esq., Greyhound Lines, Inc., 901 Main Street, 2500 InterFirst Plaza, Dallas, TX 75202

Fritz R. Kahn, Esq., 1660 L Street NW., Suite 1000, Wahsington, DC 20036

FOR FURTHER INFORMATION CONTACT:

Judy Ann Barnes, (202) 275–7962

or

Richard Felder, (202) 275–7691

[TDD for hearing impaired (202) 275–1721]

SUPPLEMENTARY INFORMATION: The involved route encounters competition from other modes of transportation. Harrisburg, Syracuse and Washington are served by Amtrak, and Piedmont, United, USAir, and TWA operate between Harrisburg and Washington. Piedmont and USAir operate between Syracuse and Washington, and between Wilkes-Barre/Scranton and Washington. Continental, Piedmont and United operate between Binghamton and Washington. Also, Syracuse, Harrisburg, Binghamton, Wilkes-Barre/Scranton and Washington are all served by Interstate Highways. The Wilkes-Barre/Scranton area is also served by another intercity bus line, Frank Martz Coach Company.

Please refer to the pooling application, which may be obtained free of charge by contacting petitioners' representatives. In the alternative, the pooling application may be inspected at the offices of the Interstate Commerce Commission, Room 1221, during usual business hours (assistance for the hearing impaired is available through TDD service (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission Headquarters).

Decided: July 22, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–17107 Filed 7–28–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31299]

Ann Arbor Acquisition Corp. Acquisition and Operation Exemption Rail Lines of Michigan Interstate Railway Co.

Ann Arbor Acquisition Corporation (Ann Arbor), a noncarrier, has filed a notice of exemption to acquire and operate various railroad assets from W. Clark Durant, III, Trustee-in-Bankruptcy of the property of Michigan Interstate Railway Company (MIRC). Ann Arbor, subject to approval of the bankruptcy court, will acquire all of the track and trackage rights presently owned and/or operated by MIRC as the Ann Arbor Railroad, constituting a mainline of 45.58 miles, branch lines of 10.60 miles, and additional yard tracks and siding of 22.92 miles. The lines and yards involved are located in southeastern Michigan and northern Ohio and can be described as follows:

1. Galena Street Branch: Beginning near Galena Street in Toledo, OH, at milepost 0.0, and extending in a northeasterly then northwesterly direction to milepost 2.82.

2. Cherry Street Branch: Beginning near Cherry Street in Toledo, at milepost 0.15, and extending in a northeasterly direction to milepost 3.57.

3. Ann Arbor Railroad Main Track: Beginning at milepost 3.57, in Lucas County, OH, and extending in a northwesterly direction to milepost 47.5, at Ann Harbor, MI.

4. Saline Branch: Beginning at milepost S–0.0, in Washtenaw County, MI, and extending in a southwesterly direction to milepost S–6.39, in Saline, MI.

5. Uptown Lead: Beginning near milepost 22.56 of the Ann Arbor Railroad Main track in Dundee, MI, and beginning at the point of switch of the Uptown Lead and Number 2 Track, also known as survey station 0+00, and extending westerly along the Uptown Lead track to survey station 56+55, near Tecumseh Street in Dundee.

6. Railroad yards: Railroad yards located on the above lines and branches and commonly known as Ottawa Yard, Wheeling Yard, Diann Yard, Dundee Yard, Dundee Cement Yard, Milan Yard, and Ferry Yard.

As part of the same transaction, Ann Arbor will acquire from MIRC all of the outstanding stock of Old Post Office, Inc., a noncarrier, that has a wholly-owned subsidiary, Temperance Yard Corporation (TYC), a Class III switching and terminal carrier.[1]

Ann Arbor, which will be a Class III carrier, will issue securities in connection with the transaction, which is exempt under 49 CFR 1175.1.

Any comments must be filed with the Commission and served on Robert H. Wheeler, Oppenheimer Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, Suite 2400, Chicago, IL 60601.

Ann Arbor must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901,* 4 I.C.C. 2d 305 (1988).[2]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 20, 1988.

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[1] Ann Arbor has concurrently filed a petition for exemption in Finance Docket No. 31299 (Sub-No. 1), *Ann Arbor Acquisition Corporation Continuance in Control Exemption—Temperance Yard Corporation,* regarding the common control of the assets noted above and TYC. A decision disposing of that petition will be issued separately. TYC purchased its principal asset, the Temperance Yard, in Toledo, from the Grand Trunk Western Railroad Company on March 10, 1988. *See* Finance Docket No. 31222, *Temperance Yard Corporation—Acquisition and Operation Exemption—Temperance Yard of Grand Trunk Western Railroad Company in Toledo, OH* (not printed) served February, 19, 1988. On July 18, 1988, TYC filed a supplemental statement changing the carrier from which it will obtain incidental trackage rights to serve the Temperance Yard. A supplemental notice of exemption reflecting this change in carriers is being published concurrently.

[2] Ann Arbor has certified that it has identified such sites and structures to the appropriate historic preservation offices of Michigan and Ohio.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-17121 Filed 7-28-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31222]

Temperance Yard Corp.; Acquisition and Operation Exemption; Temperance. Yard of Grand Trunk Western Railroad Co. in Toledo, OH; Supplement

The notice of exemption served February 19, 1988, concerned the acquisition and operation by the Temperance Yard Corporation (TYC) of the Temperance Yard (Yard), in Toledo, OH, of the Grand Trunk Western Railroad Company (GTW).[1]

The notice of exemption stated that TYC also would obtain incidental trackage rights over the Toledo Terminal Railroad Company lines between the Yard and Hallett Tower, located in Ottawa Yard at Toledo, by means of an assignment from GTW, to enable TYC to move cars to and from GTW's leased track.

By supplemental statement filed July 18, 1988, TYC states that around the time of consummation of the acquisition of the Yard, GTW declined to assign the Toledo Terminal trackager rights to TYC, and TYC instead obtained the same trackage rights by assignment from the trustee-in-bankruptcy of Michigan Interstate Railway Company.

The initial notice of exemption should be considered clarified to the extent indicated here, and in all other respects it remains in full force and effect.

Decided: July 22, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-17122 Filed 7-28-88; 8:45 am]

BILLING CODE 7035-01-M

[1] Subsequent to the initial filing of this notice of exemption by TYC, Ann Arbor Acquisition Corporation (Ann Arbor), on July 11, 1988, filed a notice of exemption to acquire and operate various railroad assets of Michigan Interstate Railway Company (MIRC), and to acquire from MIRC's trustee-in-bankruptcy all of the outstanding stock of Old Post Office, Inc., of which TYC is a wholly-owned subsidiary. That proceeding has been docketed as Finance Docket No. 31299, *Ann Arbor Acquisition Corporation—Acquisition and Operation Exemption—Rail Lines of Michigan Interstate Railway Company*. In addition, Ann Arbor's common control of the railroad assets of MIRC and TYC is the subject of a petition for exemption currently being processed in Finance Docket No. 31299 (Sub-No. 1) *Ann Arbor Acquisition Corporation—Continuance in Control Exemption—Temperance Yard Corporation*. A decision in the latter proceeding will be issued separately.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Carlisle, Ky et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 22, 1988, a proposed Consent Decree in United States v. City of Carlisle, et al., Civil Action No. 88-250, was lodged with the United States District Court for the Eastern District of Kentucky. The Complaint sought penalties and injunctive relief against the City of Carlisle ("City") and the Commonwealth of Kentucky under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations, poor operation and maintenance, and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to complete the necessary construction and improvements to bring its discharges within the the terms and limitations of its NPDES permit. It also imposes a civil penalty of $3,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to United States v. City of Carlisle, et al., D.J. Ref. 90-5-1-1-3151.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, U.S. Courthouse, 4th Floor, Limestone and Barr Streets, Lexington, Kentucky 40591, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-17124 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Cave City, KY et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 21, 1988, a proposed Consent Decree in United States v. City of Cave City, et al., Civil Action No. 88-0108-BG(M), was lodged with the United States District Court for the Western District of Kentucky. The Complaint sought penalties and injunctive relief against the City of Cave City ("City"), the Caveland Sanitation Authority and the Commonwealth of Kentucky under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to make the necessary construction and improvements to bring its discharges within the terms and limitations of its NPDES permit. It also imposes a civil penalty of $3,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to United States v. City of Cave City, et al., D.J. Ref. 90-5-1-1-3143. The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Kentucky, Bank of Louisville Building, 10th Floor, 510 Broadway, Louisville, Kentucky 40202, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be

obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-17125 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Central City, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 21, 1988, a proposed Consent Decree in United States v. City of Central City, et al., Civil Action No. 88-0109-O(CS), was lodged with the United States District Court for the Western District of Kentucky. The Complaint sought penalties and injunctive relief against the City of Central City ("City"), and the Commonwealth of Kentucky under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to make the necessary construction and improvements to bring its discharges within the terms and limitations of its NPDES permit. It also imposes a civil penalty of $4,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to United States v. City of Central City, et al., D.J. Ref. 90-5-1-1-3139.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Kentucky, Bank of Louisville Building, 10th Floor, 510 Broadway, Louisville, Kentucky 40202, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-17126 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Horse Cave, KY et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 21, 1988, a proposed Consent Decree in United States v. City of Horse Cave, et al., Civil Action No. 88-0109-BG(M), was lodged with the United States District Court for the Western District of Kentucky. The Complaint sought penalties and injunctive relief against the City of Horse Cave ("City"), the Caveland Sanitation Authority and the Commonwealth of Kentucky under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to make the necessary construction and improvements to bring its discharges within the terms and limitations of its NPDES permit. It also imposes a civil penalty of $3,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to United States v. City of Horse Cave, et al., D.J. Ref. 90-5-1-1-3141. The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Kentucky, Bank of Louisville Building, 10th Floor, 510 Broadway, Louisville, Kentucky 40202, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-17127 Filed 7-28-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Stanton, KY et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 22, 1988, a proposed Consent Decree in United States v. city of Stanton, et al., Civil Action No. 88-251, was lodged with the United States District Court for the Eastern District of Kentucky. The Complaint sought penalties and injunctive relief against the City of Stanton ("City") and the Commonwealth of Kentucky under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations, poor operation and maintenance, and failure to construct sufficient plant improvements to meet the effluent limitations contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to complete the necessary construction and improvements to bring its discharges within the terms and limitations of its NPDES permit. It also imposes a civil penalty of $5,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the

Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to United States v. City of Stanton, et al., D.J. Ref. 90–5–1–1–3140.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, U.S. Courthouse, 4th Floor, Limestone and Barr Streets, Lexington, Kentucky 40591, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–17128 Filed 7–28–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; Texaco Refining and Marketing Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 28, 1988, a proposed consent decree in United States v. Texaco Refining and Marketing Inc., f/k/a/ Getty Refining and Marketing Company, and Texaco Chemical Company (Civ. Action No. 86–321–MMS), was lodged with the United States District Court for the District of Delaware.

The proposed consent decree resolves a judicial enforcement action brought by the United States aganist Texaco Refining and Marketing Inc., f/k/a Getty Refining and Marketing Company, and Texaco Chemical Company (collectively "Texaco") for violations of the Clean Air Act. The complaint filed by the United States alleged that Texaco violated the requirements of the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for benzene, 40 CFR Part 61.

The proposed consent decree requires tht Texaco retain an independent contractor to conduct an audit of Texaco's Delaware City refinery. The consent decree further requires Texaco to pay a civil penalty of $153,000 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. Texaco Refining and Marketing Inc., f/k/a/ Getty Refining and Marketing Company, and Texaco Chemical Company (Civ. Action No. 86–321–MMS), D.O.J. Ref. No. 90–5–2–1–952.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Wilmington, Delaware, 19801 and at Region III of the U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, Attention: Katherine L. Shine. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20503. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $2.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–17129 Filed 7–28–88; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

[Civil No. 6429M]

Proposed Termination of Final Judgment; The Coca-Cola Co. et al.

Notice is hereby given that The Coca-Cola Company ("Coca-Cola"), as successor to the Minute Maid Corporation, has filed with the United States District Court for the Southern District of Florida a motion to terminate the final judgment in *United States v. Minute Maid Corporation*, Civil No. 6429M; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on September 7, 1955) alleged that Minute Maid had violated section 7 of the Clayton Act by acquiring frozen citrus concentrate facilities in Dunedin and Frostproof, Florida. The judgment (entered by consent of the parties on September 7, 1955) enjoins Minute Maid (and its successors in interest, including Coca-Cola) from acquiring any interest in facilities at Dunedin or Frostproof and from operating a facility in Davenport, Florida.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Coca-Cola's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Suite 1394, Richard B. Russell Building, 75 Spring Street, Atlanta, Georgia (telephone 404/331–7100), and at the Office of the Clerk of the United States District Court for the Southern District of Florida in Miami. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within a period of twenty-five days from the publication of this notice, and will be filed with the court. Comments should be addressed to John T. Orr, Chief, Atlanta Field Office, Antitrust Division, Department of Justice, 1394 Richard B. Russell Building, 75 Spring Street, SW., Atlanta, GA 30303.

Dated: July 26, 1988.

John W. Clark,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 88–17251 Filed 7–28–88; 8:45 am]

BILLING CODE 4410–10–M

Drug Enforcement Administration

Controlled Substances; Proposed Aggregate Production Quotas for 1989

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed aggregate production quotas for 1989.

SUMMARY: This notice proposes initial 1989 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATE: Comments or objections should be received on or before August 29, 1988.

ADDRESS: Send comments or objections to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section Drug Enforcement Administration, Washington, DC 20537 (202) 633–1366

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) The estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1989 aggregate production quotas, the Administrator considered the following factors:

(1) Total actual 1987 and estimated 1988 and 1989 net disposals of each substance by all manufacturers;

(2) estimates of inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; and

(3) projected demand as indicated by procurement quota applications which were filed pursuant to § 303.12 of Title 21 of the Code of Federal Regulations.

Pursuant to § 1303.23(c) of Title 21 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration will in early 1989 adjust individual manufacturing quotas allocated for the year based upon 1988 year-end inventory and actual 1988 disposition data supplied by quota applicants for each basic class of Schedule I or II controlled substance.

Based upon consideration of the above factors, the Administrator of the Drug Enforcement Administration hereby proposes that aggregate production quotas for 1989 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic Class	Proposed 1989 Quotas
Schedule I:	
2,5-Dimethoxyamphetamine	15,500,000
Lysergic Acid Diethylamide	11
3,4-Methylenedioxyamphetamine	5
3,4-Methylenedioxymethamphetamine	10
Tetrahydrocannabinols	20,000
Psilocyn	2
Psilocybin	2
Normorphine	5
4-Methylaminorex	5
Schedule II:	
Alfentanil	0
Amobarbital	213,000
Amphetamine	328,000
Cocaine	700,000
Codeine (for sale)	54,135,000
Codeine (for conversion)	4,528,000
Desoxyephedrine	1,318,000
1,281,000 grams for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 37,000 grams for the production of methamphetamine.	
Dextropropoxyphene	78,338,000
Dihydrocodeine	535,000
Diphenoxylate	810,000
Ecgonine (for conversion)	650,000
Fentanyl	40,000
Hydrocodone	2,507,000
Hydromorphone	197,000
Levorphanol	13,600
Meperidine	9,851,000
Methadone	1,441,000
Methadone Intermediate (4-Cyano-2-dimethylamino-4,4-diphenylbutane)	1,802,000
Methamphetamine (for conversion)	1,500,000
Methylphenidate	2,061,000
Mixed Alkaloids of Opium	9,200
Morphine (for sale)	3,208,000
Morphone (for conversion)	61,532,000
Opium (tinctures, extracts, etc, expressed in terms of USP powdered opium)	1,452,000
Oxycodone (for sale)	2,329,000
Oxycodone (for conversion)	5,200
Oxymorphone	2,500
Pentobarbital	11,777,000
Phencyclidine	31
Phenmetrazine	0
Phenylacetone (for conversion)	617,000
1-Piperidinocyclohexanecarbonitrile (for conversion)	64
Secobarbital	1,288,000
Sufentanil	400
Thebaine	4,782,000

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on one of the above-mentioned substances without filing comments or objections regarding the others. Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC. 20537, Attn: DEA Federal Representative, and must be received by (30 days from date of publication). If a person believes that one or more issues warrant a hearing, a statement to that effect with a summary of reasons for such belief should be submitted.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall cause such hearing to be convened pursuant to the provisions of Title 21 of the Code of Federal Regulations, § 1303.31(a).

Pursuant to section (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: July 6, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88–17076 Filed 7–28–88; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 88–24]

Clifford E. Bigott, D.M.D.; Revocation of Registration

On January 25, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Clifford E. Bigott, D.M.D. (Respondent) of P.O. Box 1860, 500 Central Avenue, LaFollette, Tennessee 37766 proposing to revoke his DEA Certificate of Registration AB1549990 and to deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's lack of authorization to handle controlled substances in the State of Tennessee. 21 U.S.C. 824(a)(3).

Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed

before Administrative Law Judge Francis L. Young. The Administrative Law Judge provided the Government an opportunity to file a motion for summary disposition, which the Government filed. Judge Young then provided Respondent an opportunity to respond to the motion for summary disposition. Respondent did not file such a response. In light of Respondent's failure to file a response to the Government's motion, the Administrative Law Judge issued an Order Terminating the Proceedings on July 15, 1988. Judge Young reasoned that no contest was presented between the parties which would call for any adjudicatory decision by the Administrative Law Judge. Accordingly, the Administrator hereby enters his final order in this mater based upon the investigative file pursuant to 21 CFR 1301.54(d) and (e).

The Administrator finds that on July 15, 1987, the State of Tennessee, Department of Health and Environment, Division of Health Related Boards, summarily suspended Respondent's license to practice dentistry. Therefore, Respondent is currently not authorized to handle controlled substances in the State of Tennessee.

The Administrator and his predecessors have consistently held that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. 21 U.S.C. 823(f). See, *Edward L. McIver, M.D.*, 53 FR 16477 (1988); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86–54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85–57, 51 FR 23481 (1986); and cases cited therein.

Having considered the facts and circumstances in this matter, the Administrator concludes that Respondent's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Tennessee. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AB1549990, previously issued to Clifford E. Bigott, D.M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective immediately.

Date: July 22, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–17075 Filed 7–28–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be ontained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT88–1 (Jan. 8, 1988) ..... pp. 63–64.
District of Columbia:
DC88–1 (Jan. 8, 1988) ..... pp. 83, 85.
North Carolina:
NC88–1 (Jan. 8, 1988) ..... p. 522.
New York:
NY88–7 (Jan. 8, 1988) ..... pp. 738, 740.
New York:
NY88–18 (Jan. 8, 1988) ..... pp. 830–831, pp. 833–835.

Volume II

Iowa:
IA88–2 (Jan. 8, 1988) ..... p. 29.
Ohio:
OH88–1 (Jan. 8, 1988) ..... pp. 725–727,732.
Ohio:
OH88–2 (Jan. 8, 1988) ..... pp. 738–740, pp. 742, 744–745.
Ohio:
OH88–3 (Jan. 8, 1988) ..... pp. 758–761.
Ohio:
OH88–28 (Jan. 8, 1988) ..... p. 814.
Ohio:
OH88–29 (Jan. 8, 1988) ..... pp. 820–825, pp. 827–828, pp. 831–832, pp. 836, 844.
Wisconsin:
WI88–10 (Jan. 8, 1988) ..... p. 1137.

Volume III

Montana:
MT88–3 (Jan. 8, 1988)..... p. 189.
Oregon:
OR88–1 (Jan. 8, 1988)..... p. 307.
Washington:
WA88–1 (Jan. 8, 1988) ..... pp. 360–384.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 22nd Day of July 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88–16954 Filed 7–28–88; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–88–124–C]

Buck Mountain Coal Co. No. 2; Petition for Modification of Application of Mandatory Safety Standard

Buck Mountain Coal Company No. 2, R.D. No. 4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its Buck Mountain Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner requests a modification of the standard to allow the roof in openings in excess of 20 feet in width be supported with conventional supports set on 5-foot centers in every direction, or be supported by employing the full box method.

3. In support of this request, petitioner states that in Anthracite Mines all roadways are restricted to 12 feet in width. The breasts, on the other hand, where mobile equipment is not used, are driven up to 30 feet in width. These breasts are supported by conventional supports placed on 5-foot centers in every direction, hence no span of roof is left unsupported. In the harder pitch mines 60 degrees and up, the breasts are driven full. In the full box method, manways are timbered 30 inches wide and loose coal supports every square inch of roof between the manway timber.

4. Petitioner further states that roof bolts would create a hazard in the hard pitch mines, because they would be installed at 30 degrees to as little as 2 degrees from horizontal. This would result in shearing of the bolts.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Date: July 25, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–17164 Filed 7–28–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–3–M]

Camp Bird Venture; Petition for Modification of Application of Mandatory Safety Standard

Camp Bird Venture, P.O. Box 1790, Ouray, Colorado 81427 has filed a petition to modify the application of 30 CFR 57.19070 (closing cage doors or gates) to its Camp Bird Mine (I.D. No. 05–00437) located in Ouray County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cage doors or gates be closed while persons are being hoisted; they are required not to be opened until the cage has stopped.

2. As an alternate method, petitioner proposes to use a skip gate on the 1410 shaft. In support of this request, petitioner states that—

(a) This type of gate allows transportation of supplies without bending or mutilating a solid side-to-side gate; and

(b) A gate which would completely close off the front of the skip would be more of a hazard because of having to open the gate every time supplies are hoisted. Persons would tend to transport themselves without reattaching the gate.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Date: July 25, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–17165 Filed 7–28–88; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M-88-121-C]

Carter-ROAG Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Carter-ROAG Coal Company; Inc., P.O. Box 2327, Elkins, West Virginia 26241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment, maintenance) to its No. 1A Mine (I.D. No. 46-06715) and its No. 5 Mine (I.D. No. 46-05809) both located in Randolph County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded metal locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Date: July 25, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-17166 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-111-C]

Cyprus Emerald Resources Corp; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Emerald Resources Corp., P.O. Box 871, Waynesburg, Pennsylvania 15370 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler systems; arrangement of sprinklers) to its Emerald Mine (I.D. No. 36-05466) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The Petition concerns the arrangement of water sprinkler systems.

2. As an alternate method, petitioner proposes to use a single line of automatic sprinklers for fire protection systems at main and secondary belt-conveyor drives. In support of this request, petitioner states that—

(a) Automatic sprinklers on the proposed single line would be maintained at a distance of not more than 10 (10) to ten and one half (10½) feet apart with actuation temperatures between 200 and 230 degrees Fahrenheit;

(b) Automatic sprinklers would be located so that the discharge of water would extend over the belt drive, belt takeup, electrical control, and gear reducing unit;

(c) During operation of the system, water pressure would not be less than 10 psi;

(d) The sprinkler line would be a minimum length at the drive of 50 feet of belt; and

(e) A test to ensure proper operation would be conducted during the installation of each new system and during the subsequent repair or replacement of any critical part thereof.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: July 25, 1988.

[FR Doc. 88-17167 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-49-C]

The Helen Mining Co.; Petition for Modification of Application of Mandatory Safety Standard (Amendment)

The Helen Mining Company, R.D. No. 2, Box 2110, Homer City, Pennsylvania 15748-9558 has filed an amendment to a petition for modification. On March 21, 1988, The Helen Mining Company, submitted a petition to modify the application of 30 CFR 75.205 (installation of roof support using mining machines with integral roof bolters) to its Homer City Mine (I.D. No. 36-00926) located in Indiana County, Pennsylvania. On May 25, 1988, MSHA published notice of the petition in the **Federal Register** (53 FR 18918), allowing interested parties 30 days to submit comments. On June 27, 1988, petitioner submitted a request to amend the originally submitted petition for modification to include paragraph (k). Roof bolts used in conjunction with the 3-inch by 8-inch by 12-foot wooden planks would be of the two piece point anchor type, with a minimum length of 5 feet. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the amendment and the original petition for modification are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: July 25, 1988.

[FR Doc. 88-17168 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-133-C]

Michael Mining Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Michael Mining Coal Company, Route 1, Box 197, Corbin, Kentucky 40701 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15-16331) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure the detection of any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnished written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: July 25, 1988.

[FR Doc. 88-17169 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-131-C]

R.S. & W. Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

R.S. & W. Coal Company, Inc., Box 36, R.D. No. 1, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its R.S. & W. Drift (I.D. No. 36-01818) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner requests a modification of the standard to allow the roof in openings in excess of 20 feet in width be supported with conventional supports set on 5-foot centers in every direction, or be supported by employing the full box method.

3. In support of this request, petitioner states that in Anthracite Mines all roadways are restricted to 12 feet in width. The breasts, on the other hand, where mobile equipment is not used, are driven up to 30 feet in width. These breasts are supported by conventional supports placed on 5-foot centers in every direction, hence no span of roof is left unsupported. In the harder pitch mines 60 degrees and up, the breasts are driven full. In the full box method, manways are timbered 30-inches wide and loose coal supports every square inch of roof between the manway timber.

4. Petitioner further states that roof bolts would create a hazard in the hard pitch mines, because they would be installed at 30 degrees to as little as 2 degrees from horizontal. This would result in shearing of the bolts.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Date: July 25, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-17170 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-130-C]

Wenrich Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Wenrich Coal Company, Star Route, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.206 (conventional roof support) to its Buck Mountain Slope (I.D. No. 36-05717) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that width of openings be limited to 20 feet when only using conventional roof support.

2. As an alternate method, petitioner requests a modification of the standard to allow the roof in openings in excess of 20 feet in width be supported with conventional supports set on 5-foot centers in every direction, or be

supported by employing the full box method.

3. In support of this request, petitioner states that in Anthracite Mines all roadways are restricted to 12 feet in width. The breasts, on the other hand, where mobile equipment is not used, are driven up to 30 feet in width. These breasts are supported by conventional supports placed on 5-foot centers in every direction, hence no span of roof is left unsupported. In the harder pitch mines 60 degrees and up, the breasts are driven full. In the full box method, manways are timbered 30-inches wide and loose coal supports every square inch of roof between the manway timber.

4. Petitioner further states that roof bolts would create a hazard in the hard pitch mines, because they would be installed at 30 degrees to as little as 2 degrees from horizontal. This would result in shearing of the bolts.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Dated: July 25, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-17171 Filed 7-28-88; 8:45 am]

BILLIND CODE 4510-43-M

[Docket No. M-88-9-M]

Windfall Gold Mining Corp.; Petition for Modification of Application of Mandatory Safety Standard

Windfall Gold Mining Corporation, P.O. Box 1929, Nome, Alaska 99762 has filed a petition to modify the application of 30 CFR 56.9003 (mobile equipment brakes) to its Cooper Gulch Mine No. 2 (I.D. No. 50-01484) located in Seward Peninsula County, Alaska. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that powered mobile equipment be provided with adequate brakes.

2. Petitioner operates four Caterpillar 631C scrapers for the purpose of hauling overburden and placer materials. The ground over which the scrapers must operate is layered with tundra, loamy peat, clays, placer silts, placer gravel and ancient beach sands.

3. The mine pit is encircled by "mined out" dredge tailings ponds and as such the newly developed pits have ground water entering the units as the water table is violated. With the exception of the placer gravel, all of the mined materials are especially susceptible to the retention of water leaving wet, abrasive material for an approximate depth of three feet through which the scrapers must traverse at any given time.

4. Due to continuous operation of the scrapers in this material, application of the standard would result in a diminution of safety.

5. As an alternate method, petitioner proposes three methods of providing alternate braking for the scrapers: (a) Engagement of the torque conveter retarder, this unit is part of the drive train and is not exposed to the elements encountered in the pit; (b) lowering of the bowl which allows the leading edge to penetrate the ground stopping the machine immediately, and (c) downshifting of the transmission into reverse. The first two methods allow the operator to stop the scraper whether it be loaded or empty in less space than that required to stop the scraper utilizing the brakes as originally installed for an unloaded unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: July 25, 1988.

[FR Doc. 88-17172 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-6837]

Proposed Exemptions; Real Estate for American Labor A Balcor Group Trust (the Trust) et. al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in

applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issued exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issue solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Real Estate for American Labor a Balcor Group Trust (the Trust), Located in Chicago, IL

[Application No. D–6837]

Proposed Exemption

Section I. Exemption for Certain Transactions Involving the Trust

(a) The restrictions of sections 406(a), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section IV are met.

(1) *Transactions Between Parties-In-Interest and the Trust: General.* Any transaction between a party-in-interest with respect to a plan which has an interest in the Trust (a Participating Plan) and the Trust, or any acquisition or holding by the Trust of employer securities or employer real property, if the party in interest is not Balcor Institutional Realty Advisors, Inc. (Balcor) or one of its affiliates, any other trust maintained by Balcor or one of its affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interest of any other Participating Plans maintained by the same employer or employee organization in the Trust, does not exceed 10 percent of the total of all assets in the Trust.

(2) *Special Transaction Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Trust.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Trust, or any acquisition or holding by the Trust of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

The interest of the multiemployer plan in the Trust exceeds 10 percent of the total assets in the Trust, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales, or Holdings of Employer Securities and Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Trust which does not meet the requirement of paragraphs (a)(1) and (a)(2) of this section I, if no commission is paid to Balcor or to the employer, or any affiliate of Balcor or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease or employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Trust are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Trust that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither Balcor nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Trust owns the obligation at the time the plan acquires an interest in the Trust, and interests in the Trust are offered and redeemed in accordance with valuation procedures of the Trust applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Trust not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. Balcor, its affiliates, and any collective investment fund maintained by Balcor or its affiliates, shall be considered to be persons independent of the issuer if Balcor is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Balcor or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Balcor or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), or (I) of the Act.

(b) The restrictions of section 406(a)(1) (A) through (D) and section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section IV are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Trust by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Trust to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Trust, if—

(A) In the case of goods, they are furnished to or by the Trust in connection with real property owned by the Trust;

(B) The party-in-interest is not Balcor, any affiliate of Balcor, or one of the other trusts and;

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Trust with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Trust on the most recent valuation date of the Trust prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing

of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Trust to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions if the conditions of section IV are met:

Any transaction betwen the Trust and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Trust;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Trust, does not exceed 20 percent of the total of all assets in the Trust; and

(3) The person is not Balcor or an affiliate of Balcor.

(d) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reasons of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest (Units) in the Trust if no more than reasonable compensation is paid therefor and (a) each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of Balcor and any of its affiliates or (b) the purchase or sale is a mandatory redemption required by the Trust Agreement, including the failure of the Participating Plan to remain a plan which can invest in a group trust described in section 401(a)(24) of the Code, and the applicable conditions of section IV are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of section 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Trust) by a Participating Plan if: (1) the acquisition of holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Trust; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of section I of this exemption are met; and (3) the applicable conditions set forth in section IV of this exemption are met.

Section III. Transfers of Real Property From Balcor to the Trust

(a) The restrictions of section 406(a), 406(b)(1) and (2) of the Act and the taxes imposed by section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any sale to the Trust of real property acquired by Balcor or an affiliate during the offering period if the following conditions are met:

(a) The price paid by the Trust for the property will be no greater than the lesser of the sum of the amount paid and the holding costs incurred by Balcor or an affiliate or the fair market value of the property, as determined by an independent appraiser, as of the date of sale to the Trust;

(b) The offering memorandum (Memorandum) is supplemented during the offering period with a description of the proposed investment;

(c) All documents relating to such an investment by Balcor indicate specifically that the investment is being made on behalf of the Trust and all documents relating to the calling of funds from investors specify the investment for which such funds will be used;

(d) All such transfers are completed within 120 days of purchase by Balcor or an affiliate; and

(e) The conditions set forth in section IV of this exemption are met.

Section IV. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Balcor or its affilitate, the terms of the transaction are not less favorable to the Trust than the terms generally available in arm's-length transactions between unrelated parties.

(b) Balcor or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section IV to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Balcor or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section IV are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Trust of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of Balcor or its affiliate, or commercial or financial information which is privileged or confidential.

Section V. Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Trust" shall include any collective investment fund that may hereafter be established, operated and managed by Balcor or its affiliate in essentially the same manner as the Real Estate for American Labor A Balcor Group Trust.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management of policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Trust occurs on or after the effective date of this exemption, and the requirments of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and I(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Trust by the Participating Plan. For this purpose, assets allocated do not include the investment of Trust earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction described in section 406 of the Act of section 4975 of the Code while the transaction is continuing, unless the conditions or the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Trust as its proportionate interest in the total assets of the Trust as calculated on the most recent preceding valuation date of the Trust.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this proposed exemption.

Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption 80–51 (PTE 80–51, 45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicants have requested relief are those which, in part, are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

To date the Department has proposed and granted various individual exemptions on behalf of collective investment funds which have not qualified for relief under PTE 80–51 or Prohibited Transaction Exemption 78–19 (PTE 78–19, 43 FR 59915, December 22, 1978; class relief on behalf of pooled separate accounts sponsored by insurance companies). Such individual exemptions have provided relief for similar transactions subject to, in most instances, similar terms and conditions as those contained in the class exemptions.

Summary of Facts and Representations

1. The Trust is intended to be a group trust described in section 401(a)(24) of the Code and Rev. Rul. 81–100, 1981–1 C.B.326, to provide multiemployer plans (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) a vehicle for pooling a portion of their funds for the purpose of making investments in real estate and mortgage loans. The Trust is intended to be qualified under section 401(a) of the Code and exempt from tax under section 501(a) of the Code.

2. Pursuant to a written investment management agreement entered into with the trustees (the Trustees) of the Trust, Balcor will serve as the investment manager for the Trust. Prior to the offering of Units, Balcor, a newly formed corporation, will acquire all of the partnership interests of and become successor to Balcor Real Estate Investment Advisors, a registered investment advisor. Thereafter, Balcor will become an investment advisor registered under the Investment Advisors Act of 1940. The Balcor Company (Balcor Co.) owns all of the outstanding shares of Balcor and will unconditionally guarantee payment of all of the liabilities of Balcor. Balcor Co. and its subsidiaries have shareholder's equity in excess of $163,000,000 and manage property valued at more than $5,000,000,000. Balcor Co. is a wholly-owned subsidiary of Shearson Lehman Brothers, Inc. (Shearson), an investment banking and brokerage firm and an investment advisor to, among other entities, multiemployer pension plans. Shearson is wholly-owned by American Express Company, which is primarily in the business of providing travel related services, insurance services, and international banking services. Affiliates of Balcor Co. have formed numerous public and private real estate entities. In addition, Balcor Co. and its affiliates manage or advise additional public and private real estate entities, as well as entities not engaged in the real estate business. They also engage in other business activities. Any successor investment manager will be chosen by a majority of the Trustees. Balcor expects to manage additional trusts in the future which will be structured similarly to the

Trust. Pursuant to the investment management agreement, Balcor will be vested with the exclusive authority to acquire, manage and dispose of the Trust's investments in real property. Balcor will be responsible for performing the day-to-day administrative and investment operations of the Trust. Balcor will, directly or through an affiliate, provide property acquisition, maintenance and repair, rent collection, bookkeeping, lease negotiation, mortgage brokerage and servicing and other related management services. Balcor is not currently a qualified professional asset manager as defined in Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494) since it does not yet have $50 million of assets under management. Messrs. Jerry M. Reinsdorf, Stephen H. Silverstein, John L. West, Barry R. Jackson, Van L. Pell and Thomas E. Meador serve as the Trustees. The Trustees are officers of Balcor or an affiliate. The Trustees will receive no compensation for serving as Trustee. They will be solely responsible for accepting or rejecting participation in the Trust by a prospective Participating Plan, determining the fair market value of the Trust's assets for the purpose of valuing Units, and determining the time and amount of distributions to Participating Plans.

3. Interests in the Trust will be offered pursuant to the Memorandum, which describes the management, operation, investment objectives and income tax consequences of the Trust and compensation to be paid to Balcor as investment manager. The initial offering price of each Unit is $100,000, with a minimum subscription by an investor of 10 Units. The offering price per Unit will be adjusted to reflect quarterly re-evaluations of the Units. There is no minimum or maximum total offering of Units, although the Trust will only accept payment for Units for which it has received investor commitments or subscriptions when subscriptions for at least 200 Units ($20,000,0000) have been accepted by the Trustees. In order to avoid making short-term investments for the Trust, Balcor will not call commitments to invest in the Trust until it has made appropriate investments on behalf of the Trust equal to the amount of the commitments. If such investments are not made within 15 months after obtaining the initial $20,000,000 of commitments, each investor will be offered the right to rescind its commitment. Afterward, the process will be repeated for each $10,000,000 in commitments and investments. The Trust provides that Balcor or an affiliate may, for the purpose of facilitating the acquisition of an investment by the Trust, make or acquire an investment in its own name and within 120 days transfer such investment to the Trust. The price will be no greater than the lesser of the sum of the amount paid and the holding costs incurred by Balcor or an affiliate or the fair market value of the investment, as determined by an independent appraiser, as of the date of sale to the Trust. It is contemplated that Units will be offered for an indefinite period which is not expected to exceed ten years. After that time, Units will only be offered to current Participating Plans and no new investors will be permitted unless such investor is purchasing Units which are being redeemed. The Units will be privately offered commencing on or about September 15, 1986 and will not be registered under the Securities Act of 1933. Neither the Units nor any interest therein may be resold, transferred, assigned, or otherwise disposed of or encumbered by Participating Plans, as required by Rev. Rul. 81–100.

4. The decision of any plan to invest in the Trust will be made by fiduciaries of that plan. The Trustees may reject a subscription for any reason. The applicant states that none of the individual Trustees of the Trust, nor any of the employees, officers, directors or shareholders of Balcor or its affiliates will exercise any discretionary authority over or otherwise participate in the decision of any plan to invest in the Trust. In connection with the proposed exemption for the purchase and sale of Units in the Trust, the applicant represents that Balcor or its affiliates may act as an investment adviser or investment manager with respect to portions of the assets of plans that may become Participating Plans and may on occasion be retained by such plans to provide services with respect to specific real estate investments made by the plans. However, the applicant represents further that assets of plans for which Balcor or any of its affiliates acts as investment adviser or investment manager or otherwise subject to the investment discretion of Balcor or any of its affiliates will not be eligible for investment in the Trust. In addition, Balcor expects to engage in normal marketing and promotional activity in connection with the Trust, but it will not recommend investment therein of plan assets with respect to which it acts as an investment adviser or investment manager.[1]

5. The Trustees, in their sole discretion, may terminate the Trust at any time. Upon termination, the Trustees are required to liquidate the Trust's properties and distribute its assets to Participating Plans, pro rata, subject to appropriate reserves for existing liabilities and contingencies.

6. A Participating Plan may request that the Trust redeem all or any portion of its Units. Furthermore, under certain circumstances described below, the Units of a Participating Plan may be involuntarily redeemed.

The Trustees will make redemption payments out of available funds and will be under no obligation to sell any properties to satisfy redemption requests. However, the Trust may not enter into any new commitments to purchase properties or make new mortgage loans if any redemption requests are outstanding unless the Trustees determine that a redemption at that time will violate the conditions of the Trust Agreement. Upon receipt of the redemption request the Trustees may, in their discretion, notify all remaining Participating Plans of the availability of additional Units that may be purchased at the existing Unit asset value as of the date of redemption. If the remaining Participating Plans do not purchase all the Units being redeemed, the Trustees may, in their discretion, offer the remaining Units to other eligible investors. Upon the redemption date, the Trustees will distribute to the redeeming Participating Plan the existing Unit asset value as of the date the Units are redeemed. The redemption price will be decreased by any estimates of the costs of disposition of assets the proceeds of which are used to redeem Units, which costs are not reflected in such Unit asset value.

Upon termination of the status of a Participating Plan as a qualified trust under section 401(a) of the Code or upon amendment of the Participating Plan so that it is no longer authorized to invest in the Trust, the Units held by such Participating Plan shall be deemed to have been redeemed as of the

[1] To the extent that, in the ordinary course of business, Balcor or any of its affiliates provides "investment advice" to a Participating Plan within the meaning of regulation 29 CFR 2510.3–21(c)(1)(ii)(B) and recommends an investment of the plan's assets in the Trust, the presence of an unrelated second fiduciary acting on the consultant/investment adviser's recommendations on behalf of the plan is not sufficient to insulate the advisers from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984). The Department is unable to conclude that fiduciary self dealing of this type (if present) is in the interests or protective of plans and their participants and beneficiaries and, accordingly, has limited exemptive relief for the acquisition or sales of Units in the Trust to section 406(a) violations only.

coincident or preceding Valuation Date. As funds are made available, the Trustees will distribute to such Participating Plan 90% of the Unit asset value of the Units which were redeemed, decreased by any costs of redemption. Ten percent of the value of the Units being redeemed will be placed in an interest bearing escrow account and treated as a contingent liability of the Trust for seven years. At the end of seven years, the Trustees will compare the Unit value at that time with 90% of the Unit value at the time of the redemption (the Settlement Value). If the Unit value is less than the Settlement Value, the contingent liability will be eliminated, with no additional payment to the Participating Plan which had Units which were subject to a mandatory redemption. If the Unit value is greater than the Settlement Value, the former Participating Plan will be refunded some or all of the retained ten percent, including interest on that amount, up to the current Unit value.

The applicant represents that in the event of such a mandatory redemption, the Trust will be obligated to repurchase the Units held by such Participating Plan in order to maintain its tax-exempt status. The need to repurchase such Units could disrupt the investment portfolio and Balcor's strategy and adversely affect the return on the investments of the other Participating Plans. The Trust therefore requires that the Participating Plan which causes a mandatory redemption to bear a greater share of the risk of loss caused by the redemption. If there are no adverse consequences to the Trust, the 10% retained interest will be paid out to such Participating Plan after seven years, which is the expected turnover time of the Trust's portfolio.

Upon the Trustees' determination that the Trust will be engaged in a non-exempt prohibited transaction because of a Participating Plan's acquisitioin or ownership of Units, such Units will be subject to a mandatory redemption as described in the preceding paragraph, except that there will be no ten percent retention.

7. The purposes of the Trust are preserving and protecting capital, generating income on investments, providing for capital appreciation and providing jobs for union labor. Consistent with these purposes, funds of the Trust will be invested in direct or indirect ownership, contract, or leasehold interests in (1) Realty currently or soon to be under construction or rehabilitation, (2) land underlying realty described in (1) above, and (3) realty the investment of which is incidental to investments described in (1) and (2) above. Funds of the Trust will also be invested in direct or indirect interests in loans or commitments to make loans related to the types of realty described above.

8. All investments will be evaluated by Balcor in accordance with Balcor's investment criteria and must offer a commercially competitive rate of return. A requirement for all investments by the Trust in realty or in loans thereon is that the construction or rehabilitation by the developers must be provided by contractors and sub-contractors who employ union labor, defined as laborers who are members of United States labor unions and registered with the Department of Labor or who are covered by collective bargaining agreements. Where some laborers are required on a project but cannot satisfy the foregoing condition, work will be deemed to be performed by union labor if the building trades council or other body representing union trades in the locale of the realty being developed approves or endorses the plan of construction by a mix of union and non-union labor. The seller or borrower must provide, as a condition to receiving assets of the Trust, a commitment of the developer or general contractor that all labor will be provided by union labor or, where that condition cannot be satisfied, in accordance with such plan of construction approved by the local building trades council or other body.[2]

Financing applications will be individually considered and accepted by Balcor after it is determined that they satisfy the investment criteria. The applicant represents that Balcor or its affiliates seek similar types of investments (i.e., forward-commitment first mortgage loans on commercial properties) without regard for whether union labor will be used for several funds or client accounts managed by Balcor and its affiliates. Balcor therefore seeks such investments generally, and will allocate those that first meet its financial investment standards among the funds and accounts on the basis of which fund or account committed money first. Whether a project uses union labor will be a factor only to determine if the investment should be allocated to the Trust. Balcor will consider financing applications without regard to the identity of the general contractors or the subcontractors who may potentially be selected (or who may already have been selected if such selection was made prior to submission of the financing application). Neither Balcor nor any affiliate thereof will develop, rehabilitate or contract or subcontract to develop or rehabilitate the realty in which the Trust has an interest. Balcor will not be directly involved in the process of selecting contractors, subcontractors or providers of goods, services or facilities, as selection will be made by the developer or general contractor, neither of which will be affiliated with the Trustees or Balcor. However, Balcor may establish and administer guidelines regarding the terms of such selection process to ensure prudent selection and compliance with the investment objectives, policies and limitations of the Trust. Balcor's decisions on the issuance of loans are final.

9. Balcor's investment criteria will contain no requirement that the real estate underlying investments be within any specific locales, and it is expected that the investments will be geographically dispersed. Therefore, there will be no obligation on the part of Balcor to invest in areas where employers whose employees are covered by the Participating Plans are located. Similarly, there is no obligation on the part of Balcor to invest funds of the Trust in realty which is under

[2] The Department notes that to the extent the fiduciaries of the Participating Plans restrict their consideration of investment opportunities for non-economic reasons, such conduct may involve certain violations of Part 4 of Title I of the Act which violations if present would not be provided relief by this exemption.

In this regard, section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. To act prudently, a plan fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments for his plan. Because the investments made by the Trust are investments which would be selected, if at all, in preference to alternative investments, such an investment would not be prudent if it provided the Participating Plans with less return, in comparison to risk, than comparable investments available to the Plans, or if it involved a greater risk to the security of Plan assests than other investments offering a similar return.

The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in a particular investment, a fiduciary must ordinarily consider only factors relating to the interests of plan participants and beneficiaries in their retirement income. A decision to make an investment may not be influenced by desire to stimulate the real estate industry and generate employment, unless the investment, when judged solely on the basis of its economic value to the plan, would be equal or superior to alternative investments available to the plan. (See Advisory Opinion 81-12A, January 13, 1981).

construction or to be rehabilitated by employers whose employees are covered by a Participating Plan. The requirement that the developer have construction provided by contractors or subcontractors who employ union laborers is a general requirement and not tied to laborers represented by unions whose members are covered by a Participating Plan.

10. Balcor as investment manager will receive a single fee for its management services, including property management, equal to 1.45% per annum of the net value of investments in real property or loans. No additional fees, commissions or compensation will be paid by the Trust to Balcor or any of its affiliates. However, Balcor or its affiliates will be reimbursed by the Trust for certain costs and expenses, including travel, appraisal and other out-of-pocket expenses incurred in connection with administration of the Trust and property evaluation, negotiation, operation or disposition. The Trust will also pay costs of on-site building management personnel and office space, leasing fees paid to third parties and other fees for professional and technical services. Balcor will pay all fees and expenses in connection with the organization of the Trust and the offering of Units. The fee arrangement will be fully disclosed in the Trust Agreement and Memorandum and will be known to the fiduciaries of each of the Participating Plans at the time of their decision to invest in the Trust.

11. The books and records of the Trust will be audited by an independent certified public accountant each fiscal year. Copies of such reports and other pertinent information, including a summary of fees and expenses, report of acquisitions and appraisals and schedules of net asset and unit values, will be forwarded to each Participating Plan. Trust assets will be valued by the Trustees quarterly based on valuations by independent evaluators or appraisers. Each real property owned by the Trust will be appraised annually by an independent appraiser.

12. Because each Participating Plan will incorporate as part of such plan the terms, provisions, and conditions of the Trust agreement, the Trust will occupy a position equivalent to the trust created under such Participating Plan. Accordingly, pursuant to Revenue Ruling 81–100, it is the position of the Department that a "party in interest" as defined in the Act, or a "disqualified person" as defined in the Code, with respect to a Participating Plan may be viewed as a party in interest or disqualified person with respect to the Trust. Thus, a transaction between such party and the Trust may be viewed as a prohibited transaction as described in section 406(a) of the Act, section 4975(c) of the Code, or both. The applicant represents that if the Trust is unable to enter into transactions with certain persons because such persons are parties in interest with respect to a Participating Plan, the Trust's ability to prudently make its investments and conduct its operations solely for the benefit of the Participating Plans will be unduly restricted. In addition, the purchase and sale of Units in the Trust may be considered a prohibited sale or transfer or assets between a Participating Plan and the Trustees that is not exempted by operation of the statutory exemption provided in section 408(b)(8) of the Act because the Trust is not maintained by a bank or an insurance company.

13. The applicant requests prospective exemptive relief for many of those classes of transactions between the Trust and certain parties in interest which were afforded exemptive relief in PTE 80–51. The applicant proposes that such classes of transactions be subject to similar conditions, limitations, and restrictions as those delineated with respect to those transactions afforded exemptive relief in PTE 80–51.

14. In summary, the applicant represents that the proposed exemption for certain transactions between the Trust and certain parties in interest satisfies the criteria of section 408(a) of the Act because: (a) The proposed exemption would allow the Trust to enter into transactions which, although prohibited, are necessary for the Trust to prudently make its investments and conduct its operations solely for the benefit of its Participating Plans and their participants and beneficiaries; (b) the proposed exemption would primarily apply to various classes of prohibited transactions which were afforded relief in PTE 80–51 and would be subject to similar conditions, limitations and restrictions as those delineated with respect to those transactions afforded exemptive relief in PTE 80–51; and (c) independent fiduciaries, unrelated to the Trust, the Trustees, Balcor or any other related party, will maintain complete discretion with respect to investment of the Participating Plan's assets in the Trust.

For Forther Information Contact: David Lurie of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

M&W Pump Corporation Employees Profit Sharing Plan (the Plan), Located in Deerfield Beach, Florida

[Application No. D–6922]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of certain improved property located in Deerfield Beach, Florida (the Property) by the Plan to the Plan sponsor at the greater of $283,000 or the appraised fair market value as of the date of the Sale; provided the terms and conditions of the transaction are similar to those obtainable in an arm's-length transaction between unrelated parties.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 78 participants and total assets of $1,671,512 as of June 30, 1987. The trustee of the Plan is J. David Eller, who is also President of the Plan sponsor.

2. The Employer was incorporated in 1950 and manufactures water pumps for agricultural, municipal and construction industries.

3.On December 7, 1984, the Plan was formally terminated. The Plan has chosen a five-year liquidation program in which all Plan assets will be liquidated and distribution of proceeds made to Plan participants.

To facilitate the distribution, the applicant requests an exemption which would permit the Plan to sell the improved Property to the Employer for cash in amount of the greater of $283,000 or the Property's appraised fair market value as of the date of the Sale.

4. The Property is located at 208 N.W. 1st Street, Deerfield Beach, Florida, which, the applicant represents, is closely proximate to the Employer's main manufacturing plant. The Property consists of an office building, a warehouse, a concrete tank above ground, three sheds and four underground metal tanks.

5. The Plan acquired the Property from the city of Deerfield Beach (the City) in 1980 by means of an exchange of land purchased by the Plan in 1974 and 1975 for $56,250. In addition to the Property, the City also granted the Plan another

parcel of realty valued at $42,000 as part of the exchange.

6. The Plan has leased the Property to the Employer under a long-term triple net lease, effective July 1, 1980 (the Lease). The Lease requires the payment of $1,600 per month, totalling $19,200 in annual rental. In addition to the base rental, the Employer is responsible for all costs of maintaining the Property, including taxes, insurance, and repairs, which average $5,000 per year.[3]

7. Mahlon J. Saxon, a qualified independent appraiser, A.S.A., of M.J. Saxon & Associates, Plantation, Florida, has determined the fair market value of the improved Property. Mr. Saxon considered and incorporated the special value of the Property to the Employer under the Lease and appraised the Property at $283,000 as of April 15, 1988.

8. D. Douglas Hill, a certified public accountant, has reviewed the transaction and found it to be in the best interests of the Plan and its participants. In Mr. Hill's opinion, the Sale will result in a substantial gain to the Plan over the Plan's acquisition cost of the Property.

9. In summary, the applicant represents that the transaction meets the statutory criteria of section 408(a) of the Act because: (a) The Plan will receive fair market value for its asset but in no event will it receive less than $283,000; (b) a qualified independent appraiser will determine the Property's fair market value as of the date of the Sale; (c) the Sale will be a one-time transaction consummated for cash; (d) the Employer will pay the applicable excise tax and file Form 5330, Return of Initial Excise Tax Relating to Pension and Profit Sharing Plan, within 60 days of the granting of this proposed exemption; and (e) a certified public accountant has determined that the transaction is in the best interests and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Mrs. Betsy Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Boston Company Real Estate Counsel, Inc. (TBCREC), Located in Boston, Massachusetts

[Application No. D–7511]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, TBCREC shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984) solely because of TBCREC's failure to satisfy Section I(g) of PTE 84–14 as a result of its affiliation with E.F. Hutton & Company (Hutton).

Effective Date: If granted, this exemption will be effective as of the date on which TBREC became an affiliate of Hutton.

Summary of Facts and Representations

1. Shearson Lehman Hutton Inc. (Shearson), which is incorporated in Delaware, is a wholly-owned subsidiary of Shearson Lehman Brothers Holdings Inc. (Shearson Holdings) which in turn is a majority-owned subsidiary of American Express Compnay (American Express). Both Shearson Holdings and American Express are publicly-owned companies whose stock is traded on the New York Stock Exchange. American Express and its subsidiaries form a diversified financial and travel services company.

On January 13, 1988, over 90 percent of the stock of E.F. Hutton Group Inc. (Hutton Group), the parent company of Hutton, was tendered to SLBP Acquisition Corp. (SLBP), a wholly-owned subsidiary of Shearson Holdings, pursuant to an Agreement and Plan of Merger (Merger Agreement) dated December 2, 1987, as amended on December 28, 1987, entered into among Shearson Holdings, SLBP, and the Hutton Group. On January 21, 1988, as permitted by the terms of the Merger Agreement, SLBP assigned its right to purchase those shares so accepted to Shearson, and Shearson purchased the shares. As a result of the acquisition of the Hutton Group stock, Shearson controls the Hutton Group and indirectly controls Hutton.

2. On May 2, 1985, Hutton entered a plea of quilty (the Guilty Plea) to an Information filed in the United States District Court for the Middle District of Pennsylvania. The Information charged that Hutton had violated the federal mail and wire fraud statutes in connection with its handling of certain checking accounts it maintained for the deposit of its own funds during the period from July 1, 1980 to February 28, 1982. As a result of the Guilty Plea, Hutton agreed to pay, and has paid, a criminal fine of $2,000,000 plus $750,000 to defray the costs of the government investigation. Hutton further agreed to establish, and has established, a restitution program for the benefit of commercial banks that may have been damaged by its actions. None of the acts alleged in the Information, however, involved funds or securities owned by any investment advisory or brokerage clients of Hutton or any employee benefit plan for which Hutton or any affiliate is a party in interest.

3. On May 16, 1988, Hutton entered a plea of guilty (the Providence Plea) in the United States District Court for the District of Rhode Island on two counts of violating the Bank Secrecy Act and one count of conspiracy to violate that Act. Hutton agreed to pay, and has paid, an aggregate fine of $1,010,000 as a result of the Providence Plea. The Information filed by the government in connection with the Providence Plea alleges that the conduct of the two brokers, formerly employed at Hutton-Providence, was in violation of the Bank Secrecy Act. The Bank Secrecy Act requires the filing of a Currency Transaction Report, under certain, circumstances, if more than $10,000 in cash is deposited with a financial institution. The brokers' unlawful conduct occurred primarily in the period from 1982 to 1983, and no such conduct transpired later than October 1984—more than three years before Shearson acquired its majority interest in Hutton.

4. The applicant represents that although none of the unlawful conduct that occurred at Hutton-Providence involved Hutton's investment management activities or any ERISA plans, Hutton's Guilty Pleas preclude Hutton and its affiliates from serving as a "qualified professional asset manager" (QPAM) pursuant to sections I(g) and V(d) of PTE 84–14. Section I(g) of PTE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate thereof has within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity. For purposes of section I(g) of PTE 84–14, an "affiliate" of a person is defined in relevant part as "any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person * * *" (PTE 84–14, section V(d)). As such, under this definition American Express, Shearson Holdings and all of their majority-owned subsidiaries, including TBCREC, would be considered affiliates of Hutton as a result of Shearson's acquisition of a controlling interest in the Hutton Group.

[3] The applicant represents that Form 5330, Return of Initial Excise Tax Relating to Pension and Profit Sharing Plans, will be filed with the Internal Revenue Service and that all applicable excise taxes in connection with the continuation of the Lease beyond June 30, 1984 will be paid by the Employer within 60 days of the granting of this exemption.

5. TBCREC, a registered investment advisor and pension fund manager, is a Massachusetts corporation established in 1968 which specializes in large, sophisticated real estate transactions. Throughout its existence, TBCREC has been a wholly-owned subsidiary of the Boston Company, Inc. (TBC). TBC is a Massachusetts corporation which was established in 1964. In addition to TBCREC, TBC owns Boston Safe Deposit and Trust Company and several other investment subsidiaries. In 1981, TBC, which had theretofore been an independently-owned public company, was acquired by Shearson. TBC has been an indirect, wholly-owned subsidiary of Shearson since 1981.

The applicant represnets that TBC is a separate unit within the Shearson group managed by a 14-person Board of Directors of whom 2 are employees of Shearson, 2 are employees of TBC, and 10 are outside directors unaffiliated with Shearson. TBC maintains its own separate corporate headquarters in Boston, Massachusetts, and is essentially operated independently of Shearson.

The applicant represents further that TBCREC, also headquartered in Boston, is managed by a team of executive officers none or whom is, in any other respect, affiliated with Shearson. In particular, no TBCREC officer is an officer or an employee of Shearson or any non-TBC Shearson subsidiary. None of the TBCREC officers is an officer or employee of Hutton. In addition, Hutton is part of a completely separate operating unit within the Shearson group and none of TBCREC's operations involve Shearson or any of its non-TBC subsidiaries, including Hutton.

6. TBCREC is retained by 15 institutional clients, of which 10 are large ERISA plans. Each of these ERISA plan clients has aggregate assets in excess of $500 million. Real estate assets held by these institutional clients have a value of $2.23 billion.

The applicant asserts that failure to grant the requested exemption will prohibit such plans for which TBCREC acts as investment manager from engaging in transactions with parties in interest that would otherwise be permitted under PTE 84–14 and will cause plans to forego attractive investment opportunities. TBCREC typically engages in real estate transactions which may be structured in a variety of different ways, including participating mortgages, joint ventures or other partnership interests, or outright fee ownership. In all of these contexts, there is a significant risk that the party with which the plan is dealing will be a party in interest. Given the size of the plans which TBCREC represents, the large number of service providers (particularly financial institutions) which such plans engage and the breadth of the ERISA definition of "party in interest", it is not uncommon for a proposed transaction in the private real estate market to involve a party in interest.

7. Accordingly, the applicant proposes that for the purposes of section V(d) of PTE 84–14, Hutton not be considered an affiliate of TBCREC, in order that TBCREC may continue to avail itself of the provisions of PTE 84–14, notwithstanding the acquisition of Hutton by Shearson and the resultant failure to comply with section I(g) of PTE 84–14.

8. The applicant represents that the following safeguards will be present to assure that the flexibility which PTE 84–14 provides will be utilized by TBCREC in a manner protective of and beneficial to both ERISA plans and their participants:

(a) PTE 84–14 includes numerous other conditions all of which would continue to apply and to assure that the best interests of ERISA plans are served;

(b) All of TBCREC's ERISA plan clients are large plans, and hence have access to the resources and sophistication needed to properly monitor TBCREC's performance as investment manager;

(c) All of the Hutton criminal activity in question occurred to its acquisition by Shearson. Shearson is fully cooperating with all ongoing government investigations, and Shearson is actively working to install various safeguards and procedures designed to protect against such violations in the future; and

(d) As an investment adviser registered under the Investment Advisers Act of 1940 (the Advisers Act), TBCREC is subject to the jurisdiction of the Securities and Exchange Commission (SEC) and to the substantive requirements of the Advisers Act. TBCREC must make annual filings with the SEC and is subject to unannounced audits by the SEC to assure compliance with the requirements of the Advisers Act.

9. In addition, the applicant represents that Hutton and Shearson have taken a number of steps to ensure that conduct such as that leading to the Guilty Plea and the Providence Plea will not recur. In connection with the Guilty Plea, Hutton acted to recompense its depository banks for any harm that may have been caused by the illegal acts. Hutton offered to make full restitution (including interest to date of payment) to any bank with which it maintained a deposit relationship during the period July 1, 1980 to December 31, 1982 for any net uncompensated interest losses incurred by the bank as a result of Hutton's having drawn on uncollected funds without prior written agreement. Hutton's offer to reimburse its banks included unreimbursed service fees, unreimbursed charges in respect of uses of uncollected funds, and interest on the foregoing amounts.

The applicant represents that Hutton also initiated changes in its organizational structure and management practices as follows:

(a) Nearly all of Hutton's financial operations were realigned and subjected to centralized control.

(b) Hutton also installed a computerized Branch Information Processing System to expedite and improve communications between its New York headquarters and its more than 400 branches, which allows Hutton's headquarters in New York to monitor drawdown activity at the branch and regional levels.

(c) Hutton also held instructional meetings for its employees in 18 cities from coast to coast with respect to the nature of the activities that were found unlawful and/or now are enjoined, and explained the revised internal controls and auditing procedures that Hutton was putting in place with respect to its cash concentration system.

10. Subsequent to the Guilty Plea, Hutton Group retained the Honorable Griffin Bell, former Attorney General of the United Staes and a one time Judge of the United States Court of Appeals for the Fifth Circuit, to conduct an independent inquiry into the cash management practices to which Hutton pleaded guilty.

Judge Bell found that ultimate management responsibility for the practices in question rested with Thomas P. Lynch, then Executive Vice President and Chief Financial Officer of Hutton, and with Thomas P. Morley, then Senior Vice President and Money Mobilizer of Hutton. Judge Bell determined that the practices were developed and carried out by middle management employees who generally believed they were operating within the law, and that Messrs. Lynch and Morley, though not bearing any criminal responsibility for the practices, should have detected and/or prevented them. Following the release of the Bell Report, both Mr. Lynch and Mr. Morley relinquished their positions.

The Bell Report also recommended substantial monetary and other sanctions against other Hutton employees. All of the culpable Hutton employees involved in the activities

which led to the Guilty Plea resigned or were dismissed prior to Shearson's acquisition of Hutton Group. In addition, Judge Bell recommended a number of procedural and structural reforms designed to ensure that the practices in question did not recur.

These changes included:

(a) Restructuring the financing, financial control, operations and general counsel functions;

(b) Establishing a separate audit committee for Hutton to specificially review Hutton's activities to supplement the existing audit committee of Hutton Group, with full access to the chief executive officer and the board of directors; and

(c) Working in conjunction with the Ethics Resource Center in Washington, DC to develop a corporate code of ethics, supplemented by educational and monitoring programs.

11. In late December 1987, following the announcement of Shearson's acquisition of Hutton, Shearson retained outside counsel to conduct an internal investigation and provide legal advice concerning compliance by Hutton, prior to its acquisition by Shearson, with the reporting requirements of the Bank Secrecy Act.

The investigation revealed unreported currency transactions (over half involved under $20,000 and 90% involved under $50,000) at Hutton branch offices, prior to Shearson's acquisition of Hutton. A majority of potential non-reporting occurred in two New York retail offices. Isolated instances of possible non-reporting were found in seven additional Hutton branch offices in the New York metropolitan area. No such instances were found in the offices reviewed outside the New York area. The persons potentially involved in the possible violations were exclusively branch office personnel. Outside counsel is in the process of evaluating the possible involvement of any individuals in these branches and will provide Shearson with a report as to such involvement. Shearson has advised the United States Attorney for the Southern District of New York of Shearson's internal investigation and is cooperating with the United States Attorney in his inquiry.

12. The applicant states that in connection with its request for an exemption from the Securities and Exchange Commission from the provisions of section 9(a) of the Investment Company Act of 1940,[4] Shearson at its expense has agreed to retain independent auditors:

(a) To confirm that the Shearson currency reporting procedures are in place, and that the computer software program used in connection with the procedures is operational, with respect to each former Hutton branch office;

(b) To review the procedures: (i) To determine whether the procedures are reasonably designed to ensure compliance with the currency transaction reporting provisions of the Bank Secrecy Act, (ii) to detect non-compliance with the procedures, and (iii) to make recommendations, if appropriate, for changes in the procedures and staffing necessary reasonably to ensure compliance with applicable law relating to currency transaction reporting; and

(c) To report to Shearson the results of its review.

The auditors' review will be completed within 180 days of the filing of the request for exemption. Shearson will, within 60 days of delivery to it of the auditors' report and recommendations, if any, submit the report and recommendations to the Commission together with a report of Shearson setting forth the action it has taken or proposes to take concerning the implementation of the recommendations.

13. The applicant states that as of February 8, 1988, as part of the consolidation of the Hutton branch offices into the Shearson branch office system, each Hutton branch has been made subject to the same internal procedures for processing currency transactions as those to which Shearson is subject. Shearson's procedures with respect to currency transaction reporting were adopted as a means of avoiding the type of situation that occurred at Hutton-Providence. The procedures prohibit the deposit or payment in currency at any Shearson or Hutton branch office. The procedures also mandate that any Shearson or Hutton employee who is asked by a customer to deposit currency in any account, inform the customer that Shearson and Hutton will only accept a non-cash instrument and will not accept cash. The procedures further protect against the kind of irregularities that occurred at Hutton-Providence by requiring Shearson and Hutton employees to notify immediately not only their branch manager, but also Shearson's Compliance Department, if any customer, during a limited period of time, deposits a series of cashier's checks, traveler's checks, money order or checks in bearer form (*i.e.*, checks made payable to cash or endorsed in blank) that are each under $10,000 but collectively exceed $10,000.

The applicant also notes that as an additional safeguard against irregularities in currency transaction reporting, the procedures expressly forbid Shearson and Hutton brokers and all other Shearson and Hutton employees from engaging in any of the following activities:

(a) Taking procession of currency for a customer;

(b) Escorting a customer to a financial institution to convert currency to an acceptable means of payment; and/or

(c) Advising a customer as to how to "structure" his transaction with a financial institution in order to avoid the financial institution's reporting requirements under the Currency Transaction Reporting Act.

Shearson and Hutton employees are also informed that failure to comply with these procedures will subject the offender to internal disciplinary action and possibly to civil and criminal liability for violating Federal Law.

14. In summary, the applicant represents that this proposed exemption satisfies the criteria of section 408(a) of the Act because, among other things: (a) TBCREC is to a very significant respect operated independently of Shearson and is operated independently of Hutton; (b) none of TBCREC's officers is an officer or employee of Hutton; (c) Hutton's criminal activity in every case took place before its acquisition by Shearson; (d) both Hutton and Shearson have undertaken substantial reforms and put in place procedures designed to prevent any recurrence of the criminal activity; (e) the other provisions of PTE 84–14 taken together with Shearson's independent audit procedures established pursuant to its exemption request under section 9(a) of the Investment Company Act of 1940, are sufficient to assure that the best interests of the ERISA plans and their participants are served; and (f) TBCREC will be able to take advantage of a broader variety of attractive investment opportunities on behalf of the participants and beneficiaries of its clients' plans.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

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[4] Section 9(a) of the Investment Company Act of 1940 states, in part, that it shall be unlawful for a person to serve as or act in the capacity of employee, officer, director, member of an advisory board, investment advisor, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company if such person, or an affiliate of such person, has engaged in certain criminal activity (as specified in section 9(a)(1)).

Puckett Machinery Company Profit Sharing Plan (the Plan), Located in Jackson, MS

[Application No. D-7576]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the continued leasing (the Extended Lease) of certain improved real property (the Real Property) by the Plan to Puckett Machinery Company (the Employer), a party in interest with respect to the Plan, provided the terms of the Extended Lease are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Effective Date: If granted, this proposed exemption will be effective April 1, 1985.

Summary of Facts and Representations

1. The Plan is a defined contribution plan having 194 participants and net assets of approximately $2,480,522 as of December 31, 1986. The trustee of the Plan is Deposit Guaranty National Bank (the Trustee), a national banking association with its principal office located in Jackson, Mississippi. The Trustee makes investment decisions for the Plan.

2. The Employer, which maintains its principal place of business in Natchez, Mississippi, is engaged in the business of selling and leasing heavy equipment and machinery. The Employer is a dealer for Caterpillar, Inc. equipment and machinery which it sells to the public.

3. Among the assets of the Plan is an unencumbered parcel of land located at Highway 61 North, Natchez, Mississippi. The Real Property consists of 6.5 acres of land and two buildings situated thereon. A predecessor of the Plan acquired the Real Property in 1970 for $250,000 from a party in interest. At that time of the purchase, the Real Property was leased to a related party. Since 1970, the Plan and its predecessor entities have leased the Real Property to the Employer and the Employer's predecessor corporations under the terms of a formal written lease (the Original Lease).

4. The Original Lease had an initial term beginning April 1, 1970 and ending March 31, 1985. It also contained a renewal option for another ten year period. The Original Lease required the Employer to pay the Plan a total annual rental of $24,000 for the Real Property or $2,000 monthly. The Original Lease also required the Employer to repair and maintain the demised premises with the exception of the roof and foundation which remained the responsibility of the Plan. The Original Lease further obligated the Employer to insure the premises against casualty loss and to pay all state, county and municipal ad valorem taxes and special improvement assessments levied against the real Property. The applicant represents that the Original Lease satisfied the requirements of section 414(c)(2) of the Act and, therefore, was exempt statutorily from the prohibitions of sections 406 and 407 of the Act through June 30, 1984.[5]

5. On March 25, 1985, the Plan and the Employer agreed to continue their leasing arrangement for a period of five years commencing April 1, 1985 and ending March 31, 1990. Although the Extended Lease was based primarily on the same terms and conditions as the Original Lease, the rental was increased from $2,000 to $4,000 per month to reflect the fair market rental value of the Real Property. According to the applicant, the Employer has paid all rental amounts under the Extended Lease in a timely manner. In addition, the applicant represents that the Trustee has represented the interests of the Plan as the independent fiduciary under the Extended Lease and has agreed with the decision to extend such lease.

6. On August 12, 1987, the Employer was notified by the Department of violations of sections 406 and 407 of the Act stemming from its continued leasing arrangement with the Plan. In this connection, the Trustee has requested an administrative exemption that will permit the continuation of the Extended Lease as well as the holding of the Real Property by the Plan. The Employer represents that for the period July 1, 1984 through April 1, 1985 it will pay the Internal Revenue Service (the Service) all applicable excise taxes that may be due by reason of the continuing nature of the Extended Lease within 90 days of the publication in the **Federal Register** of the grant of the notice of proposed exemption. In addition, the Employer represents that it will pay the Plan the difference between the fair market rental value of the Real Property and the rental actually paid plus reasonable interest on the rental deficiency for the same period. Appropriate determinations of deficient rent and interest will be made by the Trustee.

7. As stated previously, the Extended Lease requires an annual rental of $48,000 which is payable in equal monthly installments until its expiration on March 31, 1990. The Extended Lease also obligates the Employer to pay all ad valorem taxes assessed against the Real Property, all insurance premiums as well as certain repair and maintenance costs incurred on the Real Property. In the event the Employer defaults on its lease obligations, the Trustee is empowered to sell the Real Property to an unrelated party.

The Trustee proposes to supplement the Extended Lease with a written addendum (the Addendum). The Addendum lengthens the terms of the Extended Lease for two successive five year periods (from April 1, 1990 until March 31, 1995 and from April 1, 1995 until March 31, 2000). Such option to extend the Extended Lease may be exercised by the Employer by giving written notice to the Plan not more than twelve months nor less than six months prior to the then existing term. Each extended term of the Extended Lease will be pursuant to the terms and conditions described above, but at an increased rental. No extension of the Extended Lease beyond its initial term will be permitted unless the Trustee determines before each proposed extension, that such extension is in the best interests of the Plan and its participants and beneficiaries. The Addendum further provides that the annual rental of the leased premises for the initial and subsequent Extended Lease term will be an amount equal to the greater of the annual rental being charged for the preceding lease term or comparable market rentals in Natchez, Mississippi as determined by an independent appraiser. Such reappraisals will be performed at the direction of the Trustee.

8. The Real Property was appraised by Mr. Gary H. Krize (Mr. Krize), ASA, CRPA, CRA, an independent appraiser affiliated with Krize Appraisal Company of Natchez, Mississippi. On May 9, 1985, Mr. Krize placed the fair market value and annual fair market rental value of the Real Property at $321,000 and $43,000, respectively. In an updated appraisal report dated September 14, 1987, Mr. Krize determined that the Real Property had a fair market value of

[5] The Department expresses no opinion on whether the Original Lease satisfied the requirements of section 414(c)(2) of the Act.

$349,000 and a fair market rental value of $45,000, annually.[6]

9. As noted above, the Trustee will continue serving as the independent fiduciary for the Plan with respect to the continuation of the Extended Lease. The Trustee represents that it maintains retirement plans with total assets that are in excess of $300 million and it says it has been administering plans for over 30 years. The Trustee also asserts, that it has had experience under the Act through its involvement in audits initiated by the Department and the Service. Moreover, the Trustee represents that it recognizes its duties, responsibilities and liabilities under the Act as a Plan fiduciary.

In describing its pre-existing relationship with the Employer, the Trustee states that no shareholders of the Employer serve on its board of directors or vice versa. The Trustee represents that it has given the Employer a line of credit totaling $7.5 million. The Trustee asserts that the Employer's draw against this line of credit is $5 million or .003 percent of the Trustee's loans and lines of credit. The Trustee also states that it has total deposits exceeding $2 billion and that it holds deposits of the Employer of less than $10,000.

10. The Trustee states that it has reviewed all documentation associated with the transaction and certifies that the terms contained therein are comparable with the terms of similar transactions in Mississippi. The Trustee also believes the Extended Lease provision requiring the Plan to repair the roof and the foundation of the demised premises is an appropriate condition and a common practice in the leasing of commercial buildings within Mississippi. Based upon its review of transaction documents, the Trustee believes the transaction is in the best interests of the Plan and its participants and beneficiaries.

In conjunction with the transaction, the Trustee has reviewed the overall investment portfolio of the Plan and considered the liquidity requirements. In addition, the Trustee has examined the diversification of the Plan's assets in light of the transaction and it has determined that there exists sufficient diversification to satisfy the Plan's liquidity needs. Based upon its analysis of the Plan's portfolio, the Trustee concludes that the transaction complies with the Plan's investment objectives and policies.

The Trustee asserts that it has used due care in examining the safety of the Extended Lease as well as the probable income and gain to be derived therefrom by the Plan. In addition, the Trustee has determined that the Extended Lease will offer the Plan a fair return that is commensurate with prevailing lease rates. Finally, with respect to the diversification of the Plan's assets, the Trustee believes the transaction, which represents approximately 14 percent of the Plan's assets, will not result in Plan property being invested in whole, or in an unreasonably large proportion, in one type of investment vehicle or in various investment vehicles that are dependent upon the success of a single enterprise or the conditions of one locality.

The Trustee has agreed to monitor the Extended Lease throughout its duration and to take actions that are necessary and proper to safeguard the interests of the Plan. In this connection, the Trustee represents that it will receive and review financial statements and other documents that are required to be filed by the Plan. Moreover, the Trustee states that it will discharge its duties in accordance with the documents and instruments governing the Plan insofar as they are consistent with the protection of employee benefit rights under the Act.

11. In summary, it is represented that the transaction satisfies the terms and conditions of section 408(a) of the Act because: (a) The Trustee, as the independent fiduciary on behalf of the Plan, has determined that the Extended Lease with the proposed Addendum is an appropriate investment for the Plan and is in the best interests of the Plan and its participants and beneficiaries; (b) the rights of the participants and beneficiaries of the Plan are being protected by the Trustee which has approved the terms of the Extended Lease and will continue monitoring such lease throughout its duration; (c) the value of the Real Property is approximately 14 percent of the Plan's assets; (d) in the event the Employer defaults in payments due under the Extended Lease, the Trustee will have the discretion to sell the Real Property to an unrelated party; (e) the Employer will pay the Service all applicable excise taxes which may be due by reason of the past leasing of the Real Property within 90 days of the publication in the **Federal Register** of the grant of the notice of proposed exemption; and (f) the Employer will pay the Plan the difference between the fair market rental value of the Real Property and the amount of rental actually paid together with interest on such excess for the period July 1, 1984 until April 1, 1985 as such amounts are determined by the Trustee.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons by either mail or hand delivery within 30 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments are due within 60 days of the date of publication of the proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the

[6] The Employer represents that to the extent the annual rental amount of $48,000 exceeds the fair market rental value of the Real Property, it will treat the amount of excess rent as a contribution to the Plan. The Employer also states that the amount of excess rental when added to the annual additions to the Plan will not exceed the limitation prescribed by section 415 of the Code.

employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of July 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-17175 Filed 7-28-88; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 88-72; Exemption Application No. D-6911 et al.]

Grant of Individual Exemptions; Schroder Real Estate Fund A (the Fund) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Schroder Real Estate Fund A (the Fund), Located in New York, NY

[Prohibited Transaction Exemption 88-72; Exemption Application No. D-6911]

Exemption

Section I. Exemption for Certain Transactions Involving the Fund

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties-In-Interest and the Fund: General.* Any transaction between a party-in-interest with respect to a plan which has an interest in the Fund (a Participating Plan) and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not Schroder Real Estate Associates (Schroder) or one of its affiliates, any other Fund maintained by Schroder or one of its affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interests of any other Participating Plans maintained by the same employer or employee organization in the Fund, does not exceed 10 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Fund.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(A) The interest of the Participating Plan does not exceed 10% of the total assets of the Fund, and the employer is not as "substantial employer" with respect to the Participating Plan, as defined in section 4001(a)(2) of the Act; or

(B) The interest of the Participating Plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales, or Holdings of Employer Securities and Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section I, if no commission is paid to Schroder or to the employer, or any affiliate of Schroder or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither Schroder nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Fund owns the obligation at the time the plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Fund not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. Schroder, its affiliates, and any collective investment fund maintained by Schroder or its affiliates, shall be considered to be persons independent of the issuer if Schroder is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Schroder or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Schroder or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) The restrictions of section 406(a)(1)(A) through (D) and section 406 b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of section III are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party-in-interest is not Schroder, any affiliate of Schroder, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406 (a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (D) of the Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Fund and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3 (14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Fund, does not exceed 20 percent of the total of all assets in the Fund; and

(3) The person is not Schroder or an affiliate of Schroder.

(d) The restrictions of section 406 (a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest in the Fund if no more than reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of Schroder and any of its affiliates, and the applicable conditions of Section III are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if: (1) The acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Schroder or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) Schroder or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Schroder or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of Schroder of its affiliate, or commercial or financial information which is privileged or confidential.

Section IV. Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Fund" shall include any collective investment fund that may hereafter be established, operated and managed by Schroder or its affiliate in essentially the same manner as the Schroder Real Estate Fund A.

(b) An "affiliate" of person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means that power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is define in section 4975 (e) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are member of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occures is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in this case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and (I)(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the investment of Fund earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this proposed exemption. Effective Date: This exemption is effective December 22, 1987.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18922.

Written Comment: The Department received one written comment, from the applicant. The comment updated certain representations contained in the Notice of Proposed Exemption. Braeswood Advisory Corporation, which was owned by Mr. Charles Grossman is no longer a partner in Schroder and Mr. Grossman is no longer a trustee of the Fund. Several additional partners have been admitted by Schroder Real Estate Associates, L.P., and Marguerite Leanne Lachman, one of the new partners in Schroder, has been appointed as a trustee of the Fund. In addition, the Trustees have amended the Group Trust to permit consideration of requests for redemption of Units at any time, although the Trustees do not expect to pay cash in such a redemption prior to the expiration of the four year period beginning on the date of the closing of the last acquisition of real property or an interest therein by the Fund, unless another investor, either a Participating Plan or a prospective investor, is willing to purchase the redeemed Units. Finally, the applicant requests that the exemption be made retroactive to December 22, 1987, which is the date on which the Fund accepted its first contribution.

After due consideration of the entire record, the Department has decided to grant the proposed exemption, as modified.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Quevado Properties, Ltd. (Quevado), Located in Tyler, TX

[Prohibited Transaction Exemption 88-73; Exemption Application No. D-7138]

Exemption

The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the

Code, shall not apply to the payment of an investment management fee to the general partner of Quevado, a limited partnership in which employee benefit plans may invest, in connection with the investment by Quevado in a particular parcel of unimproved real property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18929.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Elliot Siegel Self-Employed Retirement Plan (the Plan), Located in Massapequa, New York

[Prohibited Transaction Exemption 88–74; Exemption Application No. D–7321]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a parcel of unimproved real property (the Property) from the Plan to Elliot Siegel, D.D.S., a party in interest with respect to the Plan, provided the Plan receives no less than the greater of $190,000 or fair market value for the Property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 25, 1988, at 53 FR 18932.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Sammons Trucking Amended and Restated Profit Sharing Plan (the Plan), Located in Missoula, Montana

[Prohibited Transaction Exemption 88–75; Exemption Application No. D–7340]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The past sales by the Plan of five parcels of unimproved real property (the Properties) to Robert R. and Mary Lynn Van Derhoff (the Van Derhoffs), parties in interest with respect to the Plan; and (2) past extensions of credit by the Plan to the Van Derhoffs in conjunction with the sales of the Properties; provided that the terms and conditions of such transactions were at least as favorable to the Plan as those which the Plan could obtain in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Tuesday, June 7, 1988 at 53 FR 20920.

Effective Date: The effective date of this exemption is June 3, 1975.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Andes-Buchanan Medical Corporation Defined Benefit Pension Plan and Money Purchase Pension Plan (together, the Plans), Located in Fullerton, California

[Prohibited Transaction Exemption 88–76; Exemption Application No. D–7402]

Exemption

The restrictions of section 406 (a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase by the Plans of a certain promissory note (the Note) which is secured by a deed of trust against certain real property owned by F.V. Ltd., an unrelated party, from the Jerry P. Andes and Barbara J. Andes Revocable Estate Trust, a party in interest with respect to the Plans, provided that the price paid for the Note is the lesser of either the outstanding principal balance on the Note or the fair market value of the Note on the date of purchase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 7, 1988 at 53 FR 20921.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

The AT&T Management Pension Plan and the AT&T Pension Plan, Located in New York, New York

[Prohibited Transaction Exemption 88–77; Exemption Application Nos. D–7463 and D–7464]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the acquisition by AT&T Communications, Inc. of an easement across certain real property in Oconee County, Georgia, owned by the First National Bank of Atlanta Collective Timberland Trust—II for Qualified Employee Benefit Trusts, provided the cash amount paid is not less than the fair market value of the easement on the day of the acquisition.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13359.

Written Comments and Hearing Requests: The applicants informed the Department that they were unable to notify interested persons of their right to comment and request a hearing within the time period set forth in the proposed exemption. Pursuant to discussions with the Department, the applicants notified interested persons by June 17, 1988 that the period for written comments and requests for a public hearing would be extended until July 17, 1988. No written comments or hearing requests have been received by the Department.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

McInerney & Dillon, Professional Corporations, Profit Sharing Plan and Trust (the Plan), Located in Oakland, California

[Prohibited Transaction Exemption 88–78; Exemption Application No. D–7487]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan by the Plan to McInerney & Dillon, P.C., the Plan sponsor, under the terms and conditions described in the notice of proposed exemption, provided that such terms and conditions are not less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988 at 53 FR 21941.

Correction

On page 21942 in the Summary of Facts and Representations, on the last line of the first paragraph beginning on that page, the figure "35%" is corrected to read "25%".

For Further Information Contact: Joseph L. Roberts III of the Department,

telephone (202) 523–8881. (This is not a toll-free number.)

Brentwood Orthopedics, Inc. Defined Benefit Pension Plan and Trust (the Plan), Located in Warrensville Heights, Ohio

[Prohibited Transaction Exemption 88–79; Exemption Application No. D–7533]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain firearms (the Firearms) to Edward L. Andrews, M.D., a party in interest with respect to the Plan, provided that the price paid is the higher of either the Plan's original purchase price for the Firearms, plus the expenses incurred by the Plan in connection with the holding and maintenance of the Firearms, or the fair market value of the Firearms on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988 at 53 FR 21943.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the tranaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of July 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–17176 Filed 7–28–88; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: 1989 National Survey of Natural and Social Scientists and Engineers.

Affected Public: Individuals.

Responses/Burden Hours: 44,134 responses, 13 minutes per response for a total of 9,577 burden hours.

Abstract: The data collected in this survey will enable the Foundation to partly fulfill the legislative requirement which obligates the agency to develop data on the Nation's scientists and engineers and otherwise act as a central clearinghouse for information about the scientific and technical population of the United States. The information provided allows for policy and planning activities by officials of government, private industries, and academic institutions.

Dated: July 26, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88–17189 Filed 7–28–88; 8:45 am]

BILLING CODE 7555–01–M

Forms Resubmitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Earned Doctorates Awarded in the United States.

Affected Public: Individuals.

Responses/Burden Hours: 31,000 responses; 20 minutes per response.

Abstract: Persons with doctorate-level education are key members of the labor force in scientific, engineering and learned professions. Information on their demographic & educational background and immediate postdoctoral study or employment plans is essential for analyses of supply and demand. These data also report on the flow of women and minorities into the fields.

Dated: July 26, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88–17190 Filed 2–28–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co., Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR 50.62 to Connecticut Yankee Atomic

Power Company (the licensee) for the Haddam Neck Plant located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of Proposal Action

The exemption would provide relief from requirements of 10 CFR 50.62 for the Haddam Neck Plant. The proposed exemption is in accordance with the licensee's request for exemption from the requirement to provide a turbine trip on indication of an Anticipated Transient Without Scram (ATWS), dated August 19, 1986.

The Need for the Proposed Action

10 CFR 50.62, "Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants," requires that each pressurized water reactor must have equipment from sensor output to final actuation device, that is diverse from the reactor trip system, to automatically initiate the auxiliary (or emergency) feedwater system and initiate a turbine trip under conditions indicative of an ATWS. For the Haddam Neck Plant, the licensee maintains that the risk from ATWS is sufficiently low, considering such factors as power level and unique design features, and that the addition of turbine trip is not necessary or justified.

Environmental Impacts of the Proposed Action

The proposed exemption for a turbine trip exemption from the requiements of 10 CFR 50.62 for the Haddam Neck Plant will not result in a significant environmental impact because:

1. The estimated peak pressure for the most limiting ATWS is well below pressures which could threaten primary system integrity and is also well below the pressure at which significant fuel failures are expected to occur. Therefore, any offsite radiological consequences would be well within the limits of 10 CFR Part 100,

2. The response of the Haddam Neck Plant to an ATWS event is very mild compared to the response of the Westinghouse generic plant. This is due to several factors including:

a. The Haddam Neck Plant is relatively small, approximately half the size of the Westinghouse generic plant,

b. The licensee installed larger pressurizer power operated relief valves providing greater relief capacity per unit power and,

c. The licensee provided a more negative moderator temperature coefficient.

3. The licensee provided a risk assessment of the safety benefit for implementing any further ATWS Rule requirements and determined the reduction in the core melt frequency to be 2.4 E–7 per year or a net decrease of 1.3 E–2 man-rem over the remaining life of the plant.

Thus the likelihood of core melt or radiological release from the ATWS at the Haddam Neck Plant is low.

Our evaluation of the proposed exemption indicates that the exemption will not significantly increase the probability or consequences of any radiological releases, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts and could result in the licensee being in violation of the Commission's regulations.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult with agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated August 19, 1986, which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 20th day of July 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88–17138 Filed 7–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

GPU Nuclear Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50, issued to GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) to incorporate action statements and surveillance requirements for post-accident monitoring instrumentation required by Regulatory Guides 1.97.

The proposed action is in accordance with the licensee's application for amendment dated September 15, 1987.

The Need for the Proposed Action

The proposed change to the TS is required to comply with an NRC Order dated July 18, 1985 to GPU Nuclear. The Order required upgrading of certain instrumentation to improve the ability of plant operators to respond to emergency situations.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specifications. As a result of these changes, the plant instrumentation needed to deal with conditions following an accident or emergency will be more assured to provide accurate indications. The proposed changes do not increase the probability or consequences of any

accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 2, 1987 (52 FR 45882). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in the safety improvements ordered by the NRC not being implemented.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Three Mile Island Nuclear Station, Unit 1, dated December 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 15, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room, Government Publication Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Bethesda, Maryland, this 21st day of July 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–17137 Filed 7–28–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 11–13, 1988, in room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on June 14, 1988.

Thursday, August 11, 1988

8:30 a.m.–9:00 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest, including the status of NUREG–1150, Reactor Risk Reference Document.

9:00 a.m.–11:00 a.m.: Meeting with NRC Executive Director for Operations (Open)—Discuss status of and plans for completion and implementation of NUREG–1150, Reactor Risk Reference Document.

11:15 a.m.–12:15 p.m. and 1:15 p.m.–2:15 p.m.: Standardization of Nuclear Power Plants (Open)—Discuss proposed EPRI requirements document for advanced LWRs (Chapters 2, 3, 4, and 5).

2:15 p.m.–4:45 p.m.: Systems Interactions (Open)—Review and comment regarding proposed resolution of USI A–17, Systems Interactions in Nuclear Power Plants.

4:45 p.m.–6:15 p.m.: TVA Nuclear Power Plant Operations (Open)—Discuss lessons learned from TVA management, operations, and construction problems.

6:15 p.m.–6:30 p.m.: Future ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

Friday, August 12, 1988

8:30 a.m.–11:30 a.m.: NRC Rulemaking Activities on Nuclear Power Plants Maintenance (Open)—Discuss NRC activities for developing requirements for maintenance programs at nuclear power plants.

11:45 a.m.–12:30 p.m. and 1:30 p.m.–2:45 p.m.: Decay Heat Removal Systems (Open/Closed)—Review and comment regarding proposed NRC resolution of USI A–45, Shutdown Decay Heat Removal Requirements and Generic Issue-99, Loss of RHR Capability in PWRs.

Portions of this session will be closed as required to discuss Proprietary Information applicable regarding this subject.

2:45 p.m.–3:45 p.m.: BWR Power Oscillations (Open)—Briefing by invited expert regarding power oscillations in boiling water reactors.

4:00 p.m.–5:45 p.m. Modular High Temperature Gas-Cooled Reactor (Open)—Review and comment on standardized design for the DOE proposed modular high-temperature gas cooled reactor.

5:45 p.m.–6:30 p.m.: Safety Implications of Control Systems (Open)—Review and comment regarding proposed assumptions and limitations to be used in the Multiple System Response Program for evaluating residual concerns associated with USI A–47, Safety Implications of Control Systems in Nuclear Power Plants.

Saturday, August 13, 1988

8:30 p.m.–12:30 p.m.: Preparation of ACRS Reports (Open/Closed)—Discuss proposed ACRS reports to the NRC regarding items considered during this meeting and the Environmental Qualification-Risk Scoping Study which was considered during the 339th ACRS meeting.

Portions of this session may be closed as required to discuss Proprietary Information relating to the matters being discussed.

1:30 p.m.–2:00 p.m.: Appointment of ACRS Members (Closed)—Discuss qualifications of persons nominated for appointment as members of the ACRS.

This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

2:00 p.m.–2:30 p.m.: Activities of ACRS Subcommittees and Members (Open/Closed)—Reports of ACRS subcommittee chairmen and members

regarding the status of assigned activities.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

2:30 p.m.–3:30 p.m.: Important Safety-Related Issues (Open)—Discuss proposed hierarchical structure for important safety-related issues identified by the ACRS members.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), Proprietary Information applicable to the facility being discussed (5 U.S.C. 552b(c)(4)), and to protect information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: July 26, 1988.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 88–17141 Filed 7–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–269, 50–270 and 50–287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Power Company (the licensee or Duke), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

The proposed amendments would revise the Technical Specifications (TSs) to support operation of Oconee Unit 3, Cycle 11 at full rated power and to include other revisions. To support the reload TSs revisions, Duke submitted the report, "Oconee Unit 3 Cycle 11, Reload Report," DPC–RD–2011, May 1988. These amendments would revise the following 4 areas: (1) Update the operational power imbalance envelope. These envelops would be revised for all three units; (2) Increase the minimum boron concentration in the borated water storage tank (BWST) from 1835 to 1950 parts per million; (3) Increase the minimum volume of the concentrated boric acid storage tank (CBAST) from 1020 to 1100 cubic feet. The increase in volume would ensure that the CBAST can borate the reactor coolant system to 1% delta k/k subcritical with the following assumptions: cold conditions with the maximum worth stuck rod, and no credit for xenon at the most limiting time in the core life; and (4) Revise other areas of the TSs that are administrative in nature. In its submittal, Duke also stated that the bases have been updated in certain sections.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the

hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director; Project Directorate II–3; (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the peitition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell, and Reynolds, 1200 17th Street NW., Washington, DC 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 16, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Dated at Rockville, Maryland, this 21st day of July 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–17135 Filed 7–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–269, 50–270 and 50–287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–38, DPR–47, and DPR–55, issued to Duke Power Company (the licensee or Duke), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

In its October 2, 1987 letter, the NRC requested Duke to propose revisions to the Technical Specifications (TSs) that would add, similar to Unit 1, primary to secondary leakage limits of 0.3 gallons per minute (gpm) for Units 2 and 3. With this application, Duke proposed to revise the TSs to establish a 1 gpm leakage limit for all three units. Also, Duke proposed several other revisions to the TSs. Duke proposed to revise the following five areas: (1) To establish a limit of 1.0 gpm total primary to secondary leakage through both steam generators (SG) for each of the three Oconee units. Presently, only Oconee Unit 1 has a limit of 0.3 gpm; Units 2 and 3 have no limit; (2) To delete the last sentence in the current TS 3.1.6.4 which requires NRC notification of SG tube leaks "in accordance with section 6.6.2.1;" (3) To delete the current TS 4.17.6.c which requires NRC notification of the results of SG tube inspections which fall into Category C–3 "pursuant to TS 6.6.2.1.a prior to resumption of plant operation;" (4) To delete the current requirements in Table 4.17–1, Item C–3, for a "prompt notification to NRC pursuant to TS 6.6.2.1.a;" and (5) To change in the current TS 4.17.6.a the term "Director" to Regional Administrator." In its submittal, Duke also stated that the bases have been revised for certain sections.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specfic aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly to so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews, Director; Project Directorate II-3; (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated May 31, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 22nd day of July 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-17136 Filed 7-28-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-42 and DPR-60, issued to the Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

In accordance with the licensee's application for amendments dated July 5, 1988, the amendments would change the values of the nuclear hot channel factor (F_Q) and the nuclear enthalpy rise in the hot channel factor ($F_{\Delta H}$) as they relate to the power distribution limits. It should be noted that power distribution limits are used in the Departure from Nucleate boiling (DNB) calculations for analyzing various potential accidents. Specifically, (F_Q) and ($F_{\Delta H}$) will have assigned values of 2.50 and 1.70 respectively, instead of the existing condition where the assigned values are based on a function of each other.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By August 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated July 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 21st day of July 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-17139 Filed 7-28-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25938; File No. SR-AMEX-88-18]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on June 29, 1988, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 904C as set forth below. (Italics indicate material proposed to be added.)

Rule 904C

(a)-(d) No change.

* * * Commentary

.01 *Positions in broad-based index options classes traded on the Exchange, held in the aggregate by a customer (who is neither a member nor a broker/dealer), are exempt from this position limit rule to the extent that procedures and criteria as established by the Exchange are met.*

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

The Exchange proposes to establish an exemption from broad-based index option position limits for customers holding a pre-approved portfolio of stocks. For purposes of this rule, a customer is defined as neither a member nor a broker/dealer.

Currently, position limits for broad-based index options, specifically the Major Market ("XMI") and the Institutional ("XII") Indexes, are limited to a maximum of 17,000 and 25,000 contracts, respectively. These limits are the same for all investors, regardless of whether an investor holds a portfolio of stocks that could hedge an index option position. On various occasions during the past four years, managers of large portfolios, such as pension and insurance funds, have indicated that the current position limits for broad-based index options restrict the use of such options in hedging stock portfolios. The purpose of this proposal is to provide customers who wish to use index options to hedge large stock portfolios with relief from existing position limits.

The Exchange proposal would operate as a pilot program for one year and would allow exemptions from position limits for up to 50,000 contracts for XMI options and 75,000 contracts for XII options. [1]

It is proposed that a customer may receive an exemption from broad-based index option position limits if the procedures and criteria outlined in Exhibit 1 are met. As more fully described in Exhibit 1, a customer who seeks an exemption from broad-based index option postion limits would need (1) prior Exchange approval and (2) a qualified portfolio consisting of net long positions in at least twenty common stocks [2] representing at least four industry groups (with no stock accounting for more than 15% of the value of the portfolio). The Exchange's Market Surveillance Department is prepared to coordinate the granting of the hedge exemptions with the other options exchanges in an effort to guard against the use of a qualified portfolio to obtain exemption(s) in more than one

[1] *See letter from Claire P. McGrath, Staff Attorney, Amex, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated July 22, 1988, amending the maximum number of contracts permitted as a hedging exemption for XMI options.*

[2] The Amex initially proposed that a qualified portfolio could consist of net long positions in fifteen common stocks. The Amex subsequently amended its filing to require that a customer's qualified portfolio include net long positions in twenty common stocks in order for the customer to be eligile for the exemption from broad-based index option position limits. Letter from Claire P. McGrath, Staff Attorney, Amex, to Mary Revell, Attorney, Commission, dated July 20, 1988.

[3] Current exercise limits are 10,000 contracts for XMI and 15,000 contracts for XII.

options product. The Surveillance Department also will monitor a hedge customer's options positions daily. Customers who exceed the hedge exemption limits and/or violate any of their undertakings in connection with granting of an exemption will be instructed to liquidate any excess position promptly and in an orderly manner. Although exercise limits in expiring options on expiration will not be restricted, holders who exercise positions in excess of the current limits [3] will be closely examined and there will be a rebuttable presumption of a violation of the Exchange's policy if the customer also liquidates a substantial amount of stock on the day prior to expiration. In addition, the firm carrying the customer's position will be required to telefax to the Surveillance Department on the Wednesday prior to expiration the current status of the customer's qualified portfolio. The Exchange believes these, as well as other requirements, will make it difficult to use the exempted positions to disrupt or manipulate the market. Upon approval of this rule change, the Exchange plans to advise its members of the requirements for a hedger's exemption from index option position limits and the procedures to be followed in applying for an exemption in one or more information circulars.

The proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange since it is designed to give investors with large portfolios the ability to hedge those portfolios and may increase the depth and liquidity of index option trading without increasing the risk of market manipulation or disruption.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register.** The proposed rule change is substantially identical to a proposal submitted by the Chicago Board Options Exchange ("CBOE") that was noticed for the full thirty-day period and was recently approved by the Commission.[4] The Commission concludes, as it did with the CBOE proposal, that the Amex proposal to provide public customers who hold a pre-approved portfolio of stocks with an exemption from broad-based index option position limits will allow more effective hedging of large stock portfolios and may increase the depth and liquidity of the stock index options market without significantly increasing concerns regarding manipulation of these products or disruptions of the underlying stock market. The Commission notes that, as with the CBOE proposed rule change, the Amex has proposed a one-year pilot program for the index option hedge exemption. During the one-year pilot, the Amex and the Commission can monitor the effects of the hedge exemption on the market to ensure that problems have not arisen due to the increased position and exercise limits.[5]

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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 19, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 22, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-17157 Filed 7-28-88; 8:45 am]

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[4] *See* Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204 (June 2, 1988).

[5] The Amex has informed the Commission that it will obtain the following information from the monitoring program: the persons who use the exemption; how often the exemption is used; the size (dollar value) of any portfolios hedged; the number of stocks represented in these portfolios and the quantity of each stock held; positions held by the portfolios in stock index futures, stock index options on futures, or any other stock index option contracts; and the size (number of contracts) of the index options positions held pursuant to the exemption. Letter from Claire P. McGrath, Staff Attorney, Amex, to Mary Revell, Attorney, Commission, dated July 20, 1988. The Amex also should inform the Commission of the results of any surveillance investigations undertaken for apparent violations of any of the provisions of the hedge exemption rule.

[Release No. 34-25941; File Nos. SR-SCCP-87-04 and SR-Philadep-87-01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company; Order Approving Proposed Rule Changes

The Stock Clearing Corporation of Philadelphia ("SCCP") and the Philadelphia Depository Trust Company ("Philadep") on December 8, and December 10, 1987, respectively, submitted proposed rule changes pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposals would authorize SCCP and Philadep to penalize participants that fail to confirm in a timely manner the accuracy of their monthly account statements. Notice of the proposals appeared in the **Federal Register** on February 29, 1988 to solicit public comment.[2] No comments were

[1] SCCP and Philadep are wholly-owned subsidiaries of the Philadelphia Stock Exchange, Inc.

[2] Securities Exchange Act Release Nos. 25385 and 25386 (February 23, 1988); 53 FR 6047, 6049.

On January 27, 1986, SCCP and Philadep filed similar proposals (File Nos. SR-SCCP-86-01 and SR-Philadep-86-02) to authorize the imposition of fines on SCCP and Philadep participants that were delinquent in verifying the accuracy of their monthly statements. At that time, however, the Commission expressed concern because the proposals appeared to lack adequate due process standards. SCCP and Philadep voluntarily withdrew these proposals by a letter dated February 27, 1986.

Continued

received. This order approves both proposed rule changes.

I. Description of the Proposals

The proposals would: (1) Amend SCCP Rules 21 (financial statements) and 24 (appeals); and (2) add a new Philadep Rule 30 (financial statements) and amend Philadep Rule 21 (appeals). The two proposals, in identical language, would authorize SCCP and Philadep, as self-regulatory organizations ("SROs"), to impose minor sanctions, ranging from warnings to fines up to $250, on their participants that fail to confirm in writing whether the monthly account statements issued to them by SCCP and Philadep are accurate.[3] Specifically, the proposals would authorize the Chairman or Vice-Chairman of either SRO's Audit Committee or any other properly authorized officer to recommend disciplinary action against any participant that fails to respond to an account confirmation request in a timely manner. The proposals would define "in a timely manner" as the 20th day of the month following the date of the statement. Potential disciplinary action would consist of: (1) A warning for the first offense within a 12 month period, (2) a $100 fine for the second offense within a 12 month period, and (3) a $250 fine for the third offense within a 12 month period.

Under the proposals, an alleged delinquency would be noticed to the affected participant by a written statement of charges. The participant could choose to accept the allegation of delinquency, pay the fine (if any), and waive the opportunity for a hearing. Alternatively, the participant could elect to contest the matter and, if so, would have a right to a hearing on the record before an Audit Committee member who would serve as hearing officer. The hearing officer would be appointed by the Chairman of the SRO's Audit Committee, and the hearing officer's ruling would be subject to appeal to the SRO's board of directors.

II. Rationale of SCCP and Philadep

SCCP and Philadep state that they should have the authority to impose reasonable penalties on their participants for occasional or repeated failure to confirm their monthly statements. SCCP and Philadep believe that the exercise of such authority would be a legitimate regulatory aid and that such authority would be within their statutory mandate as SROs. They further assert that the proposals would promote sound business policies without being unduely burdensome. SCCP and Philadep emphasize their belief that the proposals include specific due process standards that conform to the disciplinary procedure requirements of section 17A of the Act.

III. Discussion of the Proposals

The Commission believes that it is appropriate for SCCP and Philadep to set and enforce compliance with basic standards of financial recordkeeping. The proposed penalties, however, while administrative in nature, would constitute disciplinary sanctions under the Act. Accordingly, the penalties must be imposed in a manner consistent with section 17A(b)(3)(H) of the Act, which: (1) Requires that a clearing agency provide a "fair procedure" [4] for the disciplining of its participants; and (2) incorporates by reference section 17A(b)(5) of the Act which requires that a clearing agency grant and accused party specific due process rights including a statement of charges, notice of the charges, an opportunity for a hearing, and a record.

In this regard, the proposals submitted by SCCP and Philadep expressly provide for each of these mandatory rights of due process. Additionally, as amended,[5] the proposals would authorize, as a matter of right, appeals from the decisions of the hearing officers to the SCCP and Philadep boards of directors. The proposals also would permit and informal proceeding whereby an accused participant may elect not to contest the offense, to pay the fine (if any), to waive the right to a hearing, and to avoid the commencement of a formal disciplinary proceeding.

Accordingly, the Commission is satisfied that, as required by the Act, the proposals would provide an accused party with a fair and orderly disciplinary procedure that would include the basic rights of due process. Moreover, the Commission notes that these proposals are not matters of first impression and that similar rules, authorizing modest fines for minor offenses and informal disciplinary procedures, already are in effect at other SROs.[6] Such fines and procedures, where authorized at other SROs, generally apply to offenses that, like the subject of the instant filings, are technical, inadvertent, or otherwise minor in nature.[7]

The Commission believes that the two proposals in question are consistent with the Act, particularly Section 17A of the Act. The Commission further believes that these proposals, by fostering improved standards of financial recordkeeping among clearing agency participants, will facilitate efficiency in the clearing and settlement of securities transactions.

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act, that the above-mentioned proposed rule changes (File Nos. SR–SCCP–87–04 and SR–Philadep–87–01) be and hereby are approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–17158 Filed 7–28–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16492; 812–6980]

Centel Capital Corp.; Notice of Application

July 22, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

See Securities Exchange Act Release No. 23124 (February 14, 1986), 51 FR 13309.

The Commission likewise expressed due process concerns with the instant filings. As a result, SCCP and Philadep submitted letters that amended their filings by adding due process rights in the form of rights of appeal. *See* letters from William W. Uchimoto, General Counsel SCCP and Philadep, to Thomas C. Etter, Attorney, Securities and Exchange Commission, dated May 18, 1988, and July 12, 1988.

[3] A "monthly account statement" details a participant's activity and account balances with SCCP and Philadep.

[4] The term "fair procedure" as used in section 17A(b)(3)(H) of the Act means that any SRO disciplinary action must be conducted under rules that provide a fair and orderly procedure, including the obligation that an SRO bring specific charges, give notice to the accused, and provide an opportunity for a hearing. *See* Sen. Report to Accompany S.249, Doc. No. 75, 94th Cong. 1st Sess. 25, 96, 124 (1975).

[5] *See, supra,* note 2.

[6] *See, e.g.,* New York Stock Exchange Rule 476A (Imposition of Fines for Minor Violation(s) of Rules).

[7] They include the so-called "traffic tickets" that are issued to individuals for breaches of decorum, such as running, eating, wearing improper attire, or using abusive language on a trading floor. *See* Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025. More comparable to the two instant proposals are "late fees" (actually fines) for a broker-dealer's lateness in transferring a customer's securities account. *See* NYSE Rule 412(g), Securities Exchange Act Release No. 22913 (February 14, 1986), 50 FR 49638. *See also,* Securities Exchange Act Rule 19d–1(c)(2), 17 CFR 240. 19d–1(c)(2), which provides an exception whereby SROs ordinarily need not report to the Commission fines imposed for certain minor offenses.

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Centel Capital Corporation ("Applicant")

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant, a wholly-owned finance subsidiary of Centel Corporation ("Centel"), seeks an order to permit it to issue debt securities that will provide funds for use by Centel in connection with its own diversification and in support of the activities of subsidiaries of Centel.

Filing Dates: The application was filed on February 1, 1988 and amended on July 21, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 15, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, c/o Ms. Barbara R. Johannesen, General Attorney, Centel Corporation, 8725 Higgins Road, Chicago, Illinois 60631.

FURTHER INFORMATION: Paul J. Heaney, Financial Analyst (202) 272–3420 or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Applicant, a Delaware corporation, was incorporated on January 18, 1988, and is a wholly-owned subsidiary of Centel. Centel was incorporated in Kansas on September 22, 1909, as the Concordia Electric Light Company. Through its telephone subsidiaries, it operates local exchange telephone systems in nine states. In addition, Centel, through other subsidiaries (the "Diversified Subsidiaries"), provides cable television service in seven states; and designs, engineers, installs and maintain advanced business telecommnications and information systems and networks. Centel itself directly provides electric service to customers in two states. In addition, Centel's electric operations are subject to utility commission regulation. Centel may establish additional such subsidiaries in the future.

2. Applicant was formed to advance efficient administration and management of financing activities for Centel and the Diversified Subsidiaries. In addition, legal and business reasons arising out of the regulatory framework to which Centel is subject, including the need to keep cash flows for the Diversfied Subsidiaries clearly separate and distinct from those of the telephone subsidiaries, indicate that the formation and utilization of a finance subisidiary is the preferable method of obtaining debt financing for the activities and uses of Centel and the Diversified Subsidiaries. Neither Centel nor any of the Diversified Subsidiaries is an investment company under section 3(a) of the 1940 Act.

3. The Applicant's primary business will be to provide funds which Centel will use to finance its own activities and for the activities of the Diversified Subsidiaries. The Applicant will issue debt securities for sale in the United States and foreign markets (collectively, the "Securities") and, in turn, loan the proceeds of these issuances to Centel and the Diversified Subsidiaries. All loans by Applicant to Centel and the Diversified Subsidiaries will bear interest equal to that which the Applicant is required to pay to obtain funds through its corresponding borrowings, plus a small mark-up sufficient to cover operating costs. Further, the amounts and maturities of these loans will allow the Applicant to make timely payments of principal, interest and premium, if any, on the Securities. The Applicant will remit to Centel and/or the Diversified Subsidiaries at least 85% of the cash or cash equivalents raised by the Applicant as soon as practicable after receipt thereof, but in no event later than six months after the Applicant receives such cash or cash equivalents. The Applicant represents that it will not issue voting securities to any person other than Centel or a wholly-owned subsidiary of Centel, and that it will not hold securities other than Government securities and other securities as permitted by Rule 3a–5(a)(6) under the 1940 Act.

4. Before Applicant issues any Securities, Centel and the Applicant will enter into a Support Agreement (the "Support Agreement"). Under the Support Agreement, Centel will agree to cause the Applicant to maintain a positive tangible net worth (as determined in accordance with generally accepted accounting principles) and, if the Applicant is unable to pay when due principal, interest and premium, if any, owed by it in connection with the Securities, then Centel shall provide funds to Applicant to assure that Applicant will be able to pay when due such principal, interest and premium, if any. The Support Agreement will also provide that in the event of any default by Centel in meeting its obligations under such Support Agreement, or in the event of default by the Applicant in the timely payment of principal, interest, and premium, if any, owed on any Securities, holders of the Securities or, if applicable, a trustee acting on their behalf, shall be entitled to proceed directly against Centel.

5. The Support Agreement will also provide that without the written consent of all the holders of the then outstanding Securities (other than Securities having an original maturity of one year or less, which will not be affected by such amendment or termination) the Support Agreement may not be amended in a way adverse to them or terminated unless all outstanding Securities have been retired.

6. The Applicant represents that its offerings of Securities are expected to consist of short-term, intermediate-term and long-term Securities to be offered and sold either in transactions exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act") or in public offerings of securities registered under the 1933 Act. In the case of a public offering of any of its Securities not exempt from the registration requirements of the 1933 Act, the Applicant and Centel will, prior to offering such securities, file a registration statement under the 1933 Act with the SEC and will not sell such Securities until the registration statement is declared effective by the SEC and any related indenture is qualified under the Trust Indenture Act of 1939 to the extent required thereunder. The Applicant and Centel will comply with the prospectus delivery requirements of the 1933 Act in connection with the offering and sale of such Securities.

7. In the case of an offering of Securities not requiring registration under the 1933 Act, the Applicant will

provide each offeree with disclosure materials which will include a description of the business of Centel and other data of the character customarily supplied in such offerings. In the event of subsequent offerings, these materials will be updated at the time thereof to reflect material changes in the financial condition of Centel and its subsidiaries taken as a whole.

8. Further, prior to any issuance and sale of the Securities in the United States capital market, such Securities shall have received one of the four highest investiment ratings (signifying investment grade) from at least one nationally recognized rating organization. No such rating shall be required, however, if the Applicant's counsel opines that an exemption from registration is available with respect to such issue and sale under Section 4(2) of the 1933 Act.

Applicant's Legal Conclusions

1. The Applicant was formed as a financing conduit to provide funds for Centel's own activities and those of the Diversified Subsidiaries, and to advance efficient administration and management of financing activities of Centel and the Diversified Subsidiaries. All funds raised by it through the issuance of Securities will be lent only to Centel or the Diversified Subsidiaries. The Applicant meets all of the requirements for the Rule 3a–5 exemption under the 1940 Act except for the requirement that Centel unconditionally guarantee the Securities. The execution and delivery of the Support Agreement provides a functional equivalent to an unconditional guarantee of the Securities since the Support Agreement enables purchasers of the Securities to proceed directly against Centel in the event the Applicant fails to meet its obligations. Therefore, the Support Agreement will enable purchasers of the Securities to look ultimately to Centel for repayment.

2. Centel intends to support the Securities with all legally available assets. By means of the Support Agreement, Centel will make available to all holders of the Securities the same assets which would be available to the holders of Centel's own debt securities used to fund the Diversified Subsidiaries and, thus, the holders of the Securities will be in the same position as if Centel itself has issued the Securities directly.

3. Granting of the exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Johathan G. Katz,

Secretary.

[FR Doc. 88–17086 Filed 7–28–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16491; 812–7006]

Lifetime Gold & Precious Metals Trust et al.; of Application

July 22, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Amendment of a Prior Order for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Lifetime Gold & Precious Metals Trust, Lifetime Intermediate Income Trust (the "New Trusts"), Lifetime Money Market Trust, Lifetime Managed Municipal Bond Trust, Lifetime Government Income Plus Trust, Lifetime High Income Trust, Lifetime Capital Growth Trust, Lifetime Emerging Growth Trust, Lifetime Managed Sectors Trust, Lifetime Global Equity Trust, Lifetime Dividends Plus Trust (collectively, the "Existing Trusts") and MFS Financial Services, Inc. ("FSI").

Relevant 1940 Act Section: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c–1 thereunder, and approval requested under section 11(a) of the 1940 Act.

Summary of Application: Applicants seek an order amending a prior order permitting the assessment and waiver of a contingent deferred sales load and approving a continuing exchange offer.

Filing Dates: The application was filed on March 18, 1988, and amended on May 16 and June 22, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 15, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, 200 Berkeley Street, Boston, Massachusetts 02116. Attention: Arnold D. Scott, Esq. (with a copy to Roger P. Joseph, Esq.), Bingham, Dana & Gould, 100 Federal St., Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–2190, or Brion R. Thompson, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application as amended; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Trust was organized as a business trust under the laws of the Commonwealth of Massachusetts and is registered under the 1940 Act as an open-end management investment company. Each Trust, except Lifetime Managed Sectors Trust, Lifetime Gold & Precious Metals Trust and Lifetime Intermediate Income Trust, is registered as a diversified investment company. Shares of each Trust are offered for sale as part of the Lifetime Investment Program. Although none of the Trusts have any current intention to create and issue any additional series or classes of shares, each Trust and FSI request that the order requested herein extend to such shares that may at any time hereafter be offered on substantially the same basis.

2. The principal underwriter of each Trust is FSI ("the Distributor"), and the investment adviser of each Trust is Lifetime Advisers, Inc. ("the Adviser"). The Distributor and Adviser are subsidiaries of Massachusetts Financial Services Company ("MFS"). MFS is a subsidiary of Sun Life Assurance Company of Canada (U.S.), which in turn is a subsidiary of Sun Life Assurance Company of Canada.

3. On January 28, 1987, the SEC issued an exemptive order (Investment Company Act Release No. IC–15555) permitting Existing Trusts to assess and waive a contingent deferred sales charge on certain redemptions and approving certain exchange offers involving shares of the Existing Trusts. Each Trust now proposes to: (1) Offer shares of the Trust without an initial sales charge but subject to a contingent deferred sales charge (the "Charge") to be paid directly to the Distributor, (2)

waive the Charge for certain redemptions of Trust shares as enumerated in the application, (3) distribute its shares pursuant to a plan of distribution adopted in accordance with Rule 12b–1 under the 1940 Act (the "Plan"), and (4) impose a service charge of $5.00 on exchanges of Trust shares for shares of any other Trust made pursuant to a continuing offer of exchange ("Exchange Offer").

4. Although there is no initial sales charge, the Distributor compensates each dealer which sells shares of a Trust at the rate of 4% of the purchase price of such Trust's shares sold through such dealer. The Charge will only be imposed on investments in a Trust's shares upon which a dealer commission has been paid ("Direct Purchases"). Such investments will be subject to the charge for a period of six years from the time of purchase. For purposes of determining the number of years from the time of purchase of a Trust's shares, all such Direct Purchases will be aggregated on a calendar year basis, with the effect that all Direct Purchases made during a calendar year, regardless of when they have occurred, will age one year on December 31 of that year and each subsequent year.

5. At the time of redemption, the amount by which the value of a shareholder's account represented by Direct Purchases exceeds the sum of the six calendar year aggregations of Direct Purchases may be redeemed without charge ("Free Amount"). No Charge will ever be assessed on additional shares acquired through automatic reinvestment of dividends or capital gain distributions ("Reinvested Shares"). At the time of redemption, the amount of the redemption equal to the then-current value of Reinvested Shares and any Free Amount will not be subject to the Charge, but any amount of the redemption in excess of the aggregate of the then-current value of Reinvested Shares and such Free Amount will be subject to the Charge.

6. The amount of any Charge will be calculated on the basis of the number of years since the investor made the purchase from which an amount is being redeemed. The Charge will be 6% for redemptions in the first calendar year of purchase and will decline 1% for each calendar year thereafter until the seventh and following years when no Charge will be assessed on redemptions. The amount of the Charge will be calculated by first determining the date on which the Direct Purchase which is the source of the redemption was made, and then applying the appropriate percentage to the amount of the redemption that is subject to the Charge. In determining whether a Charge is payable and, if so, the percentage Charge applicable, it will be assumed that the amount invested first is the first to be redeemed. This will result in any such Charge being imposed at the lowest possible rate.

7. Under the proposed Exchange Offers, shareholders of each Trust will be able to exchange their Trust shares for shares of the other Trusts at their relative net asset values without the imposition of the Charge at the time of the exchange. An exchange is subject to the minimum initial purchase requirement of the Trust the shares of which are being acquired (which is currently $1,000 in the case of each Trust), except that a shareholder may exchange all the shares in his or her account even if their net asset value is less than such minimum initial purchase requirement. Shareholders cannot make more than five exchanges in any one telephone call. Furthermore, a service fee of $5.00 will be deducted on each exchange and paid to MFS Service Center, Inc. (the "Shareholder Service Agent"). For purposes of calculating the Charge upon redemption of shares acquired in such exchange, the purchase of shares acquired in one or more exchanges will be deemed to have occurred at the time of the original purchase of the exchanged shares.

8. Under the Plan of each Trust, the Trust will pay to the Distributor a distribution fee at an annual rate of 1.00% of the Trust's average daily net assets to compensate the Distributor for its distribution services provided to the Trust. In their review of the Plan pursuant to Rule 12b–1, the Trustees of each Trust will consider, among other things, the use by the Distributor of revenues raised by the Charges.

Applicants' Legal Conclusions

1. The requested exemptions and the approval of the service fee charged in connection with an exchange made pursuant to the Exchange Offers are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act. The proposed Charge permits shareholders of each Trust to have the advantage of greater investment dollars working for them from the time of their purchase of shares in a Trust. Furthermore, the proposed waivers of the Charge in connection with certain redemptions of each Trust's shares as specified in the application are appropriate and fair because such shares are primarily sold at little or no selling expense to the Distributor, and no sales commission to a dealer is involved in such sales. In addition, the imposition of a Charge on redemptions effected upon the death of an investor or pursuant to the Trusts' right to liquidate certain accounts might be deemed unfair in the context of such redemptions which are involuntary in nature. Finally, the proposed waivers of the Charge are consistent with Rule 22d–1 and will not discriminate among shareholders of the Trusts.

2. The imposition of a service fee of $5.00 under the Exchange Offers is fair and will not harm shareholders or discriminate among shareholders of the Trusts. The Exchange Offers will provide shareholders the opportunity to change their investment objective from time to time. Furthermore, the service fee is designed merely to compensate the Shareholder Service Agent for its costs in facilitating exchanges among the Trusts.

Applicant's Proposed Conditions:

If the requested order is granted, the Applicants agree to the following conditions:

1. The Trusts will comply with the provisions of Rule 22d–1 under the 1940 Act.

2. The Trusts will comply with the provisions of proposed Rule 11a–3 under the 1940 Act when and if it is adopted by the SEC.

3. Any administrative fee will be uniformly applied to all shareholders participating in the Exchange Offer.

4. The Trusts will comply with the provision of Rule 12b–1 under the 1940 Act.

5. The Trusts will give shareholders notice in writing at least 60 days prior to any modification of the proposed Exchange Offer, unless such modification involves the reduction or termination of the service fee imposed on certain exchanges; provided, however, that neither the temporary cessation of the sale of a Trust's shares under extraordinary circumstances such as when a Trust is unable to effectively invest amounts in accordance with its investment objectives, policies or restrictions, nor the suspension of the redemption of a Trust's shares pursuant to section 22(e) of the Act and the rules and regulations thereunder, shall be considered a modification of the Exchange Offer which would require such advance notice.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-17087 Filed 7-28-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16496; 811-3612]

Master Reserves Income Fund; Notice of Application

July 25, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Master Reserves Income Fund ("Applicant").

Relevant 1940 Act Sections: Order requested under Section 8(f) of the 1940 Act.

Summary of Application: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on December 31, 1987, and amended on July 13. 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 19, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th street NW., Washington, DC 20549. Applicant, 99 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney (202) 272-2847, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is organized as a Massachusetts business trust and is registered as open-end, diversified management investment company under the 1940 Act. Although Applicant filed a registration statement under the Securities Act of 1933 on December 2, 1982, which became effective on April 23, 1983, no public offering of Applicant's shares has been made.

2. Keystone Custodian Funds, Inc. ("Keystone") has been the sole shareholder of Applicant since Applicnt's inception. On December 31, 1987, $128,274 was distributed to Keystone in complete liquidation of its shares in Applicant, which amount represented Keystone's initial capital contribution of $100,000, together with accrued interest, after deduction of accrued administrative expenses.

3. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaires of which were or are securityholders of Applicant.

4. Applicant has no assets, debts or liabilities which remain outstanding, is not a party to any litigation or administrative proceeding, has no remaining securityholders and is not engaged in or proposing to engage in any business activities other than those necessary for the winding up of its affairs.

5. Applicant has filed a Form N-SAR for each semi-annual period for which such form was required. Applicant's Form N-SAR for the period ending April 30, 1988 was filed on June 16, 1988. If a Form N-SAR is required for any period from April 30, 1988 through the date of Applicant is deregistered, such form will be filed promptly after the earlier of the due date of the form or the issuance of the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-17088 Filed 7-28-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending July 22, 1988

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

[Docket No. 45718]

Parties: DHL Corporation and DHL International, Ltd.

Date Filed: July 21, 1988.

Subject: Application of DLH Corporation and DHL International, Ltd. pursuant to section 412 of the Act, and Part 303 of the Department's Regulations, submits several amended agreements which have previously been filed by DHL Corporation and given numbers Agreement CAB Nos. 24307 through and including 24307-A4. The instant agreement has been numbered as 24307-A5. This amendment to the DHL-DHLI Agreement creates a compensation mechanism to adjust for the imbalance in traffic coming into the United States which is delivered by DHL Corporation/Airways and the traffic sent out of the United States by DHL Corporation/Airways which is delivered by DHL International.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 88-17132 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 22, 1988

The following applications for certificates of public convenience and necessity and foriegn 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 application, or motion 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 No. 45712

Date Filed: July 20, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 17, 1988.

Description: Application of Prairie Flying Service (1976) Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit authorizing it to engage in foreign scheduled air transportation of persons, property and mail between Minot, North Dakota and Regina, Saskatchewan, Canada.

Docket No. 45720

Date Filed: July 22, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 19, 1988.

Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for an amendment of its certificate of public convenience and necessity for Route 137 to authorize service between a point or points in the United States, on the one hand, and a point in Denmark, Norway, and Sweden, on the other hand, and to integrate such authority with American's present route rights to Germany and Finland.

Docket No. 45723

Date Filed: July 22, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 19, 1988.

Description: Application of Transportes Aereos Ejectivos, S.A. de C.V., pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to engage in charter air transportation of persons, property and mail between points in Mexico, on the one hand, and points in the U.S., on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-17131 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

In the Matter of U.S.-Mexico Air Transportation Operations

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Order 88-7-43, U.S. Mexico Authority—Order to Show Cause, Order 88-7-43. Docket 45728.

SUMMARY: On January 29, 1988, the United States and Mexico initialed a new aviation agreement which will govern the air transportation operations between the two countries. By Order 88-7-43, the Department is proposing procedures for the award of route rights to U.S. carriers who wish to provide air transportation services between the United States and Mexico under the new agreement. The Department also is requesting that all air taxi and commuter operators registered under Part 298 of the Department's Regulations and currently serving Mexico, submit to the Department information concerning their current operations. In addition, the Department is inviting all carriers interested in serving the U.S.-Mexico market under the new agreement to file applications for the authority.

DATES: Objections to the Department's proposed procedures are due August 8, 1988; answers are due not later than August 15, 1988. Information responses by Part 298 operators and carrier applications are due August 26, 1988. Interested parties may obtain a service copy of the order by calling the Licensing Division (202) 366-2387 or by writing to the address below for the Licensing Division.

ADDRESS: Objections, comments, supporting information and certificated carrier applications should be filed in Docket 45728, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties listed in Appendix A of the order. Air taxi and commuter carrier information responses and applications for designation should be addressed to the Licensing Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 6412, Washington, DC 20590.

Dated: July 26, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-17130 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Oxygen Mask Assembly, Continuous Flow, Passenger

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C64a prescribes the minimum performance standards that Oxygen Mask Assembly, Continuous Flow, Passenger, must meet to be identified with the marking "TSO-C64a."

DATE: Comments must identify the TSO file number and be received on or before November 16, 1988.

ADDRESS:

Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C64a, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or Deliver Comments To: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO-C64a will include revised Marking and Data Requirements for oxygen mask assembly, continuous flow, passenger. Also, the proposed TSO incorporates Society of Automotive Engineers, Inc. (SAE), Aerospace Standard (AS) 8025, Passenger Oxygen Mask.

How To Obtain Copies

A copy of the proposed TSO-C64a may be obtained by contacting the person under "For Further Information Contact." TSO-C64a references SAE AS 8025, dated February 24, 1988, for minimum performance standards. SAE AS 8025 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

Issued in Washington, DC, on July 19, 1988.

Daniel P. Salvano

Acting Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 88-16819 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP88-03; Notice 2]

General Motors Corp.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by General Motors Corportation, of Warren, Michigan to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.210, Federal Motor Vehicle Safety Standard No. 210, "Seat Belt Assembly Anchorages." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 22, 1988, and an opportunity afforded for comment (53 FR 13373).

Paragraph S6(c) of Standard No. 210 requires owner's manuals in vehicles with GVWR of 10,000 pounds or less manufactured on or after September 1, 1987 to have a diagram showing the location of the shoulder belt anchorages (required by Standard No. 210) "for the rear outboard designated seating positions, if shoulder belts are not installed as items of original equipment by the vehicle manufacturer at those positions." General Motors reported that 20,514, 1987 and 1988 Chevrolet Caprice vehicles do not have owner's manuals containing the required seat belt anchorage location diagram.

General Motors argued that this noncompliance is inconsequential as it relates to motor vehicle safety because the owner's manuals in question have a secton titled "Rear Seat Shoulder Belts (Dealer-Installed Accessory)" which explains the proper use and availability of rear seat lap shoulder belt kits. These kits also include diagrams of the rear seat shoulder belt anchorage locations. General Motors feels that this section of the owner's manual makes people aware that shoulder belts can be installed in the rear seat; therefore, it serves the intended purpose of Paragraph S6(c) of Standard No. 210.

No comments were received on the petition.

The agency believes that the noncompliance standing alone is not inconsequential as it relates to motor vehicle safety. Owners of vehicles who wish to install these restraints must be properly informed of the location of the anchorage locations. Without a diagram it is possible that the belt will not be installed properly. Such an error could reduce or negate the effectiveness of the rear upper torso protection. However, there are special circumstances unique to this case that merit favorable consideration of the petition. First, the Chevrolet Caprice vehicles themselves contain the requisite upper torso anchorages in compliance with the standard. The noncompliance reported does not affect the vehicle. After the close of the comment period, General Motors informed the agency on June 9, 1988, that it "is planning to send a copy of the subject diagram and a letter of explanation to each owner of the subject vehicles." GM will mail the information "early in July which is as soon as a complete list of owner names and addresses can be compiled." although petitioner has not met its burden of persuasion that the noncompliance, standing alone, is inconsequential as it relates to motor vehicle safety, the importance of the noncompliance diminishes in view of the fact that the owners will receive the diagrams originally denied them. The agency has considered the possibility that receipt of the diagram apart from the owner's manual may focus attention on the availability of the option in a manner that its placement in the manual might not have. NHTSA has determined that the safety purposes of the Act are met with the provision of the missing information, and that no substantive purpose would be served by a denial of the petittion. In consideration of these additional factors, the agency believes that the burden of persuasion is met and grants the petition.

Barry Felrice,

Associate Administrator for Rulemaking.

July 25, 1988.

[FR Doc. 88-17162 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP88-01; Notice 2]

Uniroyal Goodrich Tire Company; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Uniroyal Tire Company, Akron, Ohio, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on March 1, 1988, and an opportunity offered for comment (53 FR 6215).

Paragraphs S6.5(d) and S6.5(f), "Tire Markings," of Standard No. 119 require that tires be marked with the maximum load rating and corresponding inflation pressure and the actual number of plies. During the production weeks of August 15, 1987, through October 27, 1987, Uniroyal manufactured 5,000 31×10.50R LT Uniroyal Laredo raised white letter sidewall tires that do not comply with Standard No. 119. These tires were labeled with the incorrect maximum load, corresponding inflation pressure and ply rating. The correct branding of these tires is:

Load Range C, Max. Load, 2,250 lbs. at 50 PSI cold, 6 Ply Rating

However, Uniroyal branded the tires on both sidewalls as follows: Load Range C, Max. 1,750 lbs. at 35 PSI cold, 4 Ply Rating

Uniroyal argued that the noncompliance is inconsequential because the correct load range and ply rating are imprinted on the paper label adhered to the tread of the tire.

One comment was received on the petition, from Robert F. Schlegel, Jr., a professional engineer. He opposed granting it, concluding that "A recall action or notification of purchasers would be appropriate." Mr. Schlegel commented that Uniroyal Goodrich had not stated whether the tires in question were sold for installation on new trucks (and the associated makes and models), or the replacement market. In his opinion, the petitioner should also have discussed "the effects of operating at 35 psi * * * where the 2,250 lb. load at 50 psi is needed for the vehicle to safely carry *its* rated load."

The noncompliance under consideration has resulted in a margin of misstatement greater than that which is ordinarily the subject of inconsequentiality petitions. While the petition was pending, the agency informally suggested that the petitioner conduct endurance and strength tests on the tires at the correct load and incorrect pressure indicated on the sidewall. The petitioner conducted these tests. The results did not indicate any apparent safety problems when the tires are overutilized. Nevertheless, at NHTSA's request, the petitioner has agreed to send information bulletins to purchasers of the tires who are known to it, i.e., those who have returned registration forms. The information bulletins give the correct inflation pressure and maximum load for these tires and should reduce the possibility of misuse due to labeling errors.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: July 25, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-17161 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in May 31, 1988. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
970-X	DOT-E 970	Callery Chemical Co., Pittsburg, PA	49 CFR 173.21(b), 173.300, 173.302(g).	To authorize use of DOT Specification 3AA2015 or 3AA2400 cylinders, for the transportation of a flammable poisonous gas. (modes 1, 2)
2462-X	DOT-E 2462	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 173.73(b)	To authorize shipment of certain lead azides in glass bottles overpacked in non-DOT specification wooden boxes. (mode 1)
2462-X	DOT-E 2462	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.73(b)	To authorize shipment of certain lead azides in glass bottles overpacked in non-DOT specification wooden boxes. (mode 1)
3216-X	DOT-E 3216	Pennwalt Corp., King of Prussia, PA.	49 CFR 173.314(c)	To authorize use of a proposed DOT Specification 110A3000W tank car tank, for transportation of certain flammable compressed gases. (modes 1, 3)
3216-X	DOT-E 3216	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.314(c)	To authorize use of a proposed DOT Specification 110A3000W tank car tank, for transportation of certain flammable compressed gases. (modes 1, 3)
4453-X	DOT-E 4453	Alamo Explosives Co., Inc., Houston, TX.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (modes 1, 3)
5232-X	DOT-E 5232	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.314(c) Table	To authorize shipment of certain flammable and nonflammable liquefied compressed gases in AAR Specification 120A300W tank cars and DOT Specification 105A500W tank cars. (mode 2)
6016-X	DOT-E 6016	Acety Arc, Inc., Paducah, KY	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (mode 1)
6016-X	DOT-E 6016	Huber Supply Co., Mason City, IA	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (mode 1)
6296-X	DOT-E 6296	Rhone-Poulenc Inc., Monmouth Junction, NJ.	49 CFR 173.377(g)	To authorize materials identified as organophosphorus pesticide, solid, n.o.s. as additional materials. (modes 1,2)
6563-X	DOT-E 6563	S.L.O. Health Products, Inc., Los Osos, CA.	49 CFR 173.302(a)(1), 175.3, 178.42-2.	To authorize shipment of certain nonflammable gases in non-DOT specification steel cylinders, made in compliance with DOT Specification 3E with certain exceptions. (modes 1, 2, 3, 4, 5)
6614-P	DOT-E 6614	Arco Industries, Inc., Milwaukee, WI.	49 CFR 173.263(a)(28), 173.277(a)(6).	To become a party to exemption 6614 (mode 1)
6694-X	DOT-E 6694	Eurotainer, S.A., Paris, France	49 CFR 173.315	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (modes 1, 2, 3)
6694-X	DOT-E 6694	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.315	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (modes 1, 2, 3)
6694-X	DOT-E 6694	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.315	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (modes 1, 2, 3)
6772-X	DOT-E 6772	Thomas Gray & Associates, Inc., Orange, CA.	49 CFR 173.119(a)(22), 173.245, 173.264(a), 173.346, 173.349, 173.369.	To authorize transport of limited quantities of waste flammable, poisonous and corrosive liquids in inside glass or compatible plastic bottles or metal can, overpacked in a DOT Specification 17H steel drum. (mode 1)
6672-X	DOT-E 6772	Monsanto Chemical Co., St. Louis, MO.	49 CFR 173.119(a)(22), 173.245, 173.264(a), 173.346, 173.349, 173.369.	To authorize transport of limited quantities of waste flammable, poisonous and corrosive liquids in inside glass or compatible plastic bottles or metal can, overpacked in a DOT Specification 17H steel drum. (mode 1)
6859-X	DOT-E 6859	Pyronetics Devices, Inc., Denver, CO.	49 CFR 173.302(a)(1), 173.34(d), 175.3.	To authorize use of a non-DOT specification nonrefillable titanium alloy spherical pressure vessel, for shipment of a nonflammable compressed gas. (modes 1, 3, 4)
6927-X	DOT-E 6927	Bromine Compounds, Limited, Beer-Sheva, Isreal 84101.	49 CFR 173.353	To authorize use of a non-DOT specification portable tank, for transportation of certain Class B poisonous liquids. (modes 1, 3)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6932-X	DOT-E 6932	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.264(b)(4)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of anhydrous hydrofluoric acid. (modes 1, 3)
7024-X	DOT-E 7024	Greenwood Motor Lines, Inc., Greenwood, SC.	49 CFR 173.249(a)(7)	To authorize transport of an alkaline corrosive liquid in non-DOT specification collapsible rubber containers identified as sealed tanks. (mode 1)
7024-X	DOT-E 7024	Avondale Mills, Sylacauga, AL	49 CFR 173.249(a)(7)	To authorize transport of an alkaline corrosive liquid in non-DOT specification collapsible rubber containers identified as sealed tanks. (mode 1)
7032-X	DOT-E 7032	Polaroid Corp., Needham Heights, MA.	49 CFR 172.101, 175.3	To authorize outside packages exceeding the 100 pounds limitation to be carried aboard cargo aircraft only for shipment of a certain corrosive solid. (mode 4)
7052-X	DOT-E 7052	Exploration Logging, Inc., Sacramento, CA.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (modes 1, 2, 3, 4)
7285-X	DOT-E 7285	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transporation of certain nonflammable, liquefied gases. (modes 1, 2, 3)
7544-X	DOT-E 7544	Eastman Kodak Co., Rochester, NY.	49 CFR 173.245, 173.249, 173.272	To authorize transport of solutions of sodium hydroxide and certain other liquid corrosives, or other liquid corrosive materials in a DOT Specifications 2U polyethylene inside container, overpacked in a non-DOT specification fiberboard box. (modes 1, 2, 3)
7640-X	DOT-E 7640	Mauser Packaging, Limited, Litchfield, CT.	49 CFR 173.266(a), 178.19	To authorize use of a DOT Specification 34 polyethylene container of 15 gallon capacity, for shipment of hydrogen peroxide, 60%. (modes 1, 2, 3)
7694-X	DOT-E 7694	Applied Companies, San Fernando, CA.	49 CFR 173.302(a)(4), 175.3	To authorize use of non-DOT specification welded, or seamless, nonrefillable cylinders, containing non-liquefied compressed gases. (modes 1, 2, 4)
7876-P	DOT-E 7878	Ashland Oil, Inc., Dublin, OH	49 CFR 173.299(a), 175.3	To become a party to exemption 7876 (modes 1, 2, 3, 4)
7909-X	DOT-E 7909	The Dow Chemical Co., Midland, MI.	49 CFR 172.203, 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.345(a), 173.359(c), 173.364(a), 173.370(b), 173.370(d), 173.377(f), 175.3, 175.30, 175.33.	To authorize renewal and an alternative packaging configuration. (modes 1, 2, 4)
7969-X	DOT-E 7969	Crosby & Overton, Inc., Long Beach, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize transport of certain waste hazardous materials in non-DOT specification single compartment cargo tanks similar to DOT Specification 307/312 except for bottom outlet and circumferential reinforcement. (mode 1)
7971-X	DOT-E 7971	Walter Kidde, Wilson, NC	49 CFR 173.302, 173.304, 175.3, 178.53.	To authorize manufacture, marking and sale of non-DOT specification cylinders, for transportation of nonflammable compressed gases. (modes 1, 2, 3, 4, 5)
8091-X	DOT-E 8091	Restor Communications, Inc., Florence, KY.	49 CFR Parts 100-177	To authorize transport of certain mercury relays exempted from 49 CFR 100-177, in heat sealed glass vials. (modes 4, 5)
8111-X	DOT-E 8111	U.S. Department of Energy, Washington, DC.	49 CFR 173.304(a), 175.3	To authorize use of non-DOT specification welded, stainless steel cylinders, for transportation of a nonflammable gas mixture. (modes 1, 2, 3, 4, 5)
8125-X	DOT-E 8125	Arbel-Fauvet-Rail, Paris, France	49 CFR 173.123, 173.315	To authorize use of non-DOT specification IMO type 5 portable tanks, for transportation of certain flammable and nonflammable gases and flammable liquids. (modes 1, 2, 3)
8127-X	DOT-E 8127	Union Explosivos Rio Tinto, S.A., Madrid, Spain.	49 CFR 171.12(d), 173.127, 173.184, 178.224.	To authorize use of a non-DOT specification fiberboard drum, for shipment of wet nitrocellulose. (modes 1, 2, 3)
8127-X	DOT-E 8127	Hercules, Inc., Wilmington, DE	49 CFR 171.12(d), 173.127, 173.184, 178.224.	To authorize use of a non-DOT specification fiberboard drum, for shipment of wet nitrocellulose. (modes 1, 2, 3)
8127-P	DOT-E 8127	General Plastics & Chemicals Co., Natick, MA.	49 CFR 171.12(d), 173.127, 173.184, 178.224.	To become a party to exemption 8127 (modes 1, 2, 3)
8426-X	DOT-E 8426	Crosby & Overton, Inc., Long Beach, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC-307/312 with certain exceptions, for transportation of liquid and semi-solid waste materials. (mode 1)
8436-X	DOT-E 8436	Pennwalt Corp., Buffalo, NY	49 CFR 173.119(m), 173.154	To authorize transport of a flammable liquid which is also an organic peroxide, in a DOT Specification MC-331 cargo tank. (mode 1)
8445-X	DOT-E 8445	Rohm and Haas Co., Philadelphia, PA.	49 CFR Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (mode 1)
8145-X	DOT-E 8445	McDonnell Douglas Corp., St. Louis, MO.	49 CFR Part 173, Subparts D, E, F, H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (mode 1)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8445-P	DOT-E 8445	Rhone-Poulenc AG Co., Research Triangle Park, NC.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445 (mode 1)
8451-P	DOT-E 8451	The Potomac Edison Co., Hagerstown, MD.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451 (modes 1, 2, 4)
8453-X	DOT-E 8453	PACCO, Inc., Tenino, WA	49 CFR 173.114a	To authorize cargo vessel as an additional mode of transportation for bulk shipment of certain blasting agents. (modes 1, 3)
8467-X	DOT-E 8467	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.315	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable gases. (modes 1, 2, 3)
8489-P	DOT-E 8489	Transnitro, Inc., Tampa, FL	49 CFR 173.154, 173.182, 173.217, 173.245b.	To become a party to exemption 8489 (modes 1, 2, 3)
8551-P	DOT-E 8551	Parkem Industrial Service Inc., Gonzales, LA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8551 (mode 1)
8582-X	DOT-E 8582	Illinois Central Gulf Railroad Co., Chicago, IL.	49 CFR Parts 100-177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1)
8582-X	DOT-E 8582	Southern Pacific Transportation Co., San Francisco, CA.	49 CFR Parts 100-177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1)
8582-X	DOT-E 8582	Chicago South Shore & South Bend Railroad, Company Michigan City, IN.	49 CFR Parts 100-177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1)
8582-X	DOT-E 8582	Chicago, Missouri & Western Railway, Co., Michigan City, IN.	49 CFR Parts 100-177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1)
8582-X	DOT-E 8582	Consolidated Rail Corp., Philadelphia, PA.	49 CFR Parts 100-177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (mode 1)
8674-X	DOT-E 8674	Thermex Energy Corp., Dallas, TX	49 CFR 173.114a(b)	To authorize transport of blasting agents in a non-DOT specification cement mixer, lined with cold tar epoxy. (mode 1)
8706-X	DOT-E 8706	Petro-Steel Division of Prairie State Equipment, Sioux Falls, SD.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/MC-312 except for bottom outlet valve variations for transportation of flammable or corrosive waste liquids or semi-solids. (mode 1)
8820-X	DOT-E 8820	Arbel-Fauvet-Rail, St Laurent Blangy, France.	49 CFR 173.315	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (modes 1, 2, 3)
8822-X	DOT-E 8822	Certified Tank Manufacturing, Inc., Compton, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks made in full compliance with DOT Specification MC-307 or MC-312 with certain exceptions, for transportation of certain waste hazardous materials. (mode 1)
8854-X	DOT-E 8854	Arbel-Fauvet-Rail, Neuilly-Sur-Seine, France.	49 CFR 173.264(b)(4)	To authorize use of non-DOT specification IMO Type 5 portable tanks for transportation of anhydrous hydrofluoric acid. (modes 1, 2, 3)
8862-X	DOT-E 8862	ABERCO Inc. Seabrook, MD	49 CFR 173.119, 173.124(a)(4), 173.305.	To authorize shipment of propylene oxide, classed as a flammable liquid, in DOT Specification 5P lagged steel drums. (mode 1)
8864-X	DOT-E 8864	Redwing Carriers, Inc., Tampa, FL	49 CFR 173.245(a), 178.340-10, 178.340-8, 178.341-3, 178.341-4, 178.341-5, 178.341-7.	To become a party to exemption 8864 (mode 1)
8886-X	DOT-E 8886	Amerex Corp., Trussville, AL	49 CFR 173.34(e)(9) 175.3	To authorize a longer time period between retests of DOT Specification 4B or 4B240ET cylinders containing nonflammable gas. (modes 1, 2, 4)
9066-X	DOT-E 9066	BMW of North America, Inc., Montvale, NJ.	49 CFR 173.154, 175.3	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption. (modes 1, 2, 3, 4)
9130-X	DOT-E 9130	Bio-Lab, Inc. Decatur, GA	49 CFR 173.154	To authorize an additional oxidizer for shipment. (modes 1, 2)
9233-X	DOT-E 9233	Occidental Chemical Corp., Dallas, TX.	49 CFR 173.164	To authorize shipment of dry chromic acid in a non-DOT specification 900-cubic-foot, two-compartment, sift-proof covered hopper type tank motor vehicle. (mode 1)
9262-X	DOT-E 9262	GOEX, Inc., Cleburne, TX	49 CFR 173.100(v), 175.30	To authorize certain DOT Specification fiberboard boxes as additional packaging. (modes 1, 2, 4)
9262-P	DOT-E 9262	NL Petroleum Services, Inc., Houston, TX.	49 CFR 173.100(v), 175.30	To become a party to exemption 9262 (modes 1, 3, 4)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9262-X	DOT-E 9262	Jet Research Center, Inc., Mansfield, TX.	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing not more than 500 grains of high explosive as Class C explosive, in a DOT Specification 12B fiberboard box. (modes 1, 3, 4)
9262-X	DOT-E 9262	Western Atlas International, formerly, NL McCulloug, Houston, TX.	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing not more than 500 grains of high explosive as Class C explosive, in a DOT Specification 12B fiberboard box. (modes 1, 3, 4)
9262-X	DOT-E 9262	GOEX, Inc., Cleburne, TX	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing not more than 500 grains of high explosive as Class C explosive, in a DOT Specification 12B fiberboard box. (modes 1, 3, 4)
9262-X	DOT-E 9262	Owen Oil Tools, Inc., Fort Worth, TX.	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing not more than 500 grains of high explosive as Class C explosive, in a DOT Specification 12B fiberboard box. (modes 1, 3, 4)
9266-X	DOT-E 9266	National Refrigerants, Inc., Radnor, PA.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of liquefied compressed gases. (modes 1, 2, 3)
9266-X	DOT-E 9266	Eurotainer, S.A., Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of liquefied compressed gases. (modes 1, 2, 3)
9266-X	DOT-E 9266	Compagnie des Containers Reservoirs, Paris, France.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of liquefied compressed gases. (modes 1, 2, 3)
9388-X	DOT-E 9388	Gulf Central Storage & Terminal Co., Tulsa, OK.	49 CFR 173.314(e)	To authorize use of DOT specification tank cars which have had the amount of liquefied gas loaded into the tank measured by a metering device. (mode 2)
9400-X	DOT-E 9400	Poly Processing Company, Inc., Monroe, LA.	49 CFR 173.114a(h)(3), 173.119, 173.125, 173.268, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F	To authorize manufacture, marketing and sale of non-DOT specification rotationally molded, spherical polyethylene portable tank enclosed in a steel skid unit, for shipment of corrosive liquids, flammable liquids or an oxidizer. (modes 1, 2, 3)
9519-X	DOT-E 9519	Transchem, Inc., South Bend, IN	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize an alternative non-DOT specification packaging for shipment of materials classed as corrosive material or flammable liquid or a material classed as oxidizer. (modes 1, 2)
9549-X	DOT-E 9549	Owen Oil Tools, Inc., Fort Worth, TX.	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing more than 350 grains, but not more than 600 grains of Class A, type 3 explosive, as Class C explosive, in DOT Specification 12H fiberboard box. (modes 1, 3, 4)
9558-X	DOT-E 9558	Day & Zimmermann, Inc., Parsons, KS.	49 CFR 173.56(a), 173.56(c)(1), 173.86(b).	To renew an exemption orginally issued on an emergency basis that provided for a one-time shipment of explosive projectiles, Class A explosives in specifically designed non-DOT specification packaging. (modes 1, 2)
9612-X	DOT-E 9612	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.288	To authorize transport of ethyl chloroformate and methyl chloroformate in DOT Specification 105A500W tank cars which have been restenciled DOT 105A100W. (mode 2)
9690-X	DOT-E 9690	Snyder Industries, Inc., Lincoln, NE	49 CFR 173.119, 176.340, 178.19, 178.253; Part 173, Subpart F.	To authorize cargo vessel as an additional mode of transportation and to approve combustible liquids as additional materials. (modes 1, 2, 3)
9704-X	DOT-E 9704	Western Atlas International (formerly Dresser), Houston, TX.	49 CFR 173.107, 175.3	Identification of an additional packaging. (modes 1, 3, 4, 5)
9761-X	DOT-E 9761	Systron Donner, Safety Systems Division, Concord, CA.	49 CFR 173.304(a)(1), 175.3, 178.47.	To authorize manufacture, marking and sale of non-DOT specification welded stainless steel cylinders patterned after DOT-4DS with exceptions, for transportation of nonflammable gases. (modes 1, 4, 5)
9770-X	DOT-E 9770	AMSPEC Chemical Corp., Gloucester City, NJ.	49 CFR 173.154(a)(2), 173.28(m), 178.118.	To authorize the round-trip shipment of sodium methylate, classed as flammable solid, in reusable DOT Specification 17H drums to an additional location in Newport, Delaware. (mode 1)
9785-P	DOT-E 9785	Independent Container Line Ltd., Richmond, VA.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785 (modes 1, 2, 3)
9851-X	DOT-E 9851	Northwest Airlines, Inc., St. Paul, MN.	49 CFR Parts 100-199	To authorize shipment of insulated dewars containing liquid nitrogen to be transported in the cabin of a passenger aircraft under special conditions. (mode 5)
9907-X	DOT-E 9907	General Defense Corp., York, PA	49 CFR 173.56(a),(c)(1)	To authorize transport of unfuzed explosive projectiles, Class A explosive, in non-DOT specification packagings. (modes 1, 2, 3)
9941-P	DOT-E 9941	McDonnell Douglas Astronautics Co., Huntington Beach, CA.	49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b).	To become a party to exemption 9941. (mode 1)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9825-N	DOT-E 9825	Sequoyah Fuels Corp., Oklahoma City, OK.	49 CFR 173.403(n)(4), 173.425(c)(2).	To authorize sludge to be classified as Low Specific Activity (LSA) at a specific activity greater than that normally allowed for liquids transported in the specification MC-312 cargo tank. (Mode 1.)
9840-N	DOT-E 9840	Kenai Air Alaska, Inc., Kenai, AK	49 CFR 172.101, 175.30	To authorize transport of hydrogen peroxide solution in DOT Specification 34 polyethylene (55-gallon drum) by cargo-aircraft only (a helicopter) between Nikiski, Alaska and Cook International, Tyonek, Alaska. (Mode 4.)
9858-N	DOT-E 9858	Fomo Products, Inc., Norton, OH	49 CFR 173.1200(a)(8)(ii)(2)	To authorize an alternative testing provision for DOT Specification 2Q containers as prepared for transportation. (Mode 1.)
9865-N	DOT-E 9865	Atlas Powder Co., Dallas, TX	49 CFR 173.65	To authorize transportation of an aqueous solution of a Class A explosive in a DOT Specification 17H drum with a DOT Specification 2S polyethylene liner in temperature controlled vans. (Mode 1.)
9867-N	DOT-E 9867	Olin Hunt Specialty Products, Inc., Seward, IL.	49 CFR 173.247(a)(1), 175.3	To authorize shipment of silicon tetrachloride and titanium tetrachloride, classed as corrosive materials, in a stainless steel ampule of 2.2 liter or less capacity inside a Military MS27684-21 metal removable head drums, and overpacked in a DOT Specification 19B wooden box. (Modes 1, 2, 4, 5.)
9872-N	DOT-E 9872	Sonoco Fibre Drum, Cheshire, England.	49 CFR 173.154, 173.156, 173.217, 173.365, 173.510, 175.3, 178.224-1.	To authorize manufacture, marking and sale of non-DOT specification fiber drums conforming to DOT Specification 21C fiber drums except that the top cover of lid is constructed of high density polyethylene, and secured to the side wall by a metal lever action closing ring. (Modes 1, 2, 3, 4.)
9886-N	DOT-E 9886	Clayton Mark Inc., Rogers, AR	49 CFR 173.306, Part 172, Subparts D, E.	To authorize Manufacture, marking and sale of non-DOT specification steel water pump system tank with an outside diameter not exceeding 28 inches and a precharge of compressed air or nitrogen not exceeding 42 psig. (Modes 1, 2, 3.)
9888-N	DOT-E 9888	Ford Motor Co., Dearborn, MI	49 CFR Parts 100-199	To authorize transport of an electric car containing a sodium-sulfur battery which is at its operating temperature (575-660 degrees Fahrenheit); authorizes shipment of electric cars containing depleted sodium-sulfur batteries. (Mode 1.)
9889-N	DOT-E 9889	Assmann Corp. of America, Garrett, IN.	49 CFR Part 173, Subparts D, E, F	To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, linear low density polyethylene portable tank enclosed within a protective steel cage for the shipment of corrosive liquids, flammable liquids, or an oxidizer. (Modes 1, 2.)
9891-N	DOT-E 9891	Sonoco Fibre Drum, Inc., Lombard, IL.	49 CFR 173.154, 173.156, 173.217, 173.365, 175.3, 178.224.	To authorize manufacture, marking and sale of non-DOT specification fibre drums of not over 115 pounds net weight, similar to DOT Specification 21C except that the top head is of molded polyethylene and secured to the sidewall by a lever locking ring. (Modes 1, 2, 3, 4)
9892-N	DOT-E 9892	Bergen Barrel & Drum Co., Kearney, NJ.	49 CFR 178.224, Part 173, Subparts E, F, H.	To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, medium density polyethylene drum, with removable head, for transportation of oxidizers, organic peroxides, flammable, corrosive and poison B solids. (Modes 1, 2, 3)
7235-	DOT-E 9894	Luxfer USA Limited, Riverside, CA	49 CFR 173.302(a)(1), 175.3	To authorize Manufacture, marking and sale of non-DOT specification fiber reinforced plastic (FRP) hoop wrapped (HW) cylinders, for transportation of nonflammable gases. (Modes 1, 2, 3, 4, 5.)
9923-N	DOT-E 9923	Chemical Handling Equipment Co., Toledo, OH.	49 CFR 173.119, 173.125, 173.266, 178.19, 178.253; Part 173, Subpart F.	To authorize Manufacture, mark and sale of a non-DOT specification rotationally molded, polyethylene portable tank enclosed in a steel frame, for shipment of corrosive materials, flammable liquids, or an oxidizer. (Modes 1, 2.)
9924-N	DOT-E 9924	U.S. Department of Energy, Washington, DC.	49 CFR 173.420(a)(4)	To authorize shipment of depleted uranium hexafluoride, low specific activity, classed as radioactive materials, in a DOT authorized packaging, Model 4BG, filled to 62% of its certified volumetric capacity. (Modes 1, 2.)
9954-N	DOT-E 9954	Cook Inlet Pipe Line Co., Dallas, TX	49 CFR 172.101(6)(b), 175.30	To authorize shipment of hydrogen peroxide solution (50% peroxide), classed as oxidizer, by air in DOT Specification 34 polyethylene drums. (Mode 4.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 4453-X	DOT-E 4453	Kentucky Powder Co., Lexington, KY.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 7052-X	DOT-E 7052	Technical Oil Tool Corp., Houston, TX.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, 4.)
EE 7991-X	DOT-E 7991	Burlington Northern Railroad Co., Ft. Worth, TX.	49 CFR Parts 100-177	To authorize transport of railway track torpedoes and fusees in flagging kits of specified construction. (Mode 1.)
EE 9855-X	DOT-E 9855	Korean Air Lines Co., Ltd. Los Angeles, CA.	49 CFR 172.101 Column 6(b), 175.30.	To authorize shipment of explosive projectiles, Class A explosives; and rocket motor and propellant explosive, solids, Class B explosive, which are forbidden for transportation by air or are in quantities greater than those prescribed for transportation. (Mode 4.)
EE 9961-N	DOT-E 9961	Brown Measurement Co., Inc., Kilgore, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of a non-DOT specification container described as mechanical displacement meter provers mounted on a truck chassis or trailer, for transportation of hydrocarbon products. (Mode 1.)
EE 9962-N	DOT-E 9962	Monsanto Chemical Co., St. Louis, MO.	49 CFR 171.2(a), 173.327, 177.801	To authorize transport of 10 one-pound compressed gas cylinders which possibly contain an unknown hazardous material. (Mode 1.)
EE 9963-N	DOT-E 9963	PLM Railcar Maintenance Co., San Francisco, CA.	49 CFR 173.314	To authorize shipments of liquefied petroleum gas in DOT Specification 105S300W tank cars which are equipped with thermal protection systems that have not yet been tested. (Mode 2.)
EE 9978-N	DOT-E 9978	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.101, 173.119(m), 173.304(a), 173.3a.	To authorize one-time shipment of certain hazardous materials in non-DOT specification steel seamless cylinders meeting Japanese standards. (Modes 1, 3.)
EE 9979-N	DOT-E 9979	U.S. Department of the Treasury, Seattle, WA.	49 CFR 172.101, 173.66, 173.86, 173.87, 175.3.	To authorize transport of several types of explosives by air which are not permitted for air shipment. (Modes 1, 4.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6556-X	Castle & Cooke, Inc., San Francisco, CA	49 CFR 173.132	To authorize use of a non-DOT specification single compartment portable tank, for transportation of a flammable liquid. (Modes 1, 3.)
8451-X	ICI Americas, Inc., Bryon, GA	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, 4.)
9379-X	Kaichem International Corp., Savannah, GA	49 CFR 172.301, 173.182(b)(6)(ii), 176.410(d).	To authorize shipment of ammonium nitrate fertilizer in collapsible polyethylene-lined, woven polypropylene bags having a capacity for approximately 2,000 pounds each. (Mode 3.)

Denials

8526-P Request by North Star Transport, Inc. St. Paul, MN to authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment denied May 31, 1988.

Issued in Washington, DC, on July 13, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-17119 Filed 7-28-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 25, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535-0050.

Form Number: PD 1003.

Type of Review: Extension.

Title: Power of Attorney by a Corporation or Unincorporated Association Authorizing Disposition of Registered Transferable Securities.

Description: Form PD 1003 is used as the request by an officer of a corporation or an official of an unincorporated association. The officer or official may use the form to lessen the paperwork necessary to appoint an attorney-in-fact to act as a caretaker, who may legally dispose of the corporation's Treasury securities.

Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 220.

Estimated Burden Hours Per Response: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 165 hours.

OMB Number: 1535-0060.

Form Number: PD 2488–1.
Type of Review: Extension.
Title: Certificate by Legal Representative(s) of Decedent's Estate During Administration, of Authority to Act and of Distribution Where Estate Holds No More Than $1,000 (face amount) United States Savings Bonds/Notes, Excluding Checks Representing Interest.
Description: Form PD 2448–1 is used to establish the authority of a legal representative to represent the decedent's estate if the face amount of securities is less than $1,000.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 30.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 8 hours.

OMB Number: 1535–0064.
Form Number: PD 1980.
Type of Review: Reinstatement.
Title: Description of United States Savings Bonds Series HH/H.
Description: Form PD 1980 is used by an owner of United States Savings Bonds to describe the owner's security holdings when applying for some type of relief or service by the Bureau of the Public Debt.
Respondents: Individuals of households.
Estimated Number of Respondents: 15,000.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Nancy Veret, (202) 376–3902, Bureau of the Public Debt, Room 445, 999 E Street, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 88–17096 Filed 7–28–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 25, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OBM for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Employment Availability Statement for Tax Technician (Tax Auditor)—GS–526–5/7/9.
Description: This form is designed to compile all the information needed for the IRS automated register system about tax technician (tax auditor) applicant that enables us to expedite the certification process. Information on Standard Form 171 is not sufficient for narrowing the systems selection and sorting process to appropriately meet the applicant's preference and needs. Also, it will enable us to serve our field offices (12) more efficiently by having a quick turnaround. This form's format is also designed for easy understanding and quick completion by the applicant, and for easy computer program input by the data transcriber.
Respondents: Individuals or households.
Estimated Number of Respondents: 6,000.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,500 hours.

OMB Number: 1545–0134.
Form Number: 1128.
Type of Review: Revision.
Title: Application for Change in Accounting Period.
Description: Form 1128 is needed in order to process taxpayers' requests to change their accounting period. All information requested is used to determine whether the application should be approved. Respondents are taxable and nontaxable entities including individuals, partnerships, corporations, estates, tax-exempt organizations and cooperatives.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 20,000.
Estimated Burden Hours Per Response: 1 hour and 22 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 35,257 hours.

OMB Number: 1545–0609.
Form Number: 1285C, 1285 (DO/SC) (C).
Type of Review: Extension.
Title: Problem Resolution Program; Follow-up Letter.
Description: After the taxpayer problem is resolved, follow-up letter comments are needed to evaluate individual case processing, monitor taxpayer satisfaction, and provide a form for taxpayer to comment or suggest improvements on the program. The 1285 Letters are used for these purposes.
Respondents: Individuals or households, Farms, Businesses or other for-profit.
Estimated Number of Respondents: 15,000.
Estimated Burden Hours Per Response:
Letter 1285 (DO/SC) (C): 12 minutes.
Letter 1285C: 12 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 3,000 hours.

OMB Number: 1545–1008.
Form Number: 8582.
Type of Review: Revision.
Title: Passive Activity Loss Limitations.
Description: Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. The worksheets 1 and 2 in the instructions are used to figure the amount to be entered on lines 1 and 2 of Form 8582 and worksheets 3 through 6 are used to allocate the losses allowed back to individual activities.
Respondents: Individuals or households, Farms, Businesses or other for-profit.
Estimated Number of Respondents: 15,000,000.
Estimated Burden Hours Per Response: 1 hour and 11 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 17,844,119 hours.

OMB Number: 1545–1034.
Form Number: 8582–CR.
Type of Review: Revision.
Title: Passive Activity Credit Limitations.
Description: Under section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income are not allowed. Form 8582–CR is used to figure the

passive activity credit allowed and the amount of credit to be reported on the tax return. Worksheets 1, 2, and 3 in the instructions are used to figure the amount to be entered on lines 1, 2, and 3 of Form 8582–CR and worksheets 4 through 7 are used to allocate the credits allowed back to the individual activities.

Respondents: Individuals or households, Farms, Businesses or other for-profit.

Estimated Number of Respondents: 1,000,000.

Estimated Burden Hours Per Response: 1 hour and 9 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,147,901 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–17097 Filed 7–28–88; 8:45 am]

BILLING CODE 4810–25–M

Fiscal Service

[Dept. Circ. 570, 1988 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Maine Bonding and Casualty Co.; Correction of Address

The business address for the above mentioned company was listed at 53 FR 25067 (July 1, 1988) as: P.O. Box 448, Portland, ME 04112. The company's business address is hereby corrected to: P.O. Box 4488, Portland, ME 04112.

Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1988 Revision, at the appropriate page to reflect this correction.

Questions concerning this correction notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, or by calling (202) 287–3921.

Dated: July 25, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88–17077 Filed 7–28–88; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 146
Friday, July 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53 Page 29721, July 25, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: Wednesday, July 27, 1988.

CHANGES: Agenda revised by deleting previous item 1 concerning staff participation in voluntary standards activities.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

July 26, 1988.

[FR Doc. 88–17191 Filed 7–27–88; 8:58 am]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:07 p.m. on Monday, July 25, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of director C.C. Hoe, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(4), (c)(6), (c)(8), (c)(g)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

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

Dated: July 26, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–17184 Filed 7–26–88; 5:11 pm]

BILLING CODE 671401–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, August 3, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Issues related to the Board's capital adequacy guidelines.
2. Proposals regarding the Board's 1988 budget.
3. Proposed amendments to Regulation C (Home Mortgage Disclosure) to implement the Home Mortgage Disclosure Act amendments that permanently extend the Act and expand its coverage. (Proposed earlier for public comment; Docket No. R–0635)
4. Any items carried forward from a previously announced meeting.

Note. This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: July 27, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–17243 Filed 7–27–88; 2:02 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.

TIME AND DATE: Approximately 12:00 noon, Wednesday, August 3, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 27, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–17244 Filed 7–27–88; 2:02 pm]

BILLING CODE 6210–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 27594 July 21, 1988).

STATUS: Closed/open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, July 18, 1988.

CHANGES IN THE MEETING: Deletions/additions.

The following item will not be considered at a closed meeting scheduled for Tuesday, July 26, 1988, at 2:30 p.m.

Formal order of investigation.

The following item will be considered at a closed meeting scheduled for Tuesday, July 26, 1988, at 2:30 p.m.

Institution of injunctive action.

The following item will be considered at a closed meeting scheduled for Thursday, July 28, 1988, following the 9:30 a.m. open meeting.

Institution of injunctive action.

The following item will not be considered at an open meeting scheduled for Thursday, July 28, 1988, at 9:30 a.m.

Consideration of whether to propose for public comment Rule 17 and amendments to Rule 2 and Form U–3A–2 under the Public Utility Holding Company Act of 1935. Rule 17

would specify the circumstances in which non-utility diversification by an intrastate public-utility holding company would not be deemed detrimental to the public interest or the interest of investors or consumers. Amended Rule 2 would provide that a claim of exemption under Rule 2 by an intrastate public-utility holding company, in order to be effective, would require the holding company to meet one of the safe harbor provisions of Rule 17, and amended Form U-3A-2 would require the company to furnish information supporting its ability to rely on one of the safe harbor provisions of Rule 17. For more information, please contact Sidney L. Cimmet at (202) 272-7430.

Commissioner Cox, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Martha Peterson at (202) 272-7502.

Jonathan G. Katz,

Secretary.

July 25, 1988.

[FR Doc. 88-17239 Filed 7-27-88; 12:48 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of August 1, 1988.

A closed meeting will be held on Tuesday, August 2, 1988, at 2:30 p.m.

The Commissioner, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 2, 1988, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement action.

Settlement of administrative proceedings of an enforcement action.

Settlement of injunction action.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272-3077.

Jonathan G. Katz,

Secretary.

July 26, 1988.

[FR Doc. 88-17238 Filed 7-27-88 12:48 pm]

BILLING CODE 8010-01-M

federal register

Friday
July 29, 1988

Part II

Environmental Protection Agency

40 CFR Part 350

Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 350

[FRL-3388-1]

Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information; and Trade Secret Disclosures to Health Professionals

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule publishes the procedures for claims of trade secrecy made by facilities reporting under sections 303(d)(2) and (d)(3), 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (Act), and for EPA's handling of such claims, for submission and handling of petitions requesting reviews of trade secrecy claims, and for disclosure to health professionals of information claimed as trade secret.

DATE: This rule is effective August 29, 1988.

ADDRESS: The record supporting this rulemaking is contained in the Superfund Docket located in Room LG-100 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Beverly D. Horn, Attorney-Advisor, Office of General Counsel, Contracts and Information Law Branch, LE-132G, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5460, or the Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202 (in Washington, DC and in Alaska at (202) 479-2449).

SUPPLEMENTARY INFORMATION: The contents of today's Preamble are listed in the following outline:

I. Introduction

A. Authority

EPA publishes this rule pursuant to sections 322, 323, and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (also known as Title III or the Act), of the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. 99-499. Section 322 provides the procedures for claiming trade secrecy and confidentiality for information submitted under sections 303 (d)(2) and (d)(3), 311, 312 and 313 of the Act. It also provides a process whereby members of the public can file petitions requesting the disclosure of chemical identities claimed as trade secret. Section 323 provides procedures for access to chemical identities, including those claimed as trade secret, by health professionals who need the information for diagnosis, treatment, or research.

B. Background of this Rulemaking

The Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, signed into law on October 17, 1986, amends and reauthorizes portions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.* Title III contains the Emergency Planning and Community Right-to-Know Act of 1986, which is itself a free-standing statute. It contains provisions requiring facilities to report to State and local authorities, and EPA, the presence, use and release of extremely hazardous substances (described in sections 302 and 304), and hazardous and toxic chemicals (described in sections 311, 312, and 313 respectively). For the reporting required in sections 303, 311, 312 and 313, a submitter may under certain circumstances claim the identity of the chemical reported as trade secret.

1. Section 303

Section 303 involves the formulation of comprehensive emergency response plans for extremely hazardous substances. These are any of the substances on a list published by EPA under section 302. The regulations implementing section 303 (and, because of their relationship, sections 302 and 304) were published on April 22, 1987, at 52 FR 13378, codified at 40 CFR Part 355. On December 17, 1987, the Agency deleted three of the substances from the Extremely Hazardous Substances List, and on February 25, 1988, the Agency deleted an additional 36. These deletions were published in rulemakings at 52 FR 48072 and 53 FR 5574, respectively.

Any facility where an extremely hazardous substance under section 302 is present in excess of the threshold quantity (as determined by EPA) must report to the State emergency response commission, established under section 301 of the Act. The local emergency planning committee (LEPC), also established under section 301 of the Act, will contact any facility that has identified itself in order to formulate a local emergency contingency plan. In this planning process, a facility is required to provide the local emergency planning committee with information the committee requests, except that the facility may withhold trade secret chemical identity from the committee. The facility must also inform the committee of any relevant changes which occur or are expected to occur which may affect the contingency plan. When informing the committee of these changes, the facility may also withhold trade secret chemical identity from the committee. Trade secret claims for chemical identities withheld from facility reports must be substantiated according to the requirements of this regulation.

2. Sections 311 and 312

Section 311 requires the owner or operator of facilities subject to the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act (25 U.S.C. 651 *et seq.* as amended, 52 FR 31852, August 24, 1987) to submit material safety data sheets (MSDS), or a list of the chemicals for which the facility is required to have an MSDS, to the local emergency planning committees, State emergency response commissions, and local fire departments. The facilities were required to submit the MSDS or alternative list by October 17, 1987, or three months after the facility is required to prepare or have an MSDS for a hazardous chemical under OSHA regulations, whichever is later. In addition, a revised MSDS or list must be submitted to the LEPC within three months following the discovery of significant new information concerning an aspect of a hazardous chemical for which an MSDS or list was previously submitted. Facilities in the non-manufacturing sector will be required to submit the MSDS or alternative list when the OSHA Hazard Communication Standard (HCS) is expanded to cover the nonmanufacturing sector. Any trade secret chemical identity may be withheld from the MSDS or list of chemicals, provided the submitter follows the trade secret claims procedures under the section 322 regulation.

Under section 312, owners and operators of facilities that must submit an MSDS under section 311 are also required to submit additional information on the hazardous chemicals present at the facility. Beginning March 1, 1988, and annually thereafter, the owner or operator of such a facility must submit an inventory form containing an estimate of the maximum amount of hazardous chemicals present at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals at the facility, and the location of these chemicals at the facility. Section 312(a) requires owners or operators of such facilities to submit the inventory form to the appropriate local emergency planning committee, State emergency response commission, and local fire department on or before March 1, 1988, (or March l of the first year after the facility first becomes subject to the OSHA MSDS requirements for a hazardous chemical) and annually thereafter on March 1. For the non-manufacturing sector, facilities are first required to submit an MSDS or alternative list when the HCS is expanded to cover the non-manufacturing sector; if the expansion becomes effective in 1988, the first Tier I or Tier II reports are required beginning March 1, 1989.

Section 312 specifies that there be two reporting "tiers" containing information on hazardous chemicals at the facility in different levels of detail. "Tier I," containing general information on the amount and location of hazardous chemicals by category, is submitted annually. "Tier II," containing more detailed information on individual chemicals, is submitted upon request by the State or local agencies. There will be no trade secrecy claims for Tier I reporting since no specific chemical identity is required to be given. However, submitters may withhold trade secret chemical identity from the Tier II form, and facilities should be prepared to submit their trade secret claims as appropriate, even if the Tier I report is initially submitted.

As noted above, the Department of Labor recently published a final HCS rulemaking at 52 FR 31852, on August 24, 1987, expanding coverage of the facilities required to maintain MSDSs. The number of facilities thereby subject to reporting under sections 311 and 312 will have expanded from 350,000 to over 4 million, when the expansion becomes effective.

The final rule for sections 311 and 312 was published on October 15, 1987 at 52 FR 38344, 40 CFR Part 370.

3. Section 313

Under section 313, a toxic chemical release inventory form (published by EPA) must be filed with a designated State agency and EPA. This form must be filed for any toxic chemical (on a list published by EPA) which is manufactured, processed or otherwise used in amounts exceeding the threshold quantity at a covered facility. The form also indicates the total annual releases of the chemical to the environment. A covered facility is any facility with 10 or more employees in Standard Industrial Classification (SIC) Codes 20–39. The rule for section 313 was published on February 16, 1988, at 53 FR 4500, 40 CFR Part 372. As with other sections of Title III, trade secret chemical identity may be withheld from the toxic chemical release inventory form.

4. Section 322

The section 322 regulations contain the procedures which a submitter must follow in order to file a trade secrecy claim. Trade secrecy claims are submitted to EPA only, by including with the appropriate 303, 311, 312 or 313 submittals, as explained below, both a sanitized and unsanitized trade secret substantiation form. The unsanitized version must contain the chemical identity claimed as trade secret, and the sanitized version is identical to the unsanitized version in all respects except that the trade secret chemical identity is deleted, and in its place a generic class or category to describe the chemical is included. This sanitized version is the one that is submitted to the State or local authorities, as appropriate.

Section 322(b) of Title III requires a submitter to substantiate its trade secrecy claim when submitting the filing containing the chemical identity claimed as trade secret. This up-front substantiation will consist of the answers to six questions which are intended to elicit sufficient factual support to indicate whether the claim will meet the criteria set forth in the statute for a claim of trade secrecy.

In order to fully answer the six questions in the substantiation, a submitter may need to include additional trade secret or other confidential information. The statute in section 322(f) allows submitters to designate as confidential any information in the substantiation entitled to protection under 18 U.S.C. 1905 (the Federal Trade Secrets Act). Claims of confidentiality in the substantiation are more expansive in scope than those allowed under the reporting requirements of the Act, and are limited solely to information necessary to substantiate the trade secrecy claim. A detailed explanation on how to make a trade secrecy claim for information in the substantiation is found under section II.G. of this Preamble.

The section 322 regulation also contains the procedures to be used by the public for requesting disclosure of chemical identity claimed as trade secret. (This public petition process does not cover requests for public disclosure of information claimed as trade secret in the substantiation other than chemical identity. These requests for disclosure must be submitted under EPA's Freedom of Information Act regulations at 40 CFR Part 2.) The section 322 regulation also sets forth procedures the Agency must follow in making a determination as to whether any trade secrecy claim is valid. These determinations will be made by the program designated to receive and handle trade secrecy claims for that particular reporting section in Title III. The Office of General Counsel will hear intra-agency appeals from the determinations of trade secrecy.

5. Section 323

The section 323 regulation contains provisions allowing health professionals to gain access to chemical identities, including those claimed as trade secret, in three different situations. The first situation is for non-emergency treatment and diagnosis of an exposed individual. Second, access is permitted for emergency diagnosis and treatment. Finally, health professionals employed by a local government may receive access to a trade secret chemical identity to conduct preventive research studies and to render medical treatment. In all situations but the medical emergency, the health professional must submit a written request and a statement of need, as well as a confidentiality agreement, to the facility holding the trade secret. The statement of need verifies that the health professional will be using the trade secret information only for the needs permitted in the statute, and the confidentiality agreement ensures that the health professional will not make any unauthorized disclosures of the trade secret. In the event of medical emergency, the health professional granted access to chemical identify claimed as trade secret may be required to execute a confidentiality agreement.

C. Summary of Public Participation

EPA issued a proposed rule for trade secrecy claims and for trade secret disclosures to health professionals, which was published in the **Federal Register** on October 15, 1987 (52 FR 38312). The proposed rule contained the form for the substantiation to accompany claims of trade secrecy and requirements for making claims of trade secrecy under the Act. After publication, EPA received over 40 written comments on the proposed rule. In addition, EPA held public meetings in Washington, DC, Chicago, IL, Boston, MA, Dallas, TX, and San Francisco, CA. Attendees at these meetings presented oral comments representative of a wide range of interests including the affected industry, environmental and other public interest groups, State and local governments, and individual citizens. These comments are part of the official record of this rulemaking

II. Trade Secrecy Claim Procedure

A. Definition of Trade Secret

1. Overview of Trade Secrecy Claims

The Emergency Planning and Community Right-to-Know Act of 1986 does not give facilities blanket authority to withhold any information they consider sensitive or confidential. The purpose of the Act is to provide information to the public, and the statute limits the types of information that may be withheld as well as the circumstances in which a claim of trade secrecy can be made.

Regardless of the basis for a trade secret (e.g., a chemical's presence at a facility, its use for a particular process, or its production in a certain quantity), the only information that a facility may withhold from an Act's report (other than location information, as explained below) is the specific chemical identity. When a facility makes a claim of trade secrecy, it must provide all of the information normally required to be reported with the sole exception of the specific identity of the chemical being claimed as trade secret.

Submitters of trade secrecy claims must distinguish two concepts: (1) What may be withheld; and (2) the basis for withholding information. As noted, the only information that may be withheld from a public report is the *identity* of a chemical found at a facility.

The basis, or reasons, for considering a chemical identity as a trade secret can vary. In most instances, the presence of the chemical at a facility is the basis for a chemical being a trade secret. However, in certain instances facilities may believe the connection between the chemical identity and other information that must be included on the Act's reports, such as quantity or process information, may also be a basis for a claim of trade secrecy. For example, a facility may believe that its estimate of the maximum amount of chemical X on site on its toxic chemical reporting form under section 313 is a trade secret, even though public knowledge of its use of chemical X is not. In such a case, the connection or as it is sometimes termed, the linkage, of the chemical identity with the quantity information is the basis for the facility's trade secrecy claim. However, the facility may only withhold the chemical identity (i.e., chemical X in this example); the quantity on site must still be reported. As Congress provided, public reports would not disclose the specific chemical, although a generic name for chemical X must be provided as a substitute, as well as data on its hazardous characteristics and adverse health effects. Hence, what can be withheld is only the chemical identity, but facilities may base their trade secrecy claims on the connection between the chemical identity and a broader set of information required on the Act's reports.

This discussion, so far, has dealt with trade secrecy claims for chemical identity on the reports required under the Act. This is the class of trade secret claims addressed by the rule. However, two other classes of confidential information are also involved under the Act, and rules for treatment of these are different.

First, when facilities explain why a chemical is a trade secret, it is recognized that they may need to cite other confidential information (such as process or financial data) in their substantiations. The statute and the rule allow facilities to make claims of confidentiality, explained below, for information they provide on their substantiations accompanying claims. Second, location information required under section 312 is considered a separate class of confidential information, and is provided only to State and local recipient(s). Section 312 location information should not be sent to EPA. The statute does not require facilities to justify the confidentiality of either of these two types of information under section 322. Under section 324, copies of the publicly available substantiations for trade secrecy claims are accessible during normal business hours through the designated State and local authorities, and through EPA, as appropriate. These substantiations are also accessible under the Freedom of Information Act, as discussed at section V.C. of this Preamble.

2. Rationale

The definition of a trade secret in this regulation is equivalent to that in the Restatement of Torts, section 757, and the regulation developed by the Occupational Safety and Health Administration to implement its Hazard Communication Standard, 52 FR 31876 (August 24, 1987), 29 CFR 1910.1200. The OSHA Hazard Communication Standard requires disclosure of the specific chemical identity of chemicals to which employees are exposed in the workplace, except in those cases in which the identity of the chemical in question can be justified by a facility to be a bona fide trade secret. The U.S. Court of Appeals ruling in *United Steelworkers of America v. Auchter*, 763 F.2d 728 (3d Cir. 1985), required that OSHA amend its Hazard Communication Standard to adopt a definition of trade secret that conformed to common law protections. OSHA selected the generally accepted definition provided in the Restatement of Torts, section 757, Comment b (1939), which reads: " 'trade secret' may consist of any formula, pattern, device, or compilation of information which is used in one's business, and which gives [the employer] an opportunity to obtain

an advantage over competitors who do not know or use it."

The Emergency Planning and Community Right-to-Know Act of 1986 only allows trade secrecy claims for a subset of the material which is traditionally covered under trade secrecy law. Section 322(a) specifically states that submitters under Title III may withhold only the "specific chemical identity (including the chemical name and other specific identification)" as a trade secret. The "specific chemical identity" means either the chemical name or other specific identification that reveals the precise chemical designation of the substance, such as the Chemical Abstract Services Registry Number (CASRN).

In the proposed rule, EPA set forth several options for determining the permissible basis for claims of trade secrecy for specific chemical identity. The most narrow interpretation of the statute would be to limit all claims of trade secrecy to claims protecting either the composition of the chemical, or the presence of the chemical at the facility. Congress stated in the Conference Report that, "the knowledge of [the] presence [of a specific chemical] at the purchasing facility could effectively define for its competitors the process and/or products being made there." H.R. Conf. Rep. No. 99-962, 99th Cong., 2d Sess. 304 (1986).

The second option set forth in the proposed rule was to allow, as a basis for a claim of trade secrecy for chemical identity, that the connection, or "linkage" between chemical identity and other information on the Title III form would reveal the trade secret. Throughout the Conference Report Congress displayed general concern for the protection of all legitimate trade secrets. For instance, in discussing the reporting requirements under section 313, it was noted, "[t]he conference substitute provides for reporting categories of use and ranges of chemical present because the exact [identity] of identified chemical[s] at a facility or the exact amount present may disclose secret processes." *Id.* at 298. Similarly, in discussing the reporting requirements under section 312, Congress stated, "[i]n order to protect chemical process trade secret information, reporting ranges may need to be broad." *Id.* at 290. Congress probably anticipated that it would be possible for the Act's reporting forms to be structured broadly enough to avoid compromising legitimate trade secrets. In the proposed rule, the Agency stated that it was making every effort to do this. EPA believed that even with the use of broad ranges and reporting categories, however, the amount of detail requested on the Act's forms would in some cases allow competitors of submitters to compare and thus to link information, thereby revealing valuable trade secrets.

EPA's proposed interpretation of the basis for a claim of trade secrecy for chemical identity was supported by several comments from industry voicing concurrence with Congressional intent to provide trade secret protection to trade secret information about use, processing, and handling which might be linked to corresponding chemical identities reported under sections 311, 312, or 313. Industry commenters referred to the definition of trade secret put forth in the Restatement of Torts to assert that the Agency's linkage concept is firmly rooted in traditional trade secret law, where trade secrecy of chemical identity occurs because of links between that chemical identity and other data. Consequently, some commenters suggested that denial by the Agency of trade secret protection to linked information, and its disclosure to the public, would constitute a taking under the Takings clause of the Fifth Amendment, even though the specific identities of component chemicals might be well known to the public.

EPA also received some comments from public interest groups which disagreed with this interpretation. They argued that trade secrecy claims should be restricted solely to claims for the presence or chemical composition of the chemicals present at a facility, and not allowed for any linkages between chemical identity and other data. These comments claimed that the four criteria listed under section 322(b) apply only to trade secrecy claims for specific chemical identities, and reflect Congressional intent to maximize the availability of information to the public. One group asserted that trade secret regulations intended to protect claims for linkage "will encourage the filing of excessive claims of trade secrecy, as well as claims that cannot be substantiated in accordance with section 322(b)" of the statute.

After carefully considering the comments, the OSHA HCS, the Conference Report, and trade secret case law, EPA has decided to allow trade secrecy claims for chemical identity to be made to protect the linkage between a specific chemical identity and other information about its use, production, storage, or processing. Such claims will be permitted even in cases when the specific chemical identity is already known to the public; however, the submitter will always have to prove that its trade secret meets the four criteria under section 322(b) by submitting the up-front substantiation described in section II.G. of this Preamble. In all trade secrecy claims the specific identities of chemicals present at the facility are the only reporting information that may be withheld, in accordance with the statute; all other information requested on the Act's forms must be reported.

Generally accepted trade secret law found under the Restatement of Torts and the OSHA Hazard Communication Standard supports protection of linkage information. According to these precedents, confidential information does not necessarily depend on public knowledge of one component of a production process; rather, it is often the means by which components are combined and used which renders the information a protectable trade secret.

The Agency believes that this interpretation of the basis for a claim of trade secrecy will not involve great numbers of additional claims beyond those that could also be based on the narrower concept of simple presence at a facility. Submitters of trade secrecy claims for linkage information will still have to meet the same four criteria in section 322(b) which all trade secrecy claims must meet.

EPA also believes that this interpretation does not run counter to the purpose of the Act—that of public disclosure—because the requirement of an up-front substantiation, which will cause submitters to justify their claims, will limit spurious claims. Further, EPA's intention is to routinely evaluate trade secrecy claims and to vigorously prosecute those submitting frivolous claims. The $25,000 penalty per frivolous claim under such circumstances is evidence of Congress intent to deter such claims. All submitters should be aware that supplemental information submitted to EPA after the initial substantiation should clearly confirm the validity of their claim as set out in the initial substantiation, or they may be subject to the penalty for frivolous claims.

3. Emission and Effluent Data

The Natural Resources Defense Counsel, Citizens for a Better Environment, and OMB Watch have argued in their comments that EPA cannot allow claims of trade secrecy for data collected on the section 313 toxic release inventory form because this data is emission or effluent data that is required to be made public by the Clean Air Act and the Clean Water Act.

Section 322(b) of Title III requires that a trade secrecy claimant demonstrate, when making a trade secrecy claim, that the chemical identity claimed as trade secret "is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law." The commenters claimed that under section 114(c) of the Clean Air Act and section 308(b) of the Clean Water Act, emission and effluent data, respectively, are required to be made public and, therefore, when collected under Title III must be made public. Section 114(c) of the Clean Air Act requires that:

> Any records, reports, or information obtained under [the Clean Air Act] shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (*other than emission data*) to which the Administrator has access under this section, would divulge methods or processes entitled to protection as trade secrets * * * the Administrator shall consider such record * * * confidential. (Emphasis added.)

Section 308(b) of the Clean Water Act has a similar provision excepting effluent data from confidential treatment.

Information which has been determined administratively (by EPA) or judicially (by a court on appeal from an EPA determination) to constitute emission or effluent data within the meaning of section 114(c) of the Clean Air Act, or section 308(b) of the Clean Water Act is clearly required to be disclosed to the public and could not be withheld from disclosure under section 322(b). Thus, a company could not claim as trade secret under Title III information which is part of a class of information for which EPA has, by regulation or otherwise, prohibited a claim of business confidentiality, such as information required in National Pollutant Discharge Elimination System (NPDES) permit applications. 40 CFR section 122.7(c). Also, a company could not claim as trade secret under Title III data already collected by EPA under another statute, such as the Clean Air or Clean Water Acts, where the Agency had decided that the data presented no valid claim of trade secrecy, either because it was emission or effluent data or for other reasons, such as, that no valid trade secrecy claim was presented.

The question posed by the comments concerns the exact meaning of the prior disclosure language—does this language concern only the circumstances described above, where EPA has determined, either generically or specifically, whether the information is eligible for trade secret status, or does it also concern circumstances where the information's trade secret status is undetermined. The commenters argued that information which EPA could obtain, but has not requested, under the Clean Air or Clean Water Acts and which could constitute emission or effluent data, cannot be claimed as trade secret on the section 313 form or in other Title III submissions.

The comments also raised the same question regarding information in EPA's possession which could constitute emission or effluent data but as to which no determination has been made. The commenters argued that this information also cannot be claimed as trade secret if later submitted under Title III. In so arguing, the commenters assumed that the definitions of emission and effluent data are self-executing and therefore that no trade secrecy claims should even be accepted by EPA for information which could be emission or effluent data.

There is no discussion of this issue in the Conference Report or elsewhere; however, EPA's position is that the most probable interpretation is that Congress intended to prevent trade secret claimants from claiming as secret information which was already in the possession of a State or Federal agency and was required to be disclosed, either because no claim of confidentiality was permitted under State or Federal law, or because a decision had been made that no valid claim was presented.

The comments did not address the threshold issue of the definition of emission or effluent data, merely asserting that EPA's definitions are "self-executing." EPA does not consider this definition to be self-executing. The definition of emission data provides:

> (2)(i) "Emission data" means, with reference to any source of emission of any substance into the air—
>
> (A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;
>
> (B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and
>
> (C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

40 CFR 2.301(a)(2)(i) (A), (B), and (C).

Whether information constitutes emission or effluent data depends on what information is "necessary" to make the needed determination. EPA has to date made no determinations that categories of information always constitute emissions data. Instead, EPA has proceeded on a case-by-case basis.

The regulations interpreting the Clean Water Act contain a similar definition for effluent data, information "necessary to determine the identity * * * or other characteristics * * * of any pollutant which has been discharged by the source * * *" 40 CFR 2.302(a)(2)(i). The NPDES regulations under the Clean Water Act (CWA) do not, however, allow confidential treatment of information required by, or contained in NPDES permits or permit applications, or of data concerning the discharge of pollutants regulated in the permit, and accordingly, that data is not allowed trade secrecy treatment under section 313. Submitters claiming this information as confidential may be subject to penalties under section 325(d) for submission of frivolous claims.

Submitters should be aware that data submitted on the section 313 form will be used for activities conducted under the Clean Water Act (including implementation of section 304(1) of the Clean Water Act and development of NPDES permit limits) and Clean Air Act. EPA is in the process of developing a class determination under 40 CFR 2.207 which would find that information, including chemical identities, submitted on the section 313 form regarding releases to air or to waters of the United States or to Publicly Owned Treatment Works, is emission or effluent data under the Clean Air or Clean Water Acts and, as such, is not eligible for confidential treatment under section 322 of Title III.

The commenters also argued that the definition of emission and effluent data includes not only data which was actually collected under section 114(c) and 308(b), but data which "could have been" collected under these sections, citing 40 CFR 2.301(b)(2) and 2.302(b)(2). Thus, the commenters argued that any data which *could* be gathered under the Clean Air Act cannot be claimed trade secret when submitted to the Agency under section 313.

The Clean Air Act regulations at 40 CFR 2.301(b)(2) state:

> Information will be considered to have been provided or obtained under section 114 of the Clean Air Act if it was provided in response to a request by EPA made for any of the purposes stated in section 114, or if its submission *could have been required* under

section 114, regardless of whether section 114 was cited as the authority for any request for the information * * * (Emphasis added.)

The comparable section of the Clean Water Act regulations has a similar provision. See 40 CFR 2.302(b)(2).

On this basis, the commenters argued that because the data collected under section 313 of Title III is emission or effluent data which could have been collected under section 114(c) of the Clean Air Act or section 308(b) of the Clean Water Act, no trade secrecy claims can be made for chemical identities of chemicals for which emission or effluent data is included on a Title III submission.

The commenters have misconstrued the meaning and function of the "could have been" language. It serves to prevent submitters from thwarting EPA's statutory right to obtain data by voluntarily submitting it to the Agency for the use of the Clean Air or Clean Water programs, and then arguing, as voluntarily submitted, that it is not subject to statutory limits on trade secret or confidential business information.

For these reasons, EPA does not agree with the commenters, assertions that the provisions of the Clean Air and Clean Water Acts render most trade secrecy claims invalid under section 313. The final rule adopts the interpretation set forth in the proposed rule with respect to the meaning of the language under section 322(b), regarding whether information claimed as trade secret is required to be disclosed under another State or federal law. Thus, information is required to be disclosed under another Federal or State law if:

(i) It is information that is specifically or is in a class that is determined administratively (by EPA) or judicially (by a court on appeal from an EPA determination) to constitute emission or effluent data within the meaning of section 114(c) of the Clean Air Act or section 308(b) of the Clean Water Act; or

(ii) It is information which is either specifically or in a class for which EPA or any other State or Federal Agency has disallowed confidential treatment, such as information required by EPA in NPDES permit applications; or

(iii) It is information collected by EPA or another State or Federal Agency where the State or Federal Agency has decided that the data presented no valid claim of trade secrecy (for any reason).

B. Methods of Claiming Trade Secrecy

There are five different types of submissions that can be made under Title III on which a facility may make a claim of trade secrecy. These are: (1) The notification (to a local emergency planning committee) of any changes at a facility which would affect emergency plans, under section 303(d)(2); (2) answers to questicns posed by local emergency planning committees under section 303(d)(3); (3) material safety data sheets or chemical lists submitted under section 311; (4) Tier II emergency and hazardous chemical inventory forms submitted under section 312; and (5) the toxic release inventory form submitted under section 313.

1. Basic Requirements

The basic requirements for making a claim are similar, although there are some differences between submissions under the different sections. These differences will not affect the validity of a submitter's claim, provided the submitter adheres to all of the requirements.

When fashioning reporting requirements under Title III, EPA has made every effort to avoid unnecessary duplication. To this end, when reporting under section 303 (d)(2) and (d)(3), and under section 311 using an MSDS, EPA only needs to receive a copy of the submittal sent to the State and local authorities. This submittal is a public document, and should not contain the specific chemical identity claimed as trade secret. EPA is not requesting an unsanitized version of this submittal.

When reporting under section 311 using the list approach, and for all section 312 Tier II forms, and section 313 reports, EPA must receive at the same time both an unsanitized and a sanitized version of the reporting form. A sanitized copy of the reporting form is one in which the chemical identity claimed as trade secret is deleted and in its place is included the generic class or category of the chemical claimed trade secret. This sanitized copy should be identical to the copy submitted to the appropriate State and local organizations in all respects except that it does not contain the chemical identity.

Finally, EPA must receive substantiations for each chemical claimed as trade secret under all reporting sections, as explained in section II.G. below. EPA must receive both sanitized and unsanitized versions of the substantiation. Although these items are the minimum required for a claim of trade secrecy under all sections, EPA suggests that submitters carefully review the requirements under each section before filing a trade secrecy claim.

In this rule, the term "sanitized" is used to refer to the copy of the report or substantiation which does not contain the chemical identity of the chemical that is being withheld as trade secret. The term "unsanitized" refers to a report or substantiation that contains the trade secret chemical identity. EPA received some comments from the public objecting to the use of these terms on the grounds that an "unsanitized" item is sometimes regarded as "unclean." EPA has decided to retain these terms because they are terms of art often used to indicate whether or not these documents contain information that may be released to the general public; their continued use helps to clarify the terms of the rule.

EPA received some questions as to whether a trade secret claim must be made at the same time the Title III submittal is submitted. Section 322 requires a submitter making a claim of trade secrecy to include in the submittal an explanation of why the information is claimed to be a trade secret. This clearly requires that the substantiation must be filed concurrently with the submittal.

To facilitate accurate processing and filing of these confidential documents, submitters of claims to EPA should arrange the parts of each claim in the following order: (1) The unsanitized trade secret substantiation, (2) the sanitized trade secret substantiation, (3) the unsanitized reporting document (not applicable to section 303 reports and section 311 MSDSs, as explained below), and (4) the sanitized reporting document. Each substantiation and reporting document should be individually stapled but the Agency requests that the individual parts for each claim be assembled into a single package using only a binder clip or rubber band. Do not staple the individual parts together.

When facilities submit trade secrecy claims for more than one chemical, EPA requests that the three or four parts associated with each chemical be assembled as a set and each set for different chemicals be kept separate within the package sent to EPA.

2. Users of Trade Name Products

Reports and claims regarding mixtures and trade name chemical products raise a number of special issues. Public comments were received on a number of points that EPA clarifies below.

Public comments indicated some users are concerned as to their responsibilities in cases where they do not know the chemical identity of mixtures and trade name products. Commenters were concerned about whether they had to submit a trade secrecy claim if they did not know the specific chemical identity of the product they use, even though they do not consider that the fact that they use the product is a trade secret. EPA does not require a trade secrecy claim if the user does not consider its

use of the product as a trade secret. For example, if a user does not know the specific chemical identity of a chemical and must provide a common name or trade name on the Title III submittal, EPA does not require a claim of trade secrecy for the omitted chemical identity because this identity, being unknown to the user, cannot be provided in such an instance. This issue is also discussed in the section 313 final rule addressing supplier notification. See 53 FR 4500.

If the submitter considers its use of the trade name chemical as a trade secret, it may file a trade secrecy claim according to the usual procedures set forth in this rule. The user will be allowed to file for trade secrecy treating the trade name as the chemical identity and filling out those parts of the Title III submittal sent to EPA that it can supply without knowing the specific chemical identity. The user must still file a complete substantiation. When making trade secrecy claims for trade name products, some commenters indicated that portions of the substantiation questions would not apply to their trade secrecy claim, however. If so, EPA requires that the user making a trade secrecy claim for its use of a trade name chemical must answer each question by explaining why it believes the question to be inapplicable.

EPA does *not* extend permission to file trade secret claims for common or trade names to users that know the specific chemical names of the chemical to be reported and consider that chemical use to be a trade secret. If users know the chemical names of substances they use and wish to file a trade secrecy claim, they must make the claim in terms of the chemical names of the substances. On the other hand, downstream chemical users and chemical licensees who happen to know the chemical identity of the trade name chemical are not required to submit claims of trade secrecy based solely on their knowledge of the specific chemical identity since this requirement would entirely duplicate the trade secrecy claim of the original chemical manufacturer and serve no purpose.

In the rulemaking process, EPA considered more extensive requirements on users making trade secrecy claims for their uses of trade name chemicals. One approach would have required suppliers to inform EPA of the chemical identity and complete the substantiation questions for the users who wished to make a trade secrecy claim. Another option considered was the "best efforts" approach based on the proposed section 313 rule (52 FR 21151, 21155), which would have required the user to make multiple attempts to obtain the chemical identity from the supplier, including offering to enter into a confidentiality agreement with the supplier.

In some cases, it may be especially difficult for facilities to acquire from their suppliers the identity of chemicals claimed trade secret by their supplier. Users of chemicals may encounter instances where the supplier does not have the same interest in providing information to them or in protecting the confidentiality of their trade secrets. Suppliers may, in some instances, sell to competitors from whom a facility wishes to keep chemical identities or applications a trade secret. EPA decided on the more pragmatic approach of allowing users of trade secret chemicals who wished to make a trade secrecy claim for their use of the trade name chemical to file claims based on their current knowledge, rather than having to rely upon obtaining cooperation from suppliers.

3. Licensees

One commenter stated that the rule does not address trade secret protection in the context of licensing arrangements that include private confidentiality agreements between suppliers and users. The commenter asserted that in these instances, a facility that is licensed to produce or otherwise use a trade secret chemical may have information about that chemical, including its chemical identity. At the same time, neither the chemical identity nor the use of the chemical is the trade secret of the licensee, and the licensee may not be able to justify it as such. As a response to this circumstance, the commenter suggested that the rule provide for a blanket trade secret substantiation by the licensor with a letter submission by the licensee referring back to the licensor's substantiation or explanation submission.

EPA requires in the above situation that users who are licensees of trade secret chemicals and who wish to make a trade secrecy claim for their own use of the chemical, file a claim of trade secrecy. If possible, these submitters should obtain the information necessary to complete the substantiation form, where relevant, from the supplier with whom they signed the confidentiality agreement, to the extent such information is needed to answer the questions on the form. If, upon review of the claim EPA requests supplemental information which the licensee does not have, the licensee will be required to contact the licensor who must contact EPA directly with the necessary information.

4. Addresses for Claims and Petitions

All trade secret claims and petitions requesting disclosure of identities claimed as trade secret should be sent to the following address:

U.S. Environmental Protection Agency, Emergency Planning and Community Right-to-Know Program, P.O. Box 70266, Washington, DC 20024–0266

Submitters may hand deliver their submittals to:

Title III Reporting Center, 470/490 L' Enfant Plaza East, SW., 7th Floor, Suite 7103, Washington, DC

C. Claims Under Sections 303(d)(2) and 303(d)(3)

Section 303 concerns the formulation of contingency plans by local emergency planning committees. Section 303(d)(2) states that owners or operators of facilities must promptly inform committees of any relevant changes occurring at the facilities as the changes occur or are expected to occur. Section 303(d)(3) states that owners or operators of facilities must promptly provide information to committees when committees request information from facilities necessary for the development and implementation of emergency plans.

A trade secrecy claim under section 303(d)(2) must include a copy of the notification of changes in the facility that was provided to the local committee. This notification may be in the form of a letter or other written communication. The document must include the name and address of the submitter. A trade secrecy claim under section 303(d)(3) must include a copy of the information requested by the local emergency planning committee and the information provided by the facility in response to the request. A letter or other written communication containing this information is sufficient. The document must include the name and address of the submitter.

In both of these submittals, where there is a need to refer to a specific chemical identity, the generic class or category of each chemical ("class" is synonymous with "category") claimed as trade secret should be used instead of the trade secret chemical identity. The generic class or category for chemicals subject to section 303 reporting is discussed below in this section.

EPA is taking the burden-reducing step of not requiring submitters to prepare an unsanitized version of this document for the reason that EPA will be receiving the claimed chemical identity on the unsanitized version of the substantiation form. For each chemical identity claimed as trade

secret in a section 303 report, a complete substantiation must be submitted to EPA. The substantiation will be discussed in greater detail in section II.G. below. Claims should be packaged as described in section II.B.1. of this preamble, and in instructions to the substantiation form.

Generic Class or Category

When a local emergency planning committee develops its contingency plan, identification of the specific chemicals that are present in its jurisdiction is vital to the development of the plan and is the first issue to be resolved in the initial preparation of the plan. As stated above, if a facility does not wish to reveal the specific chemical identity to the committee in the context of sections 303 (d)(2) and (d)(3), the section 303 submittal must include in the place of chemical identity, the generic class or category of the chemical claimed as trade secret. The purpose of the generic class or category is to provide a description of the chemical that is not as specific as the specific chemical identity. The generic class or category should provide the best description possible of the claimed chemical, as explained below.

The purpose of a contingency plan is to provide effective, expedient emergency response to aid response workers and community residents in the event of a chemical release. In order to prepare an effective contingency plan, the hazards involved with the specific chemicals such as explosivity or flammability and the adverse health effects associated with the release must be known. Only by knowing this information, can proper equipment and procedures be used to contain the release. If chemical identity is claimed as trade secret by a facility, such information can in many circumstances still be obtained through the determination of a generic class or category that reflects the information, as well as by other questions posed to the facility by the local emergency planning committee.

The proposed rule set forth for public comment three alternatives regarding the choice of generic class or category for Title III submittals under sections 303 (d)(2) and (d)(3). The alternatives all required negotiation because the Agency believed it would be impossible to devise a finite list of generic classes or categories that would incorporate the wide variety of safety factors that LEPCs and the general public may desire to know. These safety factors included chemical release hazards, adverse health effects information, distance of the affected community from the facility, level of sophistication of the first responder, and type of land use near the facility. Language in the proposed rule suggested that safety factors should be reflected in the generic class or category chosen.

The alternatives suggested in the proposed rule were:

(1) LEPCs and owners or operators would negotiate a suitable class or category, with no example list offered by the Agency;

(2) The sections 311–312 hazard categories would be provided as examples from which LEPCs and owners or operators could choose a class or category, or if they believed it to be necessary, the parties could choose another hazard-based class or category which better reflected the safety information described above;

(3) LEPCs and facilities would negotiate a class based on chemical structure.

The proposed rule on trade secrets did not discuss generic class or category determinations for section 313 submittals; another alternative was adopted by EPA in the final rule for section 313. The section 313 proposed rule stated that owners or operators should choose a generic class or category based on the preassigned class or category code for each chemical which was set out in the section 313 proposed rule. This process was changed in the section 313 final rule to allow reporting facilities to use any generic class or category that is structurally descriptive of the chemical claimed as trade secret. This change was made because of the possibility that trade secrecy could be compromised when the preassigned class or category was cross-referenced with one or more of the four adverse health effect categories provided for the section 313 chemicals in the Toxic Release Inventory database.

The comments received on the alternatives were divided. Some of the commenters wanted EPA to publish a finite list of classes or categories based on hazard categories alone, and allow facilities to choose the appropriate class or categories. Some commenters wanted facilities to choose a class based on chemical function or chemical structure without negotiation with LEPCs, State Emergency Response Commissions (SERCs), or fire departments. A few commenters supported the requirement of negotiation of generic class or category among the parties involved.

EPA has reevaluated the necessity for negotiation in choosing generic class or category and has decided to follow the process chosen for the section 313 final rule. Allowing owners or operators to choose classes on their own based on chemical structure is preferable to the options set forth in the proposed rule for several reasons. First, it will be simpler for industry, LEPCs, SERCs, and fire departments than requiring the time-consuming process of negotiation; second, negotiation of generic classes could also be technically burdensome to LEPCs; and third, this approach will provide greater consistency for choosing generic class or category under the various sections of the law.

Although owners or operators will be choosing generic classes or categories on their own, EPA is advising that classes be chosen following the guidelines of the Act's legislative history. The Conference Report directs that generic class or category be defined only as broadly as necessary to protect the specific chemical identity from disclosure, and it should at the same time reflect the thrust of the law to transmit chemical information to the public. Thus, EPA advises that classes be determined so that information on the specific chemical identity's release hazards and adverse health effects are included in the class or category. As an example of such a class, volatile aldehyde is a generic class that is functionally descriptive of the chemical acid aldehyde and provides information on the chemical's volatility.

D. Claims Under Section 311

As provided in the rule for sections 311–312, when reporting, a submitter of a section 311 report must submit either an MSDS for each hazardous chemical (above a threshold quantity), or a list of the hazardous chemicals with the chemical or common name of each hazardous chemical as provided on the MSDS.

Claims of Trade Secrecy for MSDSs

Submitters must send to EPA a copy of the MSDS, and an unsanitized and sanitized substantiation. An explanation of the substantiation is set forth in section II.G. below. Claims should be packaged as described in section II.B.1 of this preamble, and the instructions to the substantiation form.

EPA is not requiring submitters to provide an unsanitized version of the MSDS. The Agency received comments indicating that most facilities do not have "unsanitized" copies (i.e., copies indicating chemical identities) of MSDSs on file under the HCS where they have claimed chemical identity as trade secret. In such cases, facilities have on file only MSDSs that omit the chemical names of trade secret chemicals and instead contain a common name for the chemical. For a facility to supply an "unsanitized" MSDS—i.e., one containing the chemical identity of a

chemical claimed as trade secret—to EPA under the section 322 rule, as proposed, the facility would have had to modify an MSDS that did not previously indicate the chemical identity. One suggestion by commenters was to allow facilities to attach supplements of their own design indicating the chemical identities. EPA decided, however, that because the information on chemical identity will be provided to EPA in the unsanitized version of the substantiation form attached to the MSDS, a supplement or unsanitized MSDS is therefore unnecessary. Hence, EPA is taking the burden reducing step in the final rule of not requiring an unsanitized MSDS (though the requirements for unsanitized copies of sections 311 lists, 312 Tier II forms, and 313 forms remain unchanged from the proposed rule).

Three commenters stated that trade secrecy claims should not be necessary under section 322 in cases where a specific chemical identity has already been withheld as trade secret on an MSDS under OSHA's Hazard Communication Standard. Section 322(a) states that a person required to submit information under Title III may withhold from such submittal the specific chemical identity. When the specific chemical identity is claimed as trade secret under the HCS, the identity does not appear on the MSDS that the facility keeps on file under that standard. The commenters argued that because the identity is not present when these MSDSs are to be submitted under section 311, the submitters are not "withholding" chemical identity and thus a claim of trade secrecy under section 322 should not be required.

EPA disagrees with this argument for several reasons. First, if a manufacturer of a chemical were not required to file a trade secrecy claim under Title III because it had already treated the chemical as a trade secret under the HCS, the detailed, upfront substantiation provisions of section 322 would be circumvented. The HCS allows chemicals to be treated as trade secrets at the discretion of facilities, provided the facility can substantiate the secret if challenged. Congress was more strict in enacting Title III in this regard, requiring that the claim be substantiated at the time it is made.

Further, under the commenters' view, the public would be denied the means to petition for review of the trade secret claim because no claim would ever have been made, and no similar option for review by the general public exists under the HCS. Therefore, EPA requires that a claim of trade secrecy must be filed for section 311 MSDS submittals even when the chemical identity is previously withheld from the MSDS as trade secret under the OSHA HCS.

Reporting of mixtures on the MSDS is discussed below.

Claims of Trade Secrecy for the Section 311 List

The list option under section 311 is structured so that submitters may report either the chemical or common names of a chemical on the list. Submitters wishing to claim chemical identity as trade secret must submit to EPA an unsanitized version of the list which contains the chemical identity or identities which are being claimed. The submitter must also send a sanitized version of the list in which the chemical identity or identities are replaced with generic classes or categories. When more than one chemical is claimed as a trade secret, to avoid confusion the order of chemical names found on the unsanitized list must match the order of generic classes or categories found on the sanitized list. As with all other trade secrecy claims under Title III, submitters must also send to EPA a sanitized and unsanitized version of the substantiation. Claims should be packaged as described in section II.B.1 of this preamble and in the instructions to the substantiation form.

Since submitters have the option of reporting chemicals on the section 311 list by either chemical or common name, some submitters may believe that even with the use of the common name trade secret chemical identity will be revealed. In this instance submitters may want to make a claim of trade secrecy for the chemical identity. However, in other instances, as commenters noted, the use of the common name may sufficiently protect trade secret chemical identity, and the submitter may decide that no trade secrecy claim needs to be filed. LEPCs may later request the MSDSs for the chemicals on the list. If the submitter has made no trade secrecy claim for the chemical on the list, (because the use of the common name sufficiently protected trade secret chemical identity), but the specific chemical identity is withheld from the MSDS distributed to the LEPC, then the submitter must, at that time, file a trade secrecy claim with EPA regarding that MSDS.

Mixtures Reporting on the MSDS, Section 311 List, and Section 312 Tier II Form

For reporting mixtures under sections 311 and 312 (on MSDSs, lists, or Tier II forms) the submitter may provide the required information on each hazardous component in the mixture, or may provide the required information on the mixture as a whole.

If a mixture is reported as a whole by common name on the section 311 MSDS, section 311 list, or section 312 Tier II form, no trade secrecy claim needs to be filed with EPA if the submitter believes that common name sufficiently protects trade secrecy. However, if the common name or other identifier, e.g., CAS number, insufficiently protects trade secret chemical identity the submitter may file a trade secrecy claim. Claims are to be made in the manner specified for the MSDS, section 311 list or section 312 Tier II form, whichever is appropriate.

EPA received some comment on the question of whether trade secrecy claims need to be made for hazardous components of mixtures reported on the OSHA MSDS. Commenters indicated that EPA should consider instances where the specific chemical identities of hazardous components of mixtures would be claimed as trade secret on the OSHA MSDS. These commenters argued that although OSHA usually requires hazardous components to be listed on an MSDS when a mixture is reported as a whole, section 311 is silent regarding whether such hazardous components must be submitted. These commenters argued therefore, that no trade secrecy claim needed to be submitted to EPA for those hazardous components listed on the OSHA MSDS. EPA believes that since Congress authorized the reporting of mixtures as a whole under sections 311 and 312, and since health and safety data are provided for the mixtures on MSDSs, no trade secrecy claims need to be made for hazardous components when a mixture is reported as a whole.

Two commenters suggested that to reduce the paperwork burden on themselves and the Agency, EPA should allow trade secret claimants of mixtures to submit one claim rather than several claims in the situation where the same hazardous chemical is present in many different mixtures. This approach is permitted in section 311(a)(3) of the statute, which states that only one MSDS is required to be submitted for each component where the reporting is on the hazardous component(s) of the mixture, and not on the mixture itself.

Generic Class or Category

The procedures for determining generic class or category are outlined in the Generic Class or Category subsection of section II.C.

E. Claims Under Section 312

Section 312 requires the submission of emergency and hazardous chemical

inventory forms. Information filed on the Tier I emergency and hazardous chemical inventory form will not involve claims of trade secrecy since chemical identity is not requested on the form. Trade secrecy claims under section 312 may involve only Tier II inventory forms where the specific chemical identity or other specific identifier is reported.

Submitters are permitted to report Tier II chemicals by either chemical or common names. In some instances, as commenters noted, the use of the common name may sufficiently protect trade secret chemical identity, and the submitter may decide that no trade secrecy claim needs to be filed. However, some submitters may believe that even with the use of the common name trade secret chemical identity will be revealed. In this instance submitters may want to make a claim of trade secrecy for the chemical identity.

To make a trade secrecy claim on the Federal section 312 Tier II inventory form, the submitter must check the trade secret box which appears to the right of the space for chemical identity on the form. EPA must receive an unsanitized copy of the form, which will include the trade secret chemical identity. EPA must also receive a sanitized version of the form which must be a duplicate of the original except that the chemical identity will be deleted and in its place the generic class or category of that chemical will be inserted. The two copies should be attached by rubber band or binder clip (not stapled) to each other, the unsanitized form on top and the sanitized form on the bottom. When more than one chemical is claimed as a trade secret, to avoid confusion the order of chemical names found on the unsanitized Tier II form (the top page) must match the order of generic classes or categories found on the sanitized form. The sanitized Tier II form should be sent to the requesting State emergency response commission, local emergency planning committee, or fire department. In addition, a sanitized and unsanitized substantiation must be included for each chemical claimed as trade secret, as explained in section II.G. of this preamble. Claims should be packaged as described in section II.B.1 of this preamble and in the instructions to the substantiation form.

A few States have expressed an interest in using State-designed Tier II inventory forms rather than the Federal inventory form. Under § 370.41 of the final rule for sections 311 and 312, facilities will meet section 312 requirements if they submit the Federal form, an identical State form, or an identical State form with supplemental questions authorized under State law. If a submitter wishes to make a trade secrecy claim, however, it must use the Federal form as its section 312 Tier II submittal. EPA believes it cannot accept State forms for this purpose because State forms may contain additional information not required under this Federal law, some of which may be confidential, and EPA does not wish to accept extraneous confidential materials requiring confidential handling under State law. State forms that collect confidential information under State right-to-know laws are covered under State confidentiality laws.

Claims of confidentiality regarding the *location* of chemicals in facilities are not covered by Title III trade secret protection. The confidential location information should not be sent to EPA, but only to the requesting entity. This information will be kept confidential by that entity under section 312(d)(2)(F) which refers to section 324. Section 324(a) states that upon request by a facility owner or operator subject to the requirements of section 312, the State emergency response commission and the appropriate local emergency planning committee must withhold from disclosure the location of any specific chemical required by section 312(d)(2) to be contained in a Tier II inventory form. This process of confidential treatment of location information is separate from the process for treatment of trade secret information contained in the rule for section 322.

F. Claims Under Section 313

Trade secrecy claims under section 313 must include a copy of the toxic release inventory form. This form is published at 53 FR 4540. The submitter must check the box on the form indicating a trade secrecy claim and include a generic class or category. This generic class or category must be structurally descriptive of the chemical claimed as trade secret, as described in the Generic Class or Category subsection of section II.C. of this preamble.

EPA must also receive a sanitized copy of the toxic release inventory form which is identical to the original except that the chemical identity will be deleted, leaving the generic class or category. A substantiation for each claimed chemical identity must also be submitted, as described in section II.G. below. Claims should be packaged as described in section II.B.1 of this preamble and in the instructions to the substantiation form.

G. Initial Substantiation

Section 350.7 of the proposed rule required that all claims of trade secrecy must be substantiated by the claimant providing specific answers to seven questions set forth in the section. The answers to each of the questions posed, or an explanation as to why that question is not applicable, were to be provided on the substantiation form in § 350.27 and to accompany the submission. The questions posed in the rule (and the identical questions on the form) were based on the four statutory criteria in section 322(b) of Title III and are intended to elicit from a submitter all the information necessary to fulfill the statutory criteria.

The information submitted in response to these questions is the basis for EPA's initial determination as to whether the substantiation is sufficient according to the statutory criteria to support a claim of trade secrecy. Consequently, the role of the initial substantiation in the trade secret protection process as well as the specific language of individual questions asked under § 350.7(a) received considerable comment.

A description of the relationship between the rule and the statutory scheme is as follows. The first decision EPA must make after receiving a petition to disclose trade secret chemical identity or after initiating such a decision on its own concerns the sufficiency of the trade secret claim, that is, whether, assuming all assertions made in support of the claim are true, the assertions are sufficient to support a claim of trade secrecy for the chemical identity. EPA must make this determination of sufficiency based solely on the information which the trade secret claimant submits in the substantiation included with its Title III submission. See section 322(d)(2). It is only when a submitter's claim is deemed sufficient that it is entitled to "supplement the explanation with detailed information to support the assertions." See section 322(d)(3)(A). Then, EPA is to determine whether the "assertions in the explanation are true and the specific chemical identity is a trade secret." See section 322(d)(3)(B).

A major concern of several commenters was that the initial substantiation requirements were too detailed and burdensome, and that they undercut the statutory scheme noted above. Commenters argued that Congress clearly intended to establish a two-step process for substantiation of trade secrets, as expressed in section 322(d)(3)(A). The commenters asserted

that the proposed rule blurred the distinction between the two-step trade secret substantiation process by requiring the "detailed information" initially.

The commenters proposed several options to remedy their concerns. The commenters argued that claimants should be allowed to make assertions in the initial substantiation and that details supporting the assertion need only be supplied when a third party files a petition for disclosure. One commenter argued the foregoing point by stating that EPA should merely accept the assertion by a submitter that competitive harm will result if an alleged trade secret is made public—no up-front substantiation should be required for that particular assertion, and only upon challenge would a substantiation be required. The commenter felt that this option would assist a company in meeting filing deadlines because the time-consuming substantiation form would be delayed pending a challenge to the claim.

EPA has carefully considered the commenter's statements. One approach that was considered, though not adopted, was, instead of utilizing the proposed form, listing the four statutory requirements as set forth in the statute and requesting the submitter to verify that it believes it has met these requirements. The Agency chose not to adopt this method because of concerns that responses might not include the specific facts necessary for EPA to evaluate the sufficiency of a trade secret claim, as Congress required in the statute.

The Agency has concluded that while Congress did not intend the information collected up-front to consist solely of conclusory statements parroting the four criteria of trade secrecy set forth in the statute, neither was an overly detailed information collection intended, which could prove unduly burdensome. EPA has sought to strike a balance between these two extremes.

In striking this balance, the Agency has decided to make some changes in the rule as proposed (and discussed below), in order to lessen the amount of detail required in the up-front substantiation, so that the reporting burden is not so great. More specific additional details may still be requested as supplemental information.

The Agency has also revised § 350.7(a) (Substantiating claims of trade secrecy) and the substantiation form to state that a submitter must assert "where applicable" specific facts. This change is intended to reduce uncertainty as to when detail is required and to relieve claimants of the burden of having to certify as true speculative statements or negative conclusions, which commenters pointed out as a problem with some of the questions as proposed. EPA is concerned that adoption of this change might encourage claimants to not provide specific detail in many cases where their assertions require it; the change is not intended to relieve submitters of this responsibility.

The comments also raised issues concerning several of the individual questions or sub-parts to questions, proposed in § 350.7(a), and these are discussed individually below.

Question 1. The question as proposed read: "Describe the specific measures taken to safeguard the confidentiality of the chemical identity claimed as trade secret."

Two comments were received concerning the text of Question 1. These comments stated that the question requested information not required by the Act. However, the Agency disagrees since the statute in specific terms requires this information. Basic to the law of trade secrets is the requirement that the owner of a trade secret has taken steps to protect the secret from disclosure. Therefore, the question is a necessary and required first inquiry in determining whether trade secret protection is warranted for the specific chemical identity.

The Agency also received comments that proposed Question 1 did not request all the information specifically required by section 322(b) of the statute; that is, whether the submitter intends to continue taking measures to safeguard its trade secret information. The commenter also noted that this information was expected under the sufficiency criteria. (See discussion of sufficiency criteria below under section IV.C.) The Agency agrees with the commenter that such information is required, and has revised Question 1 accordingly.

Question 1 has been revised to read as follows: "Describe the specific measures you have taken to safeguard the confidentiality of the chemical identity claimed as trade secret, and indicate whether these measures will continue in the future."

Question 2. The question as proposed read: "Have you disclosed this chemical identity to any person not an employee of your company or of a local, State or Federal government entity, who has not signed a confidentiality agreement requiring them to refrain from disclosing the chemical identity to others?"

Section 350.7(a)(2) and Question 2 ask whether the submitter has disclosed the chemical identity to any person not a company or government employee who has not signed a confidentiality agreement. The one significant comment on the question noted that the proposed regulation specifies a signed confidentiality agreement, whereas, the statutory language upon which this Question is based requires persons claiming a trade secret to show that persons dealing with the alleged trade secret are "bound by a confidentiality agreement." The form of the agreement is not specified. The commenters cited State law, common law, and custom as establishing that unwritten trade secrecy agreements are enforceable.

EPA agrees with the commenters that Congress did not specify that the confidentiality agreement must be a written document. Indeed, the purpose of the question is to ascertain whether there exists a confidential relationship between a submitter and other parties that would prevent disclosure. The threshold test for a confidentiality agreement is whether it is legally enforceable. Although having a written agreement, as proposed, simplifies substantiation of the fact that the information was treated as a trade secret and steps were taken to secure its secrecy, EPA agrees that the requirement for a written agreement is not specified by Congress and the intent of the requirement can be met without a writing.

One minor comment was received which did not require any change in the rule. Several commenters cited to situations in which a trade secret is inadvertently disclosed; however, the company does not sustain an injury because the error is corrected before the trade secret falls into the hands of a competitor. They requested that Question 2 of the Proposed Form be expanded to allow for explanation of inadvertent or mistaken disclosures that were promptly corrected or retrieved before competitors became aware of the disclosure.

The Agency does not believe that any change in the form or question was necessary in response to this comment. The submitter must answer affirmatively to Question 2, but then should attach an explanation. EPA will consider the explanation in the context of all the other steps the submitter has taken to protect the trade secret.

EPA has deleted the reference to a "writing" in the final § 350.7(a)(2) and Question 2. The final Question 2 reads: "Have you disclosed the information claimed as trade secret to any other person (other than a member of a local emergency planning committee, officer or employee of the United States or a State or local government, or your

employee) who is not bound by a confidentiality agreement to refrain from disclosing this trade secret to others?" This formulation of the question avoids the double negative in the proposed question about which some commenters complained.

Question 3. The question as proposed read: "List all local, State, and Federal government entities to which you have disclosed the specific chemical identity. For each, indicate whether you asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim."

One commenter thought that the question did not address situations where information deemed "confidential" is often submitted to the government and the claim left unchallenged, without a determination of the claim's validity. The commenter stated that even if the claim is not expressly denied, it is possible that the confidentiality claim would be denied if eventually reviewed.

In this question, EPA is attempting to ascertain the submitter's efforts to protect its trade secret. The most important elements of this question are whether chemical identity was previously claimed as trade secret and whether the claim was ever denied. If the claim of trade secrecy was denied and the chemical identity therefore made public, the submitter would not be able to meet the statutory test for confidentiality. Therefore the Agency will not revise Question 3 to include the question of whether the submission was reviewed under the other authority.

Several commenters questioned whether an explanation should be permitted in instances where there is a qualified or partial grant of confidentiality by a government entity, or of where a prior determination does not affect the current claim. One commenter stated that Question 3 does not consider the potential situation of a qualified or partial grant of confidentiality by a government entity, since the question does not request an explanation in the event that a particular government entity has denied a trade secrecy claim. The commenter asserted that there may be circumstances in which a partial or total denial of the claim should not adversely affect the claim being made under Title III. A second commenter observed that the fact that the specific chemical identity of a chemical has been disclosed in some context in the past should not result in forfeiture of trade secret status if the disclosure was not tied to the specific Title III information that is at issue.

Another aspect to this issue is raised by a third commenter who alleged that Question 3 does not take into consideration the trade secret status of chemicals whose identity may have been disclosed to a government agency under circumstances where the confidential connection to the submitting firm remains undisclosed. Specifically, the commenter cites to the nonconfidential Toxic Substances Control Act (TSCA) inventory where specific chemical substances are reported without claims of confidentiality because the inventory is compiled in such a manner as not to link a chemical with a firm.

The Agency must collect information on whether the submitter has disclosed the information claimed as trade secret to a State, local or Federal agency, including previous disclosures to EPA under Title III or other statutes, and the steps the submitter took to protect this data. In doing so, the Agency is also attempting to discover whether there has been a public disclosure of the information. Submitters who believe it necessary to explain special circumstances may do so. The Agency also wishes to point out that it is sometimes possible to link specific chemical substances with the reporting firm under the non-confidential TSCA inventory. The submitter must have claimed the information reported as confidential to assure that there is no link under the inventory.

One commenter stated that if "disclosure" was defined too broadly it would negate the intent of the Community Right-to-Know aspect of Title III. A company might be reluctant to share information with an LEPC to avoid being held to have disclosed the trade secret. However, the commenter's discussion seemed to indicate that the information being provided to the LEPC would be health and safety data, not the specific chemical identity which constitutes the trade secret. Therefore, the situation described by the commenter would not constitute a disclosure of the trade secret, and the Agency has decided that no revision to the final rule is necessary to respond to this comment.

Question 4. Proposed § 350.7(a)(4) and Question 4 require trade secret claimants to substantiate the harm to their competitive position that would result from disclosure of the information claimed as trade secret. The proposed Question 4 provided:

(1) In order to show the validity of a trade secrecy claim, you must identify your specific use of the substance claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(a) Describe the specific use of the chemical substance, identifying the product or process in which it is used. (If you use the substance other than as a component of a product or in a manufacturing process, identify the activity where the substance is used.)

(b) Has your company or facility identity been linked to the specific chemical identity of the substance in publications or other information available to the public (of which you are aware)? ☐ Yes ☐ No. Is this linkage known to your competitors? ☐ Yes ☐ No. If the answer to either question is yes, explain why this knowledge does not eliminate the justification for trade secrecy.

(c) If this use of the substance is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the form.

(d) Explain why your use of the substance would be valuable information to your competitors.

Several commenters asserted that it is unreasonable for the Agency to require claimants to characterize their competitors' knowledge of the information claimed to be trade secret, as in Questions 4 (b) and (c). They argued that it is impossible to state what someone else knows, and that the inability to provide an accurate assessment of what competitors know should not endanger a trade secret claim. This requirement was also claimed to be inconsistent with the common law of trade secrecy, which does not require a trade secret claimant to show the knowledge, motivation, or capabilities of its competitors in order to avoid forfeiture of a trade secret. Moreover, commenters argued, a substantiation should not be determined insufficient on the basis that a competitor is aware of the claimant's use of a substance. As long as the information confers an advantage on the firms that do know it and it is treated as a secret by each of them, the information should qualify for trade secret status. Finally, one commenter went so far as to suggest that any reference to competitors' knowledge should be deleted altogether.

The problem of requiring claimants to assert facts concerning the knowledge of competitors is related to a more general complaint of commenters that the criteria of proposed § 350.7 tended to be phrased as "negative conclusions," and thus were difficult to prove. Commenters asserted that these provisions would place claimants in the untenable position of being required to certify the accuracy of statements that cannot be anything more than speculation.

Commenters are correct in stating that trade secrecy claimants should not be required to certify to the truth of

speculative statements. It is also true that more than one person can claim trade secrecy protection regarding the same information. Nevertheless, one of the factors that the Agency must consider in determining whether information is a trade secret is the *extent* to which the information is known outside of the claimant's business. Therefore, claimants should be required to address their competitors' knowledge if they know whether such knowledge exists.

Accordingly, the Agency has revised § 350.7(a)(4) and Question 4 to require claimants to characterize their competitors' knowledge of the information claimed as trade secret, to the extent that they know whether such knowledge exists.

One commenter also stated that the term "substance" is used for the first time in substantiation Question 4, is not defined, and therefore is ambiguous. The commenter suggested that EPA define the term or, preferably, replace it with a term that is already among the terms used in the rule. In order to conform Question 4 with terminology used throughout the rule, EPA has replaced the term "substance" with the phrase "chemical claimed as trade secret" in the final rule.

Several individual questions within Question 4 also received comment, and are discussed in order.

Question 4(a). This question asks the submitter to describe the specific use of the chemical substance, identifying the product or process in which it is used. One commenter suggested that EPA delete the term "specific" as it relates to the use or process of the chemical being described because no more than a general description is necessary here. The commenter also asked the Agency to clarify that a facility need only provide process or use information that is relevant to the claim being made, i.e., that the claim of trade secrecy may not relate solely to the use of the chemical, but may relate to other factors.

EPA disagrees with the commenter on the specificity of use information that is required. Such information is always relevant to a trade secrecy claim. Although information regarding use may not always be sufficient, standing alone, for the Agency to determine the validity of a trade secrecy claim, it is necessary information in the Agency's evaluation of the claim which should, together with other required information, enable the Agency to make the determinations required by Title III. Accordingly, EPA has retained the requirement for information regarding the specific use in the final rule, but has revised § 350.7(a)(4)(i) and Question 4(a) to substitute the term "chemical" for "substance" (as explained above).

Question 4(b). This question asks whether the company or facility identity has been linked to the specific chemical identity of the substance in publications or other information available to the public and whether this linkage is known to competitors. The one comment received suggested that the subquestion, "Is this linkage known to your competitors?", should be deleted, because the claimant cannot know the answer, making it speculative. Further, the commenter stated that even if the linkages were known by a competitor, this would not necessarily render the trade secret invalid.

As discussed above, EPA agrees that the knowledge of competitors may not be known. EPA has amended the final rule to reflect this change. In addition, EPA added a reference to patents in this question, which are a subset of publications. The discussion under Question 7 describes in detail the reasons why the requirements of the substantiation dealing with patents can be adequately addressed in the modified Question 4(b). Therefore, in the final rule, § 350.7(a)(4)(ii) and Question 4(b) have been revised to read as follows: "Has your company or facility identity been linked to the specific chemical identity claimed as trade secret in a patent, or in publications or other information sources available to the public or your competitors (of which you are aware)? If so, explain why this knowledge does not eliminate the justification for trade secrecy."

Question 4(c). The question asks the submitter to explain how competitors could deduce a trade secret use from disclosure of the chemical identity together with other information on the reporting form. One commenter stated that this question should be deleted as speculative. The commenter argued that if chemical identity as related to use could be deduced from other information on a Title III submission, there would hardly be reason for the claimant to incur the time and expense of submitting a trade secrecy claim. Another commenter argued that this question and Question 4(d) (discussed below) appear to be more appropriate for substantiating claims of *use* confidentiality than *chemical identity* confidentiality. The commenter argued that a competitor may be able to determine information on a generic basis sufficient to recognize the specific information it needs in order to learn the trade secret. The commenter stated that a company should be able to protect itself from future competitors as well as present ones.

The Agency is not persuaded by comments that Question 4(c) should be dropped from the substantiation that must be provided by each claimant. Regarding the supposed distinction between use confidentiality and chemical identity confidentiality, the two concepts are not mutually exclusive. Rather, information on the use of a chemical is necessary to determine the validity of a trade secrecy claim as to the identity of that chemical.

The final rule, however, contains a revision of § 350.7(a)(4)(iii) and Question 4(c) that substitutes "chemical claimed as trade secret" for the term "substance."

Question 4(d). The question requires the submitter to explain how his use of the substance would be valuable information to competitors. One commenter asked the Agency to clarify that submitters are not required to include a dollar estimate in their statement of "value," particularly since such an estimate would be speculative and, therefore, would not be certifiable as a "specific fact." Another commenter suggested that this question be revised to read, "Explain why the information for which chemical identity is being claimed trade secret would be valuable information to other business entities." This commenter stated that it is not only "competitors" but other business entities that could use trade secret information to the detriment of the claimant.

First, EPA does not intend for submitters to provide a dollar estimate as the sole measure of value in Question 4(d). Such a requirement would indeed put submitters in the position of certifying what could be highly speculative information. Reasonable dollar estimates may be worthwhile in the final determination, and may be requested as supplemental information. Second, the law of trade secrecy refers to "competitors," not "other business entities," as the universe of entities against whom trade secrecy protection applies.

The only change that has been made to § 350.7(a)(4) and Question 4(d) in the final rule has been the substitution of the term "chemical" for the term "substance."

The final version of question 4 reads: "In order to show the validity of a trade secrecy claim, you must identify your specific use of the chemical claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(i) Describe the specific use of the chemical claimed as trade secret, identifying the product or process in

which it is used. (If you use the chemical other than as a component of a product or in a manufacturing process, identify the activity where the chemical is used.)

(ii) Has your company or facility identity been linked to the specific chemical identity claimed as trade secret in a patent, or in publications or other information sources available to the public (of which you are aware)? If so, explain why this knowledge does not eliminate the justification for trade secrecy.

(iii) If this use of the chemical claimed as trade secret is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the Title III submittal form.

(iv) Explain why your use of the chemical claimed as trade secret would be valuable information to your competitors."

Question 5. The proposed Question 5 read: "Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, including an estimate of the potential loss of sales or profitability."

Two commenters stated that an estimate of the potential loss of sales or profitability should not be required. One of these commenters asked EPA to indicate in the Preamble to the final rule that detailed information need not be submitted in response to this question at the time of an initial submission. The commenter stated that this question would be time-consuming due to the amount and diverse sources of marketing and other data required to provide an accurate estimate.

A more detailed estimate of the potential loss of sales or profitability may be more appropriate as part of a supplemental substantiation (at which time EPA assesses the factual accuracy of the submitter's assertion). The purposes of an initial substantiation may be fulfilled by requiring a description of the nature of harm to competitive position that may result from trade secret disclosure, and an explanation of why such harm would be substantial. EPA agrees with these commenters, and has dropped the requirement to develop a loss of sales estimate as part of the initial substantiation.

One commenter requested that EPA recognize that trade secrets developed by "serendipity" are protectable under section 322 of Title III. The commenter noted that although the submitter may not have gone to any great expense to develop the trade secret, the secret nevertheless may be of great value to the submitter. This is consistent with the intent of the statute and the sufficiency criteria described in the final rule. The costs discussed in the rule relate to the cost to a competitor of replicating the information, not to the owner of the information in developing it originally. Although information will not be protectable as trade secret if it is readily available public knowledge, nothing will prevent the protection as trade secret information which the claimant has discovered with minimal effort by a stroke of good fortune.

Accordingly, EPA has revised § 350.7(a)(5) and Question 5 to read as follows: "Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, and indicate why such harm would be substantial."

Question 6. The proposed question 6 read: "To what extent is the substance available to the public or your competitors in products, articles, or environmental releases?

Describe the factors which influence the cost of determining the identity of the substance by chemical analysis of the product, article, or waste which contains the substance (e.g., whether the substance is in pure form or is mixed with other substances), and provide a rough estimate of that cost."

The issue of discovery of a chemical by reverse engineering arises in Question 6 of the substantiation form, § 350.7(a)(6), although the term "reverse engineering" is not mentioned in the question. This section of the substantiation is derived from the fourth statutory criterion (that chemical identity is not readily discoverable through reverse engineering) and the question requires answers that reflect on whether the trade secret claimed can be reverse engineered.

Most comments regarding reverse engineering focused on the difference between the proposed rule's use of the term "reasonably learn" as opposed to the statutory term "readily discoverable" as the appropriate standard of sufficiency for evaluating a chemical's susceptibility to discovery by reverse engineering. Commenters generally objected to the proposed rule's use of the term "reasonably learn", primarily on the basis that it would provide less protection for trade secrets than would the statutory standard "readily discoverable." The statutory term was also favored because it is a generally accepted and understood term employed in analytic chemistry, while "reasonably learn" is not.

Most commenters who addressed this issue explained that given sufficient time and ample resources, the discovery of almost any chemical by reverse engineering would be considered "reasonable." The commonly understood definition of the statutory standard, on the other hand, takes into account whether the time and resources necessary to successfully reverse engineer a product are readily available. Conversely, one commenter supported a definition that would deny trade secret protection if an identity is at all discoverable by reverse engineering.

Essentially, the reasonably learn versus readily discoverable issue is a matter of terminology. The Agency's choice of the term "reasonably learn" in the proposed rule was derived from the statute's directive in section 322(c) that the regulations regarding reverse engineering be "equivalent to comparable provisions" in OSHA's Hazard Communication Standard, and any revisions to the HCS required by *United States Steelworkers v. Auchter*, 763 F.2d 728 (3d Cir. 1985).

The definition of trade secrecy in the HCS was determined by the *Auchter* court to be legally deficient with respect to determining the legitimacy of trade secret claims because it failed to account for a chemical's susceptibility to reverse engineering. The revised HCS accordingly adopted the Restatement's definition of trade secret as an appendix, which requires consideration of the ability of others to discover the secret by legitimate means, including reverse engineering.

It is apparent from these revised OSHA regulations, as well as from the Restatement's definition and applicable case law, that the generally understood meaning of "readily discoverable" by reverse engineering requires that the chemical identity at issue be discoverable using readily available equipment, generally known analytic techniques, and that the required costs, time, and resources are reasonable considering the benefits derived. This is the standard the Agency intended by its initial choice of the "reasonably learn" language. The Agency also intended, with the use of this language, to avoid denying trade secrecy claims on a purely theoretical ability to reverse engineer, since this would disregard the costs involved.

The Agency has replaced the term "reasonably learn" with "readily discoverable." This standard is consistent with the revised OSHA HCS and the holding of *Auchter*, as directed by section 322(c). In order to avoid any confusion about the applicable standard, and to make it as consistent as possible with the HCS, the Agency has also adopted the Restatement

definition of trade secret as an appendix.

These changes should be recognized as changes in terms solely for the purpose of promoting clarity; it does not indicate a substantive change in the standard.

Commenters also perceived other practical and legal problems arising from the proposed trade secret definition with respect to reverse engineering. Section 350.7(a)(6) and Question 6 of the proposed rule requested trade secrecy claimants to "provide a rough estimate of [the] cost" of determining the identity of the trade secret substance through reverse engineering. The development of such cost estimates was considered useful by the Agency because cost is a factor to consider in determining whether a trade secret is readily ascertainable by reverse engineering. Commenters nevertheless pointed out difficulties, such as that developing a preestimate of the costs to reverse engineer would be speculative owing to the uncertainties of analytic chemistry, and that the costs will vary widely from company to company for analysis of similar chemical compounds because of differences in available resources and equipment and in the level of training and sophistication of those conducting the analyses.

Definitional problems were also raised, such as whether the cost estimate should include costs other than those to conduct the chemical analysis (i.e., the costs to develop and replicate the product once the chemical constituents have been identified), and whether the estimates should include the cost of the necessary equipment. Commenters also noted that the uncertainty of reverse engineering costs contributes to the trade secret's protection, since unknown costs may influence a competitor's decision not to undertake such an analysis.

The concerns regarding the possible compromise of trade secret protection by providing an estimate of the costs to reverse engineer seem to be the result of some confusion about the rule's requirements. If cost information is itself confidential information that information may be claimed as such on the trade secret substantiation.

Nevertheless, trade secret law requires some indication of the cost to discover the trade secret in order to determine the validity of the claim. If the cost of identifying the trade secret by reverse engineering exceeds the value of the trade secret itself, the trade secret is not considered to be readily discoverable. However, as one commenter correctly pointed out, cost is an inexact proxy for the pertinent factual determination of whether the trade secret is disclosable by reverse engineering. The variation in resources available to different companies also makes dollar comparisons difficult, thereby lessening the value of dollar-specific estimates.

While it is impossible to determine the ease or difficulty of reverse engineering without considering the costs and equipment involved, it is apparent that the requirement to develop specific dollar estimates will not appreciably further the inquiry at the initial stage of substantiating a trade secret under Title III. More useful to the analysis are the descriptions of the factors influencing the cost of identifying the substance sufficient to disclose the trade secret through chemical analysis. Accordingly, the Agency in the final rule has deleted the requirement to provide a "rough cost estimate" of the costs of reverse engineering in the substantiation form, but has retained the requirement to provide a description of the factors that influence the costs of analysis.

Claimants may still be requested to develop cost estimates as supplemental information following the initial review of the substantiation. The descriptions of cost factors in the substantiation must be as specific and detailed as practicable and should include information regarding the level of expertise needed, the type of equipment required, the time involved, and so forth. It is in the submitter's best interest to provide a well-detailed description of those factors that are indicative of cost, so that the Agency can make a realistic appraisal of this express statutory criterion. The failure to provide a sufficiently detailed description will likely jeopardize a trade secrecy claim.

Section 350.7(a)(6) and Question 6 of the trade secret substantiation form request information regarding the trade secret chemical's availability in both final products and in environmental releases. Commenters objected to the requirement to assess availability in environmental releases, citing myriad practical problems attendant to analyzing waste streams, such as the extent to which a waste flow may be treated prior to discharge, varying flow rates, dilutions, unintended reactions, the presence of impurities, and similar factors. These factors are asserted to make it economically impractical to conduct such a chemical analysis, and to adversely affect the ability of presently-available technologies to detect the chemical at all.

The Agency recognizes that, as a practical matter, the likelihood of successfully identifying a chemical present in facility wastes is less than the likelihood for analysis of a finished product available on the open market. Nevertheless, the assessment of whether the chemical identity is discoverable in a waste stream or release is not significantly different from the same assessment for the discoverability of a chemical present in a product available to the public or competitors. The salient question is, given the compound or mixture under scrutiny, can it be readily reverse engineered to identify the chemical that is claimed as trade secret. In order to address those cases in which a release is of sufficient purity such that the chemical is susceptible to discovery through reverse engineering, or where technological advances make such analysis feasible, this factor has been retained in the final rule.

Commenters also suggested that presumptions be established against a product's susceptibility to reverse engineering in certain cases. However, because assessing whether a "secret" can be discovered by reverse engineering or other investigatory method is fact-specific and often a unique inquiry, the Agency does not believe that a decisionmaking process punctuated by presumptions in lieu of specific fact-finding is useful or appropriate.

One commenter questioned whether a history of disinterest on the part of competitors in the trade secret chemical should be taken into consideration in determining whether a chemical is discoverable by reverse engineering. EPA agrees that a history of disinterest in a claimant's product is relevant to a trade secret claim, as it is some indication that the secret is not generally known to competitors. The history of disinterest may also be some indication that the chemical is not susceptible to reverse engineering, but it cannot be considered dispositive.

The final question 6 reads: "(i) To what extent is the chemical claimed as trade secret available to the public or your competitors in products, articles, or environmental releases? (ii) Describe the factors which influence the cost of determining the identity of the chemical whose identity is being claimed trade secret by chemical analysis of the product, article, or waste which contains the chemical (e.g., whether the chemical is in pure form or is mixed with other substances)."

Question 7. The proposed question 7 read: "Is your use of this substance subject to any U.S. patent?

If so, identify the patent and explain why (A) it does not connect you with the

substance and (B) why it does not protect you from competitive harm.

Patent Number: _____.

The commenters raised several issues concerning the patent question. First, they pointed out that a patent is a "publication" and, as such, is covered by Question 4 in the substantiation. Next, the commenters described several situations in which a patent would not reveal the trade secret, for example, the specific identity of the valuable substance is buried in a large listing of substances, or the use of the identified substance is the trade secret (i.e., the linkage is the trade secret). Also, the commenters feared that a "yes" answer to Question 7 would disqualify the claim for trade secret protection, even though trade secret protection and patent protection are not identical.

Merging Question 7 into Question 4(ii) satisfies many of the commenter's concerns. Question 4(ii) now expressly considers patents, as well as any other publications, in the relevant context of whether the publication of the chemical identity eliminates the submitter's claim for trade secret protection.

The second issue under Question 7 that must be addressed is why patent protection does not adequately protect the claimant from competitive harm. Eliminating Question 7 does not leave this issue unaddressed because of its merging into Question 4(ii) and because the Agency intends to gather additional detail on this issue in supplemental questions to the submitter.

EPA has determined that the substance of Question 7 can be adequately addressed in Question 4(ii), on publications, and Question 5 on competitive harm. Therefore, Question 4(ii) has been amended to specifically reference patents. In the final rule, § 350.7(a)(4)(ii) and Question 4(ii) read: "Has your company or facility identity been linked to the specific chemical claimed as trade secret in a patent, or in publications or other information sources available to the public or your competitors (of which you are aware)? If so, explain why this knowledge does not eliminate the justification for trade secrecy."

Finally, commenters raised a question about the requirement in the proposed rule, in § 350.5(g), that trade secrecy claims with missing substantiations or lacking a response to each question would be rejected without notice to the submitter, and the chemical identity would be made available to the public. Various commenters criticized this provision as unduly harsh, and noted that various circumstances could occur, such as clerical errors or explanations being separated from the substantiation forms which could result in EPA receiving an incomplete substantiation. EPA agrees and accordingly, this provision has been deleted. However, if a company's submissions indicate a disregard for the rule's requirements, EPA will consider this in evaluating whether a claim is frivolous.

H. Substantiation Form

A discussion of the comments on and changes to each of the questions on the substantiation form is found in section II.G. above. The form itself is designed to provide sufficient space for submitters to succinctly answer each question. The Agency is looking only for specific facts, briefly stated within the space permitted to indicate that the submitter has met the prima facie threshold of trade secrecy. If submitters believe it necessary to make an attachment, they may, although such instances should be rare. Additional, more extensive facts can be gathered in the supplemental round of questions.

The Agency also received several public comments on the certification statement included at the bottom of the form. The preamble of the proposed rule required that a corporate officer sign the certification form. Several commenters suggested this was unduly burdensome in a large corporation because the officer would be required to handle a large number of submissions and would not have personal knowledge about the information contained in each submission. A few commenters also suggested that the word "immediately" should be deleted from the phrase "based on my inquiry of those individuals immediately responsible for obtaining the information" because large corporations would have an intermediary between the person gathering the information and the signer of the certification. Also, the certifications for sections 312 and 313 do not contain this language.

EPA has added a definition of "senior management official" to § 350.1 of the rule. The certification form must now be signed by an owner, operator or a senior management official. The Agency believes this requirement balances the commenter's concerns of burden on the corporate officer who may not have personal knowledge of the information with the need to assure high level responsibility for the information on the substantiation form, in accordance with Congressional intent. The Agency accepts the commenters' reasoning concerning the word "immediately" in the certification and has deleted the word in this final rule.

EPA received comment requesting the deletion of the last two sentences of the certification statement. The two-tiered substantiation process described in section II.G. allows the submitter to supply and the Agency to request more factual information concerning the trade secret substantiation. EPA is not requesting that the up-front substantiation contain as much detail as was originally proposed, thus there must be additional details for some of the questions available upon request. This requirement will not be deleted.

The last sentence of the certification concerns the penalty for a frivolous claim. One commenter requested that the Agency not interpret the certification requirements to provide a basis for asserting individual liability against corporate officers. EPA will not delete this provision; however, the language has been modified. In most cases, the company, not the individual signer, would be liable for the civilly or administratively imposed penalty. In addition, knowingly providing false or misleading statements to the United States government is a criminal offense under 18 U.S.C. 1001, and language to this effect has been added.

One commenter requested clarification as to whether the owner, operator or senior management official who signs the trade secret certification must be the same individual who signed the section 312 or section 313 certification. The Agency does not require the same individual to sign all the forms; the Agency wishes to encourage the most knowledgeable individuals with sufficient authority to sign each certification. This balance of knowledge and authority for all sections of Title III may not be possible for one individual in a large corporation with various divisions.

Finally, the Agency received one comment stating that the phrase requiring the official to verify that the substantiation was "true, accurate and complete to the best knowledge and belief" of that official was unduly burdensome and defeated the purpose of the trade secret provisions. The Agency believes that the language in the proposed rule is appropriate to convey the serious nature of the certification statement and the trade secret substantiation and has retained it in the final rule.

I. Claims of Confidentiality in the Substantiation

Sometimes the submitter may need to refer to the chemical identity claimed as trade secret in the substantiation for that chemical. Also, in order to supply a complete explanation of its claim of trade secrecy, the submitter may include

other trade secrets or confidential business information in the explanation.

Section 322(f) allows submitters to claim as confidential on the substantiation form any information which falls within 18 U.S.C. 1905, the federal Trade Secrets Act, which requires the federal government to protect trade secrets and confidential business information unless another federal statute authorizes disclosure. Thus, the information which may be claimed confidential in the substantiation includes the specific chemical identity, as well as any other trade secret or confidential business information.

One commenter requested that the term "business confidentiality," which is defined in the Definitions section, be deleted wherever it appears. The commenter requests that the term "confidential business information" be used in its place. The Agency agrees that "confidential business information" has a common usage in the law of trade secrets. However, "business confidentiality," as defined in the final rule, is the same term used in the Agency's confidential business information regulations at 40 CFR Part 2.

To make these claims, the submitter must clearly label what information it considers to be trade secret or confidential. This substantiation is to be submitted to EPA, along with a sanitized substantiation, in which the trade secret and confidential business information is deleted. If any of the information claimed as trade secret on the substantiation is the chemical identity of a claimed chemical, then the submitter should include the appropriate generic class or category of that chemical on the sanitized version of the substantiation.

No substantiation needs to be submitted for information that the submitter includes in the substantiation and claims as trade secret or confidential. The submitter need only sign the certification included at the end of the substantiation form, as discussed above in section H. The claims of trade secrecy and confidentiality for information submitted in the substantiation are not subject to the petition process described below because this process applies only to claims of trade secrecy for the chemical identity made under Title III. Instead, requests for disclosure of other trade secret or confidential material must be submitted pursuant to the Freedom of Information Act regulations under 40 CFR Part 2.

The Agency received a comment requesting that the unsanitized substantiations be automatically classified as confidential under Executive Order 12600 which sets forth designation and notification procedures for confidential business information under FOIA. The provisions of this rule are in compliance with the Executive Order; unsanitized substantiations claimed as confidential are treated as such until determined otherwise.

J. Updating Substantiations Submitted Prior to Final Rule

Several commenters suggested that, in order to achieve "fundamental fairness," EPA should allow companies that submitted their Title III submittals prior to the effective date of this final rule on trade secrets to update their substantiations without penalty.

EPA agrees with this comment. Submitters could not know exactly what information would be required on the substantiation form until the final rule on section 322 is published. Thus, submissions filed prior to the effective date of this final rule will be allowed to be updated. Submitters may wish to utilize the final rule for filing submittals immediately upon publication, prior to the effective date, and are free to do so.

Commenters also requested that previous substantiations be returned to them when they submit an updated version. This is not possible, however. The Federal Records Retention Act requires that government keep such submittals as part of the Agency's record in order to support the Agency's activities and decisions.

K. Cross-Referencing of Substantiations

EPA has been encouraged by industry commenters to develop a reporting option that would allow trade secret claimants to cross-reference trade secret substantiations already submitted to EPA in subsequent Title III filings involving the same chemical and trade secret. Because the same chemical involving the same trade secret may be reported under different sections of Title III, and because these reports require periodic updating, claimants argued that the trade secret substantiations for each claim would be the same.

At least three different scenarios involving cross-referencing were identified by the commenters: (1) Subsequent reports involving the same chemical reported under different sections could all reference and rely on the same trade secret substantiation (multi-section referencing); (2) subsequent reports involving the same chemical and the same section—e.g., annual section 313 toxic chemical release reporting—could reference and rely on the earlier submitted substantiation (multi-year referencing); and (3) multi-facility companies could cross-reference a single substantiation when reporting for each of their facilities at which the same chemical is present, both for reporting under different sections (multi-facility referencing) and in subsequent years (multi-facility, multi-year referencing).

The issues raised by these comments require the Agency to strike a balance between a submitter's ease and convenience in making and substantiating trade secret claims, and the relative burdens, costs, and risks posed by altering the trade secret substantiation requirements to accommodate this proposed method of reporting.

On the one side of the balance, EPA's analysis indicates that a submitter's reporting burden is not reduced by cross-referencing.

First, a submitter must review their prior-prepared substantiations to identify one that is appropriate and relevant for re-use (that is, an identical substantiation). Cross-referencing requires that the submitter provide EPA with information sufficient to accurately identify the prior-submitted substantiation. Without cross-referencing, a submitter wishing to re-use an appropriate and relevant substantiation would be expected to photocopy the form, alter the reporting section check-off box, and re-sign the certification statement. The time and costs associated with each of these tasks are approximately equal, the costs for the cross referencing method being slightly higher for the submitter.

This somewhat counter-intuitive result is traceable to the labor-intensive procedures for cross referencing. While cross-referencing reduces the amount of paper involved, it is a slightly more complex process that increases the labor costs for submitters. The result is that there is no net savings for submitters achievable by cross referencing on a per document basis.

Second, EPA does not expect the number of trade secret substantiations that will be identical to be high, further reducing the potential for cross referencing to be an effective burden-reducing reporting method. The overall number of trade secret claims should not be high—approximately 0.1 percent of all Title III filings are expected to include trade secret claims—and because of the inexact nature of trade secrets and the differences in information required to be disclosed under each of the five reporting sections for which trade secret claims are allowed, the universe of substantiations that will be identical and appropriate for re-use should be small. There is thus a

low potential for cross referencing to measurably reduce a submitter's reporting burden.

Weighing against cross referencing are a variety of costs and other factors not consonant with the disclosure focus of the Title III program.

Trade secrets by definition run counter to the right-to-know intent of Title III, and just as the decision to make a trade secret claim should not be taken lightly, neither should substantiations be prepared as a routine document. The Agency encourages claimants to closely examine the reported information required in each case, and carefully assess whether and how that information affects what the submitter believes to be a trade secret. This explanation must be included in the substantiation. Even where previously created substantiations are relevant and appropriate for referencing, the claimant should have taken the time to carefully review the substantiation to determine its applicability to another claim. EPA procedures are designed to encourage this process.

Cross referencing has the potential to discourage such reviews and makes more likely the preparation and use of "boilerplate" substantiations for routine use. A review of substantiations submitted thus far under sections 311–312 indicates that many submitters are treating trade secret substantiations in this way. This is not consistent with the clear congressional intent that facilities subject to Title III provide EPA and the public with specific and detailed information when making a trade secret claim. Moreover, because of their general nature, boilerplate substantiations are more likely to be found insufficient to support a trade secret (thereby imperiling the claim), than is one specifically prepared to support a particular claim.

Finally, the costs to the Agency to implement a cross referencing system are not justified by the small potential for reducing a submitter's reporting burden. Cross referencing adds up to nearly 50 percent to the Agency's costs on a per document basis, exclusive of other system design and development costs and requirements. And because cross referencing increases the risk of an inadvertent disclosure of submitter's trade secret information (due, for example, to faulty identification information), additional quality-control procedures and security measures are required, at increased cost.

On balance, weighing the lack of any savings in the time and costs required for submitters to prepare a substantiation against the increased costs to the EPA and to the Title III program, cross referencing is not justifiable as a viable and effective reporting alternative. However, EPA is sensitive to and understands the burdens imposed by the extensive reporting requirements of Title III.

One significant factor contributing to the number of duplicate reports required is the number of different recipients specified by the Act. Within this statutory framework, EPA has investigated and will continue to investigate ways to reduce the overall reporting burden without compromising the primary objective of Title III. Toward this end, EPA has been able to identify and plans to implement other improvements to streamline the reporting process.

One burden-reducing improvement is the deletion of the requirement for the creation of an "unsanitized" MSDS when making a trade secret claim under section 311. Since most Title III reports and trade secret claims involve section 311, this should represent a significant savings. For similar reasons, EPA also deleted the requirement for unsanitized section 303 reports. In addition, EPA considered—and rejected—a requirement for claimants to substantiate as trade secrets the hazardous components of mixtures reported as a whole under section 311, which would have significantly added to the reporting burdens of complying with the trade secret rule.

EPA has taken steps to reduce the Title III reporting burden in other ways, such as permitting facilities to report their non-trade secret information by magnetic media.

EPA will continue to investigate ways to make compliance easier and more cost-effective both for EPA and for those subject to this law, while meeting the mandate received from Congress. Weighing the potential benefits of referencing against the costs and burdens, it does not appear that cross referencing is a viable method. However, EPA will look at the number of opportunities for cross referencing through the summer of 1989 and if actual experience provides contrary data, this issue will be revisited. Also, EPA will permit cross referencing of previous submissions sent to States on a State by State basis, as the States allow.

L. Submissions to State and Local Authorities

If a trade secrecy claim is made with respect to a particular submission, the sanitized Title III submittal and the accompanying sanitized substantiation must be sent to the appropriate State or local authorities, as required under section 322(a)(2)(ii) of the statute. Specifically, under section 303, the submittal and accompanying sanitized substantiation should be sent to LEPCs, and under sections 311–312 the MSDS or a sanitized section 311 list or Tier II submittal, as appropriate, and accompanying substantiation should be sent to the SERCs, the LEPCs and to local fire departments. Finally, a sanitized 313 submittal and substantiation must be sent to the designated State entity. If a Title III reporting form or a substantiation containing trade secret information is sent to a State or local authority by the submitter, under the law of trade secrets it will constitute public disclosure of the information, and the claim will be considered invalid.

Several commenters requested that EPA delete the requirement that a sanitized copy of the substantiation be sent to the State authorities and the local emergency planning committees. Section 322(a)(2)(A)(ii) requires that a trade secret claimant include in its section 303 (d)(2) and (d)(3), sections 311–312 and section 313 submittals an "explanation of the reasons why such information is claimed trade secret." Finally, these sections provide that all facilities subject to the Act submit this Title III submittal to the appropriate state and local authorities. Therefore, EPA cannot delete this requirement.

III. Petitions Requesting Review of Trade Secrecy Claims

Section 322 provides for a public petition process to request the disclosure of chemical identity claimed as trade secret. This petition process is only for requesting a review of the validity of a claim that a chemical identity is a trade secret. If requesters want disclosure of other items that have been claimed confidential (that is, items claimed as confidential in the substantiation, rather than the Title III reporting document), such requests for disclosure must be made pursuant to EPA's Freedom of Information Act regulations under 40 CFR Part 2.

The petition requesting disclosure must include the petitioner's name, address, and telephone number. The petitioner may be an individual, corporation, or other entity. It must also include the sanitized copy of the submission (e.g., the MSDS, toxic chemical release inventory reporting form) in which the chemical is claimed as trade secret, and the petitioner must clearly indicate on the form which chemical identity is requested for disclosure. Copies of the section 303 (d)(2) and (d)(3) filings are available at a location designated by the local

emergency planning committee. Copies of the section 311 and 312 filings are available at locations designated by the State emergency response commission and the local emergency planning committee. Copies of the section 313 filings are available from EPA and from the designated State agency.

EPA is requiring that a copy of the submission claiming trade secrecy accompany petitions for disclosure of chemical identity claimed as trade secret. The Agency believes that the requirement of a copy serves to prevent any confusion about what disclosure the petitioner is requesting. In the proposed rule, public comment was specifically requested on this issue. All four of the commenters who addressed this issue agreed that a petition for the disclosure of a chemical identity claimed as a trade secret should include a copy of the submission claiming the trade secret.

One commenter requested that the trade secret submitter be informed of the identity of a petitioner who has petitioned for the release of a trade secret specific chemical identity. This is not required by the statute and the Agency has decided not to add it to the final rule. However, the petitioner's name is publicly available under the Freedom of Information Act. Also, the petitioner is free to contact the facility directly.

EPA received several comments concerning standards for the petition process. A few commenters requested that EPA restrict the petition process in order to discourage petitioners who are seeking information for commercial, competitive or harassment purposes. Other commenters highlighted the importance of placing no limits on petitions to disclose the specific chemical identity since no restrictions were set forth in the statute. EPA agrees that it would be inappropriate to require petitioners to have a particular reason for requesting disclosure of chemical identity claimed as trade secret. The statute specifically states that "any person may petition the Administrator" and thus the Agency will not impose restrictions.

At least one commenter requested that EPA limit the number of times a trade secret could be challenged through the petition process, to avoid the filing of multiple petitions for disclosure of the same trade secret. However, the limitations of the statute, as described above, apply to the multiple petition situation as well, and EPA can provide no change in the final rule.

As soon as a petition is filed, EPA will begin the process of reviewing the trade secrecy claim. The time for reviewing the claim may vary, but the statute requires EPA to reach a decision within 9 months.

The petition should be mailed to the address set forth in § 350.16 of the rule, and set forth in this preamble at section II.B.4.

IV. EPA Review of Trade Secrecy Claims

As described in the proposed rule, section 322 defines the process by which EPA determines whether a claimed chemical identity is entitled to trade secrecy. First, EPA must decide whether the answers to the substantiation questions are, if true, sufficient to support the conclusion that the chemical identity is a trade secret. This is the determination of sufficiency referred to in the statute and is made prior to any determination of the validity of the trade secrecy claim. The statute requires EPA to follow different procedures depending on whether EPA decides the answers to the substantiation questions are sufficient or insufficient.

A. Overview of the Process

After receiving a petition requesting disclosure of chemical identity, EPA has 30 days to make a determination of sufficiency. If the claim meets EPA's criteria of sufficiency (explained in IV.C), EPA will notify the submitter that he has 30 days from the date of receipt of the notice to submit supplemental material in writing, supporting the truth of the assertions made in the substantiation. If this additional information is not forthcoming, EPA will make its determination based only upon information previously submitted in the substantiation.

If the claim does not meet the criteria of sufficiency, EPA will notify the submitter, who may either file an appeal within 30 days to EPA's Office of General Counsel or, for good cause shown, amend the substantiation in support of its claim.

Once a claim has been determined to be sufficient, EPA must decide whether the claim is entitled to trade secrecy. If EPA determines that the facts support the claim of trade secrecy, the petitioner will be notified. If EPA determines that the facts do not support the claim of trade secrecy for chemical identity, the submitter will be notified.

The statute provides for intra-agency appeal by the submitter to appeal adverse decisions and for U.S. District Court review after intra-agency appeal. This process is explained below in more detail.

B. Initial Review

Proposed § 350.9(d) required that when EPA receives a petition requesting disclosure of a trade secret, or if EPA decides to initiate a determination of the validity of a trade secrecy claim, EPA shall first determine whether the chemical identity claimed as trade secret is the subject of a prior EPA determination of trade secrecy for that chemical identity at that same facility. If the earlier determination held that the facility's trade secret claim for the chemical identity was invalid, EPA was previously authorized to release the information. Before releasing the information, the proposed rule stated that the Agency would notify the petitioner that the facility's claim for trade secrecy status for the chemical identity is the subject of a prior determination concerning the same facility and that such claim was invalid.

Four commenters discussed the role that prior determinations should play in determining the validity of a trade secret claim. Some commenters said that prior determinations denying claims of trade secrecy should not be determinative of future claims concerning the same chemical, and suggested that this could violate constitutional due process. One commenter suggested that, in the alternative, the section should be revised to give equal weight to prior determinations that *upheld* the trade secret. Two commenters stated that once a specific chemical identity has been determined to be a trade secret, that finding of validity should be determinative against subsequent challenges to the same chemical.

While the Agency is not changing the scope of the provisions dealing with prior determinations in the final rule, EPA believes that some clarification of § 350.9(d) would better explain the nature of the prior determination and would respond to the commenter's concerns. The purpose of § 350.9(d) is to establish a simple procedure for releasing a chemical identity which has already been disclosed in a prior determination for the same chemical identity at the same facility. If the trade secret has been previously disclosed, Title III does not permit EPA to continue to withhold the chemical identity as a trade secret. Obviously, if the chemical identity has been revealed, the chemical identity is no longer a trade secret. Of course, the Agency's prior determination that the trade secret is invalid must have survived any appeals before the disclosure provision will be applied. The value of this provision was to expedite release of chemical identity which has already been revealed, but to satisfy due process EPA will not disclose the identity until the submitter has exhausted his challenges to the initial

Agency determination upon appeal to OGC and in U.S. District Court. The final rule has been amended to clarify this point.

The Agency is bound by the prior disclosure only if the chemical identity claimed as trade secret that is the subject of the second petition is identical to the trade secret disclosed when the prior determination held the claim to be invalid. There may be instances where the use of the chemical identity claimed as trade secret that is subject to the prior petition (and Agency determination) is different from the trade secret use that is the subject of the second petition. The information on different Title III submittals could represent different uses, one that did not qualify for trade secret protection under Title III and one that does. In short, EPA agrees with commenters to the extent that § 350.9(d) in the final rule will not automatically disclose a chemical identity until the Agency has determined that the identical trade secret has been held invalid in a prior determination.

The Agency will not be bound by a prior decision upholding trade secret protection in this rule. Trade secrets can be lost over time and the burden is on the claimant to prove that the chemical identity meets the statutory criteria upon receipt of a petition for disclosure. However, the Agency's prior determination of validity will be considered in later determinations.

Two commenters asked that a trade secret claimant be given adequate notice before a chemical identity is released. One of these commenters stated that if a prior determination was made that a facility's chemical identity was not a trade secret, EPA should delay 30 days before releasing the information in order for the claimant to seek judicial review. EPA has provided notice of intent to release chemical identity in various sections of the proposed rule where the Agency has determined that the chemical identity claimed as trade secret is not entitled to protection. The case of disclosure of chemical identity where a prior determination has been made is not significantly different from those other cases where the rule provides for notice and the opportunity to appeal to U.S. District Court before release of the claimed trade secret. As a result, § 350.9(d) of the final rule will be referenced to an amended § 350.18(c) which contains detailed requirements for notice of intent to release chemical identity determined not to be trade secret.

C. Determination of Sufficiency

A person withholding specific chemical identity from a submission under Title III must make specific factual assertions that are sufficient to support a conclusion that the chemical identity is a trade secret. These assertions are made by completely answering all of the questions listed in § 350.7 of the rule (and found also on the Trade Secrets Substantiation form), where EPA has listed the questions that must be answered to fully address the four requirements set forth in section 322(b) of the statute.

To assist submitters in answering the questions, EPA indicates in § 350.13 of the rule the criteria that it regards as the legal basis for evaluating whether answers provided by submitters are sufficient to support the trade secrecy of a chemical. Submitters may wish to examine these criteria in preparing their answers to the questions contained on the form.

EPA received several comments discussing the proposed sufficiency criteria. Some comments suggested that the Agency reduce the detail of the sufficiency criteria, so that the sufficiency criteria are not overinclusive of the statutory criteria and, in turn, the questions on the proposed form. The suggestions leaned toward making the sufficiency criteria identical to the proposed questions. Other comments suggested altering the proposed questions so that they identically reflect the sufficiency criteria. This way a claimant can directly address the criteria that EPA is seeking in order to establish a prima facie case of trade secrecy. Finally, other comments suggested that EPA review the proposed substantiation form to match the trade secrecy factors in section 322(b). This would substitute for the proposed sufficiency criteria altogether.

EPA determined that the sufficiency criteria, as proposed, are a valuable aid in evaluating the sufficiency of trade secret claims. While the substantiation form elicits specific facts, the criteria stated at § 350.13 are the legal standard used to determine whether the submitter has established a prima facie case for trade secrecy. The facts from the form are considered against the sufficiency criteria to make that determination.

The commenters' suggestions would alter the purpose of the criteria and undermine the ability of the Agency to determine whether or not submitters have made a prima facie case for trade secrecy under the initial review process. EPA did make changes in the sufficiency criteria to reflect changes made in the substantiation questions.

Submitters are encouraged to use the sufficiency criteria as a guide in formulating their answers to the substantiation questions. Both the questions and the criteria reflect the trade secrecy provisions of section 322(b) of Title III.

Under the first criterion, the facts must show that reasonable safeguards have been taken against unauthorized disclosure of the specific identity, that the specific chemical identity has not been disclosed to any person not bound by a confidentiality agreement including local, State or Federal government entities, and that any safeguards will be continued in the future.

Under the second criterion, the submitter must show that the chemical identity claimed as trade secret is not required to be released: (1) Under a determination by a State or Federal agency that the chemical identity in question is not a trade secret, or (2) under a State or Federal law which does not allow the chemical identity to be claimed as trade secret. This criterion was also discussed in section II.A. of this preamble under emission and effluent data.

Under the third criterion, as proposed, to show that disclosure of the information is likely to cause substantial competitive harm, the facts must show that either competitors do not know that the substance can be used in the fashion used by the submitter and that duplication of the specific use cannot be determined by competitors' own research activities or that competitors are unaware that the submitter is using the substance in this manner.

Some of the comments on substantiation Question 4 also raised similar concerns with this criterion. The final sufficiency requirement has been amended where appropriate to reflect the Agency's determination that a submitter cannot be required to certify another's state of knowledge, yet must adequately support his claim of trade secrecy. The revised § 350.13(a)(3) reads as follows, in the final rule:

(i) Either:

(A) competitors do not know *or the submitter is not aware that competitors know* that the *chemical whose identity is being claimed trade secret* can be used in the fashion that the submitter uses it, and competitors cannot easily duplicate the specific use of this chemical through their own research and development activities; or

(B) competitors are not aware *or the submitter does not know whether competitors are aware* that the submitter is using *this chemical* in this fashion.

(ii) The fact that the submitter manufactures, imports or otherwise uses *this chemical* in a particular fashion is not

contained in any publication or other information source (*of which the submitter is aware*) available to competitors or the public.

(Emphasis added to show changes in final rule.)

Several commenters, following the lead of the Chemical Manufacturers Association and the American Petroleum Institute, requested that EPA revise the final rule to recognize that just because one (or even several) competitors in a field of many know that a substance is being used in a particular fashion, this does not prevent the use from constituting a trade secret. EPA agrees with the commenters. The law of trade secrets does not require that the owner of the information be the only one aware of the information for it to be of value. The language of the rule refers to the knowledge of "competitors," and this is open-ended enough to encompass a claim asserted in a factual situation where some competitors are aware of a secret of which others are unaware. Therefore, EPA recognizes the validity of the commenters' arguments but has not changed the language of the final rule to reflect this. Trade secrecy claimants may file substantiations based on a factual situation such as the one described above.

Finally, the fourth criterion requires that a trade secret claimant show that the chemical identity claimed trade secret cannot be readily discovered by reverse engineering of the submitter's products or environmental releases. This requires the claimant to show that the chemical is not available to the public or competitors in the claimant's products or environmental releases. The claimant must show that the chemical identity is only discoverable using equipment that is not readily or generally available, that discovery requires the use of uncommon or exotic analytic techniques, and that the time, costs, and resources required for discovery exceed the benefits provided by the trade secret chemical. The more difficult, costly, and time-consuming the analysis required to discover the identity, the more likely the chemical identity will qualify for trade secret protection.

If the substantiation does contain sufficient answers, EPA will notify the submitter by certified mail. Under the statute, a finding of sufficiency automatically entitles the submitter to submit supplemental information to support the truth of the answers contained in the substantiation. This could include any information or documents which would demonstrate the veracity of the submitter's substantiation, or provide even greater detail in support of the submitter's claim. Based on comments on the proposed rule, EPA narrowed the level of detail required in the initial substantiation and thus increased the importance of the material provided in this second stage. This was done in order to decrease the initial burden without sacrificing the amount of information that would be used to determine the veracity of a claim of trade secrecy.

Upon receiving EPA's request for supplemental information, the submitter will have 30 calendar days to submit the information. If EPA does not receive the supplemental information within this time, it will make a trade secret determination based upon the information already submitted. One commenter inquired as to when the 30 days provided to submit additional information to EPA tolls. Specifically, must the information be received by EPA within 30 days or will the Agency adopt a "mailbox rule", as suggested by the commenter? The Agency has decided to adopt the "mailbox rule," and will consider the submission to be timely filed if postmarked within 30 days by certified mail with the U.S. Postal Service.

D. Determination of Insufficiency

If EPA concludes that a substantiation does not contain answers sufficient to support the four requirements of section 322(b), then EPA will find that the trade secret claim is insufficient. The submitter will be notified by certified mail of EPA's finding of insufficiency. The submitter may either appeal EPA's finding to EPA's Office of General Counsel or may amend its original substantiation if it demonstrates good cause to do so.

Good cause was limited in the proposed rule to the following:

(1) The submitter was not aware of the facts underlying the additional information at the time the original substantiation was submitted, and could not reasonably have known the facts at that time; or

(2) Neither EPA regulations nor other EPA guidance called for such information at the time the substantiation was submitted.

The Small Business Administration commented, prior to the publication of the proposed rule, that the good cause standard should include the circumstance where the submitter mistakenly does not provide information but otherwise acts in good faith to comply with the rule, and that such a provision was mentioned in the Conference Report.

Various commenters agreed with the Small Business Administration and criticized this provision as unduly harsh. These commenters noted that various circumstances could occur, such as clerical errors or explanations being separated from the substantiation forms, that would result in EPA receiving an incomplete substantiation.

EPA has evaluated these comments and largely agrees with the commenters. The Agency has included inadvertent omissions as one of the good cause exceptions in the final rule. It is still incumbent on submitters to ensure that claims are complete and properly packaged. Submitters should not be tempted to rely on this good cause exception to routinely cure defective submissions.

One commenter interpreted the "neither-nor" language in the second exception as indicating that the Agency would be giving guidance, which is published without notice and comment, the same weight as regulations. The commenter also noted that the Conference Report used the conjunctive "and." The Agency intended to adopt the same meaning as that included in the Conference Report. Accordingly this language has been changed in the final rule.

EPA has revised the good cause exceptions to read as follows:

"(A) The submitter was not aware of the facts underlying the additional information at the time the substantiation was submitted, and could not reasonably have known the facts at that time; or

(B) EPA regulations and other EPA guidance did not call for such information at the time the substantiation was submitted; or

(C) The submitter had made a good faith effort to submit a complete substantiation, but failed to do so due to an inadvertent omission or clerical error."

The submitter must notify EPA by letter of its contentions as to good cause and should include in that letter the additional supporting material. EPA will notify the submitter by certified mail if the good cause standard has not been met and the additional supporting material will not be accepted. The submitter may then seek review in U.S. District Court. If after acceptance of additional supporting material for good cause, EPA decides the claim is still insufficient, the submitter will be notified by certified mail and may seek review in U.S. District Court.

If EPA reverses itself on appeal or after accepting additional assertions for good cause, and decides that the trade secret claim is sufficient, then the claim will be processed as though it had been initially found to be sufficient. If upon appeal, EPA makes a final determination that the original answers in the substantiation were insufficient,

the submitter may request review in U.S. District Court within 30 days of notice of the final determination.

E. Determination of Trade Secrecy

All claims determined to be sufficient either initially, after appeal, or after acceptance of additional material for good cause, will be examined in order to determine whether a valid claim of trade secrecy is presented. In making a determination of trade secrecy, EPA will examine the factual information provided in the substantiation form in light of the four factors under section 322(b).

If EPA decides that the chemical identity is a trade secret, the petitioner shall be notified by certified mail and may seek review in U.S. District Court. If EPA decides that the chemical identity is not a trade secret, the submitter shall be notified by certified mail and may appeal this determination to EPA's Office of General Counsel within 30 days. If EPA does not reverse its decision on appeal, the submitter may seek review in U.S. District Court within 30 days of notice of the final determination.

F. Appeals

Section 350.17 of the proposed rule established procedures for appeal from an EPA determination that a claim presented insufficient support for a finding of trade secrecy under § 350.11(a)(2)(i), or an EPA finding that a specific chemical identity is not a trade secret under § 350.11(b)(2)(i). The proposal provided procedures for filing an appeal to EPA's Office of General Counsel (OGC), a description of the appeal process in OGC, and procedures for further appeal to Federal court if OGC upholds the Agency's rejection of the claim for trade secret protection. The proposed rule did not specify the standard that OGC will apply in considering a submitter's appeal, nor did it provide for a hearing. These two features as well as other details of the appeal process received comment.

Two commenters requested that EPA amend § 350.17 to provide the right to a hearing on appeal to OGC. One of these commenters specified that the hearing should be provided upon request of the trade secret claimant.

One commenter asked that the regulation be revised to establish a standard under which review by OGC on appeal will be conducted. The same commenter further stated that, because a reviewing court will consider the Agency opinion on a de novo basis, OGC should use a de novo standard in reviewing the program office's decisions on appeal.

Four commenters stated that § 350.17 should be revised to require OGC to state the basis for its decision on appeal. Another of these commenters recommended the use of procedures paralleling those referred to in § 350.11(b), which are applicable to EPA's initial decision on a trade secrecy claim and require EPA to provide a claimant with the reasons for EPA's decision.

One commenter requested that the rule be revised to permit a submitter of a trade secret claim to appeal to OGC if his claim is judged to be insufficient, even after he has submitted additional material upon a showing of good cause.

EPA's provisions on appeals in § 350.17 closely follow the scheme for appeals under Title III. Title III did not provide the submitter with an opportunity for a hearing as part of the administrative appeal process and EPA will not include such a provision.

Title III also did not specify a standard of review for the administrative appeal process. In its review, the Office of General Counsel will be examining the entire record of the determination and statement of reasons. This review will encompass the complete file. Submitters who are denied trade secret protection have full access to U.S. District Court.

The Agency agrees with commenters that sound administrative procedures dictate that the submitter be provided with a statement of the reasons for OGC's decision to uphold or reverse the program office's decision on appeal. The final rule has been amended to include a requirement for a statement of reasons to accompany the OGC decisions upon appeal.

Finally, EPA has not changed the final rule to allow an appeal to OGC when a submitter whose trade secrecy claim has been found to be insufficient has chosen to submit additional material in support of its claim (for good cause shown). This provision tracks statutory language that permits the trade secret claimant to either amend the claim in order to meet the sufficiency requirements *or* to appeal the finding of insufficiency to OGC. If the claimant opts to amend the claim, the statute requires that the right to appeal the Agency's initial finding is forfeited. However, the submitter who loses the right to an OGC appeal still has the right to appeal the Agency's adverse determination to U.S. District Court.

Judicial Appeal

Section 350.18(c) of the proposed rule established procedures to be used by EPA when submitters are slow to appeal Agency decisions to U.S. District Court or fail to prosecute the appeal in a timely fashion. One provision of the proposed section received considerable comment. That provision authorized the Agency to disclose the identity of the trade secret, "once the court has denied a motion for a preliminary injunction in the action or has otherwise upheld the EPA determination, or whenever it appears to the Office of General Counsel, after reasonable notice to the business, that the business is not taking appropriate measures to obtain a speedy resolution of the action."

In urging deletion of the provision, the commenters made several arguments. First, the commenters noted that, once the submitter's appeal is under the court's jurisdiction, there are existing mechanisms to insure a speedy resolution of the case at issue. The Federal Rules of Civil Procedure allow the government to request a status conference to press action (Rule 11) or to move for dismissal of the appeal for failure to prosecute if there is an undue delay (Rule 41). Next, a few commenters maintained that the government's action to speed up the appeal would destroy the trade secret unilaterally during the pendency of action challenging the government's right to make that destruction. The commenters believe this action was unfair and undercut the court's jurisdiction. Moreover, since a trade secret is an intangible property right guaranteed by Constitutional protections, government destruction of that property during the course of the appeal could constitute a violation of submitter's due process rights.

EPA has decided not to delete the provision in question in the final rule. The provision is identical to language in EPA's Confidential Business Information regulations at 40 CFR 2.205(f)(2), and thus makes Title III regulations consistent with similar EPA procedures. The language of proposed § 350.18(c) and final § 350.18(d) states that EPA *may* disclose the trade secret, that is, use of the provision is not mandatory. Also, this disclosure may take place only after reasonable notice to the business. Accordingly, EPA has finalized this section as proposed, except for changing the reference to the party appealing the denial from "business" (used in 40 CFR Part 2) to "submitters" (used in Title III).

G. Common Errors Found on Substantiations

The Agency examined a sample of substantiations received since the proposed rule was issued and discovered a number of errors that occurred frequently enough that the

Agency wishes to alert submitters to the need to carefully prepare their substantiations to avoid these, and other, errors. Common errors found by the Agency fall into the following categories:

(i) Problems associated with not using the EPA substantiation form;

(ii) Certification of the substantiation;

(iii) Contents of responses to questions in the form; and

(iv) Packaging of the claim.

In order for EPA to work together with claimants to adequately protect their trade secrets, EPA strongly advises claimants to submit claims according to the following guidelines. Failure to do so could result in the claim being found insufficient and/or frivolous. Submitters found making frivolous claims are subject to a penalty not to exceed $25,000 per claim. As stated in the preamble, EPA plans to evaluate claims and vigorously prosecute those found to be frivolous.

1. Problems Associated With Not Using the EPA Substantiation Form

The first area of errors concerned non-use of the substantiation form as provided in the rule. Several claimants devised their own substantiation form, or did not use any form at all. In almost every case where a submitter-devised form was used, the forms were inaccurately reproduced. This invariably led to inappropriate and inapplicable responses (many submitters had altered the wording of substantiation questions), and, especially where no form was used, entire areas of information required to be reported were omitted. Almost every submitter-devised substantiation form did not sufficiently identify the reporting facility. Also, many submitter-devised substantiations neglected to report the specific chemical identity, and all but one form that was reviewed for errors omitted the certification statement in its entirety.

EPA is required to collect the information requested by the form. Incomplete substantiations will in all likelihood be found insufficient to support the claim, and the claim will be denied. Moreover, the statute provides that a submitter who fails to provide information in the initial substantiation will be subject to a $10,000 penalty. Substantiations that do not sufficiently identify the chemical or reporting facility increase the likelihood of a finding that the facility is not in compliance.

Several claimants who used the Agency form failed to fill out the form in its entirety, or neglected to submit all the pages of the form. Although missing pages would ordinarily be expected to indicate a mere clerical error, at least one submitter omitted the same page in each filing for the facility, suggesting a systematic disregard for the rule's requirements. Again, the probable consequence of an incomplete substantiation is a $10,000 penalty, and the increased possibility that the claim will be denied.

2. Certification of the Substantiation

The next area of error concerns the substantiation form's certification. Common errors included the certification's inaccurate reproduction or omission in its entirety from submitter-devised forms, unsigned certifications, and photocopied signatures.

The certification statement may not be varied by submitters. It contains specific assurances regarding the quality of the information and statements regarding the submitter's obligations under Title III. Noncompliance with this specific certification requirement may jeopardize the trade secret claim.

An original signature is required for each trade secret substantiation submitted to EPA, both sanitized and unsanitized. An original signature indicates that the submitter is in fact certifying that the particular substantiation provided to EPA is complete, true, and accurate, and that it is intended to support the particular trade secret claim being made. In light of the heavy penalties for noncompliance, this requirement protects both the Agency and the submitter.

3. Contents of Responses to Substantiation Questions

The first common error in this area is the setting forth of conclusory statements rather than descriptive factual assertions. The proposed rule specifically stated that more than a conclusory statement of compliance must be made in the substantiation because EPA is required under section 322(d) to make a determination of sufficiency based upon the information provided by the submitter in the substantiation. To determine sufficiency EPA must decide, assuming that the assertions in the substantiation are true, whether the assertions are sufficient to support a claim of trade secrecy. Descriptive factual statements are necessary for this purpose. Conclusory statements of compliance do not provide enough information for EPA to make this determination. Substantiations containing only conclusory statements are therefore insufficient to support the claim.

In addition, mere conclusory statements are insufficient since EPA is required to evaluate whether the factual assertions are true based on supplemental information that a claimant may be required to submit following the initial review.

The second common problem in this area concerns what information may be claimed trade secret under Title III. EPA has received claims both for entire products (and not the chemical(s) that is (are) the trade secret), and for chemicals that are not reportable under Title III. Only the specific chemical identity required to be disclosed in sections 303, 311, 312, and 313 submissions may be claimed as trade secret. No other information may be withheld as a trade secret from publicly available Title III reports.

The final problem in this area is that location information claimed as confidential under section 312(d)(2)(F) should not be sent to EPA; this information should only be sent to the SERC, LEPC, and the fire department. EPA has received several claims accompanied by blueprints of facilities. It is neither necessary nor appropriate to send such information to the Agency.

4. Packaging of the Claim

The fourth problem area involved packaging of claims. The items required for a complete filing have been varied from the proposed rule, so submitters are advised to pay close attention to what is needed. In order for a claim to be complete under section 322, the submitter must include in the submittal the following items: for section 303 reports and reporting by MSDS under section 311, a complete package will include 3 items: The public 303 report or 311 MSDS, and sanitized and unsanitized substantiation. Reports under section 311 using the list approach, 312 Tier II reports, and 313 toxi release inventory reports will include 4 items: Sanitized and unsanitized 311, 312, or 313 reports, plus a sanitized and unsanitized substantiation for *each* chemical claimed trade secret.

Because multiple chemicals may be reported (and claimed trade secret) using the 311 list method and under 312 Tier II, it is of paramount importance that claimants (1) include in the unsanitized submittals the specific chemical identity being claimed trade secret, and (2) not separate the 311 or 312 filing from the accompanying substantiations.

In some cases, submitters provided separately each of the four parts of a trade secret submittal. The Agency must receive a complete package; otherwise,

it is difficult to determine whether a claim is complete and what chemical(s) is (are) being claimed trade secret. If it is not clear that a chemical identity is being claimed trade secret, EPA will not know that it should not make the information available to the public. For the submitter's own protection, securing together all three or four parts of a claim will make it clear that a claim is complete when submitted.

These guidelines and requirements are designed for the submitter's and the Agency's protection. If they are not followed, it will be much more likely that the Agency will conclude, based solely on the information provided by a submitter, that a claim is frivolous or incomplete. It also makes more likely that the Agency will disclose information that the submitter intended to claim trade secret because it was not clear that a claim was being made. At the same time, following these guidelines permits EPA to make appropriate determinations of trade secrecy, and to legally make public those portions of each submittal required to be disclosed. In this way EPA can work to preserve the confidentiality of legitimate trade secrets, and fulfill the Congressional mandate to make non-trade secret information public.

H. Enforcement

Section 325(d) authorizes the Administrator to assess a civil penalty of $25,000 per claim against a trade secret claimant if the Administrator determines that a trade secret claim is frivolous. Two commenters asked for an explanation of the term "frivolous claims." One of these commenters asked for policy guidance and recommended that a good faith test be employed. A third commenter expressed support for the Agency position on frivolous claims, and requested that the Agency determine the validity of each trade secrecy claim without waiting for petitions for disclosure of the information.

A frivolous claim is one without a factual or legal basis or one where the facts and circumstances relied upon to substantiate a trade secrecy claim are without merit. Section 325(c) authorizes the assessment of a civil penalty of $10,000 per violation for any person who fails to furnish a substantiation. These penalties can be assessed by either administrative order or through the appropriate U.S. District Court.

The proposed rule contained a provision indicating that submitters of trade secret claims who failed to submit supplemental information requested by EPA may be liable for a fine of up to $10,000 per violation under section 325(c). When EPA reviewed the statute, it was found that this provision had been inadvertently included in the proposed rule, but was not contained in the Act. The final rule, therefore, contains no such provision.

V. Relationship of Section 322 to Other Statutes

A. Relationship to State Confidentiality Statutes

As stated in the proposed rule, section 321 of Title III provides that nothing in Title III "shall preempt any State or local law." This means that the confidentiality requirements of Title III are not to displace State confidentiality requirements under State Right-To-Know Acts. A State can still prescribe the type of information it will classify as confidential when it gathers information for its own use under a State law, such as a Right-To-Know Act. However, state confidentiality statutes do not govern information gathered under Federal law, here Title III. State confidentiality statutes only apply to information collected pursuant to State law for State use. When information is gathered under Title III, the Federal confidentiality requirements of section 322 apply regardless of whether the information is sent to a State or Federal agency because the information is being gathered pursuant to a Federal statute.

One commenter requested that the "other" information in the Title III trade secret substantiation that is protected under the Freedom of Information Act be covered instead under more protective State law. The commenter argues that this is justified because the information is being sent to State and local entities. As stated above, the destination of the data is irrelevant because it is being gathered pursuant to a Federal statute and thus the only protection allowed is Federally based.

State confidentiality statutes may affect Title III information if State trade secrecy law or regulations prohibit claims of trade secrecy under State law for information that a submitter must also report under Title III. Under the substantiation provisions of Title III, a facility will not be able to justify withholding the information under Title III. One commenter stated that a State law may require submission of data and provide greater public access to the data than would be allowed under Title III protection of trade secrets. In such cases, the data may not be eligible for trade secret treatment under section 322.

B. Overlap with Other EPA-Administered Statutes

Information collected pursuant to EPA regulations under statutes other than Title III may be similar to that collected under Title III. For purposes of confidentiality, information should be claimed as confidential and will be treated by EPA as is required by the statute under which it is collected. However, the mandatory release of information under one statute may affect its trade secret status under another statute.

C. Relationship to Freedom of Information Act

The procedures set out in section 322 apply only to claims of trade secrecy for chemical identity made under Title III. Pursuant to section 322(f), however, submitters may claim as trade secret any other confidential business or trade secret information which is included in the substantiation, or supplemental information submitted in the petition process. Requests for disclosure of this material must be submitted under the Freedom of Information Act regulations at 40 CFR Part 2. EPA will make determinations regarding the disclosure of this material under those regulations.

VI. Release of Trade Secret Information

A. Releases to States

Under section 322(h) of the Act, the States, either the governors or the State emergency response commissions, must provide to any requesting person the adverse health effects associated with extremely hazardous substances (section 303) and hazardous chemicals (sections 311 and 312) claimed as trade secret. The States will not have direct access to the identities of chemicals claimed as trade secret in preparing adverse health effects descriptions. However, the States have information on health effects in the MSDSs submitted under section 311 for this purpose. The MSDS is required to include such information for any substance claimed as trade secret. Thus, governors or State commissions should not be hindered in meeting their responsibilities to provide descriptions of adverse health effects and the trade secret status of the chemicals will not be endangered.

Under section 322(g) of the Act, the Administrator shall provide to the State governor, upon request, any information EPA has obtained under subsection (a)(2), which includes specific chemical identities and substantiations for trade secrecy claims, and under subsection (d)(3), which includes the findings that

assertions made in the above substantiation materials are sufficient. Thus, if a State governor wished to request the chemical identities of any or all chemicals claimed as trade secret in any State, EPA will provide this information to the State governor, upon request. However, governors are prevented by section 325(d)(2) from "knowingly and willfully" disclosing trade secret information to the public, as are all other individuals.

EPA considered the advantages and disadvantages of allowing State governors to provide access to trade secret information to SERCs and LEPCs. Public comments also proposed several alternative ways of restricting disclosure of trade secret information released to States.

While providing selected members of SERCs and LEPCs access to chemical identities may provide some benefits to State and local preparedness and planning, it was determined that these potential advantages were outweighed by the possible consequences of unintended disclosure of bona fide trade secrets. Because SERCs often include representatives from industry and the public and LEPCs must include these representatives from industry and the public, it could be very difficult to protect trade secrets from wider disclosure than is intended. EPA determined that the decision of whether State governors may provide trade secret information to any members of SERCs and LEPCs shall be left up to the discretion of the governors themselves. However, EPA has included a provision in the rule which prohibits State governors from releasing trade secret information to non-State employees. One commenter requested that trade secret information be given to a State only after the State has demonstrated its ability to safeguard trade secret information. The Agency requires in the rule that States take the same precautions to safeguard this information as EPA itself does. The Agency believes that this approach is appropriate to adequately protect trade secret information.

The Agency considered the option of allowing State governors to appoint designees to be provided with the authority to request trade secret chemical identities from EPA. This could expedite requests by the State departments of public health for information needed to conduct medical research on the health effects of airborne toxics. However, such an expansion of the list of authorized State representatives beyond governors alone might also increase the likelihood of unintended disclosure of bona fide trade secrets. The Agency concluded that it does not have the authority to determine who State governors may authorize to obtain trade secret information from EPA. Consequently, the EPA determined that only State governors are authorized to request and receive trade secret information directly from EPA, as stated in the statute.

B. Releases to Authorized Representatives of EPA

In addition to contractors and subcontractors, EPA has recently begun to use grantee personnel to perform Agency functions. Public comments raised two points. First, it was suggested that the employees of grantees be required to sign confidentiality agreements (as is required of the employees of contractors and subcontractors). Second, grantees were described as presenting a greater risk of disclosure of trade secrets (because they are typically retired engineers or other technical people having close associations with former employers) and should be placed under greater restrictions than contractors or subcontractors in general. Greater restrictions were suggested to include either requirements for signing written conflict-of-interest statements or requirements that grantees must demonstrate a greater need for trade secret information.

The Agency believes it is appropriate to designate grantees as "authorized representatives," to be treated in the same manner as Federal contractors and subcontractors, as that term is used in this regulation. This includes requiring full confidentiality protection, the same procedures that contractors must follow, and similarly employees of grantees will be required to sign confidentiality agreements.

One commenter objected to proposed § 350.23, which makes contractors authorized representatives of EPA for the purposes of the release of trade secret information. This provision is mandated by the Act, however, and the Agency cannot alter or delete it. Another commenter requested that the Agency add a provision to the final rule to make contractors who receive trade secret information on behalf of EPA aware of potential conflicts of interest. The Agency has decided not to do so because contractors are already required to provide the Agency with such assurances as part of the contractual process.

One commenter stated that EPA should comply with Export Administration Act (EAA) restrictions on the export of technical data through foreign nationals. The commenter suggested that through the petition process, and in particular through releases to health professionals, technical data could be exported. The commenter also questioned whether there exist suitable precautions to prevent the export of technical data through EPA's contractors, subcontractors, and grantees to the EPA. Especially of concern would be the disclosure of confidential business information to a citizen of a Category S or Z country, which are listed in the Export Administration regulations.

EPA has determined that the intent of these regulations is consistent with those implementing the Export Administration Act. The definition of "technical data" found in the EAA regulations reads in part as follows: "Technical data means information of any kind that can be used, or adapted for use, in the design, production, manufacture, utilization, or reconstruction of articles or materials." In section II.A. of the preamble to these regulations, the definition of trade secret protection of specific chemical identity was said to allow for trade secrecy claims to be made to protect the linkage between a specific chemical identity and its "use, production, storage, or processing." While these definitions are similar, it is noteworthy that these regulations are designed to protect the described information from release except under very narrow, clearly defined, and controlled circumstances.

It is not EPA's intention for a foreign national to obtain trade secret information and export the information. The intent of the statute is "community right to know." EPA has every intention of doing everything in its power to assure that the information collected is used to inform and protect local residents from chemical hazards present in their communities. Disclosures which lead to the export of that information out of the United States run counter to that intent.

The statute does not require, and EPA has declined to establish a requirement in these regulations, that petitioners for information claimed as trade secret declare the reasons for their request. It would go beyond the content of the statute for EPA to require them to state that they are citizens of the United States. When the request of a petitioner for release of information claimed to be trade secret is granted, the Agency has determined that the information is not, in fact, a trade secret.

As to the export of technical data through contractors, subcontractors, and grantees to the EPA, these authorized

representatives of EPA are required to sign confidentiality agreements and to provide full confidentiality protection.

VII. Disclosure to Health Professionals

Section 323 of Title III consists of three provisions regarding access to chemical identity information by health professionals. These provisions require the facility owner or operator to disclose the chemical identity, including trade secret chemical identity, to a health professional for diagnosis or treatment in both non-emergency and emergency situations, and for purposes of conducting preventive research studies and providing medical treatment by a health professional who is a local government employee. The health professional must sign a statement regarding his need for the chemical identity, and a confidentiality agreement, prior to disclosure, except in emergency situations, when these two documents may be delivered later.

One commenter requested that EPA delete entirely the requirement to provide specific chemical identity to health professionals. The commenter indicated that, in its experience, health professionals were more concerned with obtaining detailed health and safety data than the specific chemical identity. However, the commenter overlooks the fact that the provision of the specific chemical identity, under specified circumstances, is a direct requirement of section 323 of Title III. EPA cannot alter the basic requirements of the statute.

Health professionals may obtain trade secret information for the three purposes set out in the statute. However, they are required to sign a confidentiality agreement and a statement of need stating that they need the information for the purposes set out in the statute.

A. Non-emergency Diagnosis or Treatment

The first provision, part (a) of section 323, requires that in non-emergency situations, an owner or operator of a facility which is subject to the requirements of sections 311, 312, or 313, shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to a health professional who requests the identity in writing and describes in a written statement of need described below a reasonable basis for suspecting that the specific chemical identity is needed for diagnosis or treatment of an individual or individuals who have been exposed to the chemical concerned. The health professional must also state that knowledge of the specific chemical identity will assist in diagnosis or treatment of the exposed individual(s). The health professional must certify that the information contained in the statement of need is true and accurate. The health professional must also provide a signed confidentiality agreement described in VII.E to the facility prior to gaining access to trade secret chemical identity. Any health professional performing diagnosis or treatment, not solely doctors or nurses, is permitted access to trade secret chemical identity in a non-emergency situation.

B. Emergency Situations

The second provision of section 323 deals with medical emergencies and requires an owner or operator of a facility subject to the requirements of sections 311, 312, or 313 to immediately provide a copy of an MSDS, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests the chemical identity under emergency conditions as specified in the statute. The treating physicians or nurses must determine that: (1) a medical emergency exists; (2) the specific identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and (3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

In response to public comments, EPA considered whether health professionals other than treating physicians and nurses (such as commercial spill contractors, paramedics, and other emergency medical services workers) should be provided access to trade secret chemical identities under this provision. The Agency decided that only treating physicians and nurses are entitled to such access, in accordance with the specific wording of the statute and following the intent of the OSHA provisions. In a medical emergency, only the doctor or nurse will conduct the medical examination and diagnose the necessary treatment. Most necessary information could be obtained from MSDSs and other Title III forms. Consequently, it is not necessary for personnel other than doctors and nurses to have access to trade secret information.

The requesting physician or nurse in such an emergency does not need to submit a written confidentiality agreement or statement of need prior to receiving the trade secret chemical identity. The owner or operator disclosing such information may, however, require a written confidentiality agreement and statement of need as soon as circumstances permit.

Some industry commenters on the proposed rule expressed concern that although they would be willing to provide information in the case of a true emergency, that the procedures therein would not provide adequate protection against fraudulent attempts to obtain confidential information. EPA considered requiring procedures such as phone calls or the development of a system of identification numbers. These procedures, however, would be burdensome, beyond the scope of the statute and of limited efficiency for the various scenarios possible in emergency situations. For these reasons, EPA decided not to recommend a specific verification procedure. If the facility wishes to verify that the situation is an emergency, the facility must do so without compromising the need to immediately provide the information requested by treating physicians and nurses. Chemical identities absolutely may not be disclosed or used for any purpose other than the proper treatment and diagnosis of a chemically related injury or illness.

C. Preventive and Treatment Measures

The third provision of section 323 deals with preventive and treatment measures by local health professionals. This subsection is intended to allow local health professionals access to information on chemicals in order to facilitate epidemiological and toxicological research and to render medical treatment for the effects of chemical exposures. This subsection requires an owner or operator of a facility to promptly provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional who is a local government employee or under contract with a local government who submits a request in writing and provides a written statement of need and a confidentiality agreement. The statement of need must describe one or more of the needs set forth in the regulations.

Under this section of the statute, EPA interprets the term "health professional" to be any health professional with the professional expertise to perform the types of research and treatment set forth in the statute, and who is employed by the local government. Under this section, such health professionals as physicians, toxicologists and

epidemiologists may gain access to trade secret chemical identity.

A few industry commenters argued that a provision should be made for allowing disclosure of relevant health effects information other than the chemical identity in this preventive and treatment measures section. They asserted that other information will be sufficient to conduct the listed types of studies and surveillance. EPA considers it inappropriate to place regulatory limitations on the six statutory situations in which health professionals may seek disclosure of chemical identities because they are explicitly mentioned in the statute.

D. Statement of Need

In the proposed rule, EPA requested comment concerning whether the statement of need should contain a detailed description of why the disclosure of the following information would not be sufficient to enable the health professional to provide medical services: (a) The properties and effects of the chemical, (b) measures for controlling the public's exposure to the chemical, (c) methods of monitoring and analyzing the public's exposure to the chemical, and (d) methods of diagnosing and treating harmful exposure to the chemical. These are the provisions in the Occupational Safety and Health Act Hazard Communication Standard. One commenter objected strongly to the inclusion of these provisions, citing the paramount interest in allowing health professionals to "undertake their own independent course of treatment, and hopefully to prevent future disease." Industry commenters, on the other hand, asserted that, in the vast majority of cases, information necessary for diagnosis and treatment can be provided without disclosing specific chemical identity. They argued for a presumption against disclosure, which would justify a higher standard for the health professional to meet in demonstrating that trade secret information should be disclosed.

The Agency has decided not to explicitly include the OSHA provisions in the final rule. The statutory requirement that a health professional describe "a reasonable basis" why the specific chemical identity is needed will implicitly explain why other information would not be sufficient. The Agency believes the OSHA provisions would be unnecessary.

E. Confidentiality Agreement

The confidentiality agreement required of the health professional must state that the health professional will not use the trade secret chemical identity for any purpose other than the health needs asserted in the statement of need, or as may otherwise be authorized by the terms of the agreement itself. This agreement may be negotiated between the health professional and the facility.

The provisions in the confidentiality agreement will enable the health professional to clearly understand the extent of disclosures permissible. At a minimum, the written confidentiality agreement shall include a description of the procedures to be used to maintain the confidentiality of the disclosed information and a statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need. Also, the health professional must agree not to release the information under any circumstances, except as authorized by the terms of the agreement. However, this authorized disclosure may be structured so that the health professional may release the trade secret chemical identity to other health professionals if the professionals routinely rely on each other's expertise for needed advice. The agreement may also specify that the first health professional may disclose the trade secret chemical identity to other health professionals if such disclosure is necessary in order for the first professional to learn necessary information to render a professional opinion. Except in those instances specified in the confidentiality agreement, the health professional may not be permitted to release the information to other health professionals. The health professional may be permitted to write articles for medical journals or to go on speaking tours discussing the chemical involved if such activity does not result in the disclosure of the identity of the chemical and the facility's relationship to that chemical.

The proposed rule included a reasonable pre-estimate of damages as an appropriate legal remedy in the event of a breach of the confidentiality agreement. Commenters expressed concern that inclusion of pre-estimates of damages in confidentiality agreements may have a chilling effect on health professionals, discouraging them from entering into such agreements. Many health professionals may be unable or unwilling to assume the liability associated with such a provision in exchange for obtaining information necessary for them to provide proper treatment or diagnosis. Several commenters characterized this liability as "unreasonable" and "not contemplated by the legislation." EPA agrees with the commenters and the provision for a pre-estimate of damages has been deleted from the final rule. The Agency believes that the underlying purpose of the confidentiality agreement is to protect a facility's trade secret chemical identity from unlimited and unbridled disclosure, not to make it overly burdensome or difficult for the health professional to obtain the specific identity of a chemical.

This confidentiality agreement is subject to State law and State contractual remedies. Also, nothing in this regulation precludes the facility or health professional from pursuing non-contractual remedies to the extent permitted by law.

F. Related Issues

Following the receipt of a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the health professional. EPA considered specifically defining "promptly" and "immediately" to mean a particular number of days. Two commenters discussed the Agency's failure to define the term "immediately" in the context of the requirement to release chemical identification information to health professionals. One of these commenters asked that the Agency define the term, while the other commenter expressed support for the Agency's decision to not specify a particular time period to provide the information. For the reasons stated above, the Agency will refrain from defining "immediately" more specifically. The Agency did not receive any comments on this issue and has decided not to define the terms because of the concern that defined times will limit the speed of response. The statute requires "immediate" provision of data in the case of medical emergencies and EPA interprets this to mean that the owner or operator will provide the data over the telephone, without requiring a written statement of need or a confidentiality agreement in advance.

As stated in the proposed rule, the Agency is aware of the possible situation where the owner or operator of a facility is unable to provide the chemical identity because the manufacturer of the chemical has kept the identity confidential. In these situations, EPA suggests that the owner or operator of the facility put the requester in touch with the supplier of the chemical, but the facility is not responsible for supplying information which it cannot obtain for itself.

EPA received a comment that if a patient becomes aware, or wishes to learn, the chemical identity of a substance he was exposed to, he should be required to sign a confidentiality agreement. Since the provisions of section 323 deal only with the release of information to health professionals, the Agency cannot require disclosures to patients as part of this rulemaking.

The regulation authorizes health professionals to refer to trade secret chemical identity in discussions with EPA personnel, who themselves are authorized to have access to Title III trade secret information. This is based on a provision of the OSHA Hazard Communication Standard. Several commenters suggested that the Title III regulations should restrict the release of confidential information from health professionals to EPA to a greater extent than was provided in the proposed rule. Specifically, several commenters stated that Title III trade secret regulations should mirror the procedures in the OSHA Hazard Communication Standard, which requires that the government provide notice to the facility owner or operator whenever a health professional transmits trade secret information to the government agency. Based on the comments, EPA considered three options for restricting releases of trade secret information from health professionals to the Agency. First, EPA considered the addition of a requirement similar to OSHA's that notice be given to the facility owner or operator whenever a health professional provides trade secret information to EPA. The second option considered was the limitation of communications between EPA and the health professional to the generic class or category, in non-emergency situations. The third option considered was to establish procedures similar to Confidential Business Information (CBI) Procedures utilized under TSCA. In this option, the health professional would be required to verify that an EPA employee is on a CBI authorized access list before disclosing trade secret chemical identities.

EPA evaluated the options and decided that each one would impede timely transmission of important health effects data necessary for proper diagnosis and treatment. The procedures would be administratively cumbersome and they are not explicitly required by the statute. The Agency is already fully aware of the necessity to protect trade secret information and believes additional procedures are unnecessary.

EPA construes section 323 to mean that a facility is not permitted to deny disclosure of a specific chemical identity to a health professional under any circumstances provided there is a written statement of need and a written confidentiality agreement. Section 325(c) empowers EPA to assess civil penalties of up to $10,000 for failure to disclose the trade secret chemical identity to health professionals in emergency situations, as required by section 323(b). Health professionals may also sue under section 325(e) in U.S. District Court to obtain the information.

VIII. Summary of Supporting Analyses

A. Regulatory Impact Analysis

1. Purpose

Executive Order (E.O.) No. 12291 requires each federal agency to determine if a regulation is a "major" rule as defined by the Order and to prepare a Regulatory Impact Analysis (RIA) in connection with each major rule. EPA has determined that the requirements and procedures established in this rulemaking for treatment of chemical data considered to be trade secret by facilities reporting under other sections of Title III do not constitute a major rule under E.O. No. 12291. The Agency has prepared an economic analysis to assess the economic impacts of the final regulation on affected industry and government entities. The following summary of results are presented in detail in *Regulatory Impact Analysis in Support of Final Rulemaking under Sections 322–323 of the Superfund Amendment and Reauthorization Act of 1986.*

2. Methodology

EPA conducted an assessment of the costs and benefits associated with this final rule and the primary provisions of sections 322 and 323, including the preparation of trade secrecy claims by facilities; the processing and storing of claims by EPA; the public petition and review process; the provision of adverse health effects data for chemicals whose identities are withheld as trade secrets; and special access procedures under which facilities must promptly provide chemical data to members of the health profession.

This analysis considered the costs that five groups will incur as a result of the rule and the section 322–323 provisions. These five groups are: facilities, EPA, public petitioners, States, and health professionals.

The economic analysis conducted for the final rule took into account public comments on the proposed rule and modifications made to other Title III reporting provisions. Among the changes incorporated into the economic analysis supporting the final rule are the trade secret claims made by non-manufacturing facilities submitting reports under sections 311 and 312 of SARA; increased costs for the public petition and review process; and consideration of the potential for cost savings per claim that may result when facilities file trade secret claims for the same chemical under different Title III reporting sections.

The economic analysis for the final rule confirms that facilities will make trade secret claims in about 0.1 percent of the reports submitted under Title III. This confirmation is based on the low number of trade secret claims having actually been made by facilities in 1987 during the first round of reporting under section 311 of SARA.

3. Results

The economic analysis conducted for the final rule estimated the costs that would be incurred by each of the five groups affected by the rule and the statutory provisions. The aggregate present value costs during the first 10 years of Title III reporting, using a discount rate of 4 percent, are estimated to be approximately $67.6 million, or an average of $6.8 million annually. The following discussion summarizes the costs that each of the major groups is estimated to incur.

Facilities. Industrial facilities incur the largest amount of costs in preparing and filing trade secret claims. They also will incur costs when they respond to public petitions challenging their trade secret claims and when they provide trade secret information to health professionals.

Facilities will incur the greatest costs in 1990, when the section 311 MSDS reporting threshold for non-manufacturing facilities is assumed to decline from 10,000 pounds to 500 pounds. The 1990 facility costs are estimated in the analysis to be approximately $26.4 million.

The analysis also estimates the costs of an individual facility filing a trade secret claim for the first time and the costs to file subsequent trade secret claims. An average facility will incur costs of approximately $1,100 when it files its first trade secret claim, and between $270 and $563 when it files a subsequent claim, depending on the type of claim made. If the public challenges a trade secret claim that a facility makes, the analysis estimates that a facility will incur an average of about $1,300 dollars to provide supplemental information to support the original substantiation. The analysis also estimates that these costs could range as high as $3,400 if a facility's claim is rejected by EPA and

the facility appeals the decision to EPA's Office of General Counsel. Finally, the analysis estimates that facilities will incur costs under the provisions of section 323 that range from $110 to $250 in responding to each request made by a health professional for information about trade secret chemicals.

The time burden that this rule places upon facilities having trade secrets is estimated to consist of: 10.4 hours for a facility to become familiar with the provisions of the rule and screen its chemicals to determine which are trade secrets, 22.8 hours to prepare a claim (including 21.3 hours to complete the substantiation form) for the first chemical submitted as a trade secret, and 17.7 hours to prepare additional claims for other chemicals (including 16.2 hours per chemical to complete the substantiation form). In cases where a facility submits claims for the same chemical involving reports made under different sections of Title III, the additional related claims require less effort because the facility will be able to utilize some or all of the information prepared for the first claim (generally associated with the chemical's MSDS filing). The time needed for each such related claim is estimated to range from 1.7 to 14.6 hours.

EPA. The economic analysis estimates the aggregate ten-year present value cost that EPA will incur under the three sections of the rule to be approximately $2.6 million, or an average of $260,000 annually. These costs result from EPA processing and storing trade secret claims, responding to public petitions challenging trade secret claims, and providing adverse health effects information on section 313 chemicals to states and the public.

The processing and storing of trade secret claims and responding to public petitions result in EPA incurring the largest costs. The analysis estimates that EPA will incur costs of approximately nine dollars to process and store each trade secret claim, in addition to annual costs of approximately $60,000 to maintain a record storage and tracking system. The Agency also will incur average costs of approximately $1,900 when the public files a petition to challenge a trade secret claim. The analysis estimates that these costs could range from $1,450 to $5,040, depending on the circumstances of the claim and the decision made about the validity of the petition.

Petitioners. Public petitioners are estimated to incur total present value costs of about $48,000 over the ten year period analyzed in the report. Each public petition filed is estimated to cost the public petitioner approximately $75, and the public is assumed to file an average of 72 petitions annually during the first ten years of Title III reporting. The analysis estimates that the public will file the largest number of petitions in 1990, corresponding to the year in which facilities file the largest number of claims. The total estimated costs incurred by the public in 1990 are approximately $20,000.

States. The economic analysis conducted for the final rule estimates that the present value of costs incurred by the states will be about $443,000 during the first ten years of Title III reporting, or approximately $44,000 annually ($880 annually per state). These costs will be incurred in the course of requesting information from EPA on trade secret chemicals and disseminating adverse health effects information to the public. The analysis estimates that each state will incur costs of $33 to request from EPA adverse health effects information on section 313 chemicals; the state will incur costs of about $56 to respond to each request from the public for adverse health information on section 302–304 and 311–312 chemicals that facilities claim trade secret.

States also will incur costs to compile adverse health effects information on chemicals reported under Title III in preparation for public requests, and to sanitize the profiles in order not to divulge trade secret information. This is estimated to cost states approximately $85,300 in 1988, when they will develop most of the chemical profiles, and approximately $4,200 in each subsequent year to develop profiles for new chemicals that facilities claim trade secret.

Health Professionals. The analysis estimates that the aggregate present value costs to health professionals will be approximately $372,000 during the first ten years of Title III reporting, or approximately $37,200 annually. The analysis also estimates that health professionals will incur a range of costs between $110 and $140 in making a request of a facility for a trade secret, depending on the particular circumstances of the request as described under section 323 of the rule.

Sensitivity Analyses. After calculating aggregate costs for each of the five groups, eight sensitivity analyses were conducted to test the effect of important assumptions on the total costs of the rule. These analyses included the number of trade secret claims that facilities will file, the costs of filing a trade secret claim, the likely effect of linkage on the number of trade secret claims, the number of Tier II claims under section 312, the number of petitions that the public files challenging facility trade secret claims, the number of requests for adverse health effects information, and the number of requests health professionals make for the identity of trade secret chemicals.

The sensitivity analyses demonstrated that the costs of the final rule are most sensitive to the number of trade secret claims that facilities will file and the costs of filing each claim.

Benefits. Benefits may arise as a result of this rule both for facilities and for the public. Relationships among the activities undertaken by various affected groups are complex and only a qualitative discussion of benefits is included in the economic analysis. For facilities, direct benefits may include protection of trade secrets involving chemicals used in production processes, that, by definition, involve information that permit a facility to have a competitive advantage over another facility. For the public, the rule provides a petition and review process that allows challenge of the validity of a trade secret claim through an administrative review process, and allows health effects information to be disclosed without jeopardizing the competitive position of the facility.

B. Regulatory Flexibility Analysis

1. Purpose

Under the Regulatory Flexibility Act of 1980, a Regulatory Flexibility Analysis must be performed for all rule that are likely to have a "significant impact on a substantial number of small entities" (small businesses, small organizations, and small governmental jurisdictions). The analysis contained in this economic analysis addresses the impact of this rule on small entities. Based on this analysis, EPA has concluded that although a large number of small businesses reporting under Title III could be affected by this rule, the costs of the rule generally will be low on a per facility basis and that significant impacts will not result.

2. Methodology and Results

In order to assess the likely economic impacts that this final rule will have on small businesses, EPA compared likely average costs for small facilities to file a trade secret claim with median sales for those facilities, and evaluated whether the rule likely would affect a substantial number of small entities.

The results of the economic analysis show generally that the cost of filing a trade secret claim will not be a burden on facilities because the likely costs of

filing a trade secret claim under a worst-case scenario tested in the analysis are less than one percent of median sales.

EPA defined small businesses in this analysis to be those with fewer than 20 employees. The number of small businesses under this definition is estimated to be approximately 2,794,400 facilities (the universe of facilities in categories covered by section 303, the broadest of the sections associated with trade secrecy claims). The economic analysis conducted for the final rule estimates that approximately 61,600 facilities will file trade secret claims during the first ten years of Title III reporting. If all facilities filing trade secret claims met the definition of "small business," this would encompass only 2.2 percent of small businesses, well below the usual level of 20 percent established by EPA to represent a "substantial" number of small facilities.

3. Certification

On the basis of the analyses contained in the economic analysis with respect to the impact of this rule on small entities, I hereby certify that this rule will not have a significant impact on a substantial number of small entities. This rule, therefore, does not require a Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

Public reporting burden for this collection of information is estimated to vary from 27.7 to 33.2 hours per response, with an average of 28.8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB has reviewed the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2050-0078.

List of Subjects in 40 CFR Part 350

Chemicals, Hazardous substances, Extremely hazardous substances, Toxic chemicals, Community right-to-know, Superfund Amendments and Reauthorization Act, Trade secrets, Trade secrecy claims, Intergovernmental relations.

Dated: July 21, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended by adding a new Part 350 to read as follows:

PART 350—TRADE SECRECY CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW INFORMATION: AND TRADE SECRET DISCLOSURES TO HEALTH PROFESSIONALS

Subpart A—Trade Secrecy Claims

Sec.

Subpart B—Disclosure of Trade Secret Information to Health Professionals

Authority: 42 U.S.C. 11042, 11043 and 11048 Pub. L. 99-499, 100 Stat. 1747.

Subpart A—Trade Secrecy Claims

§ 350.1 Definitions.

"Administrator" and "General Counsel" mean the EPA officers or employees occupying the positions so titled.

"Business confidentiality" or "confidential business information" includes the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its right in the information. The definition is meant to encompass any concept which authorizes a Federal agency to withhold business information under 5 U.S.C. 552(b)(4), as well as any concept which requires EPA to withhold information from the public for the benefit of a business under 18 U.S.C. 1905.

"Claimant" means a person submitting a claim of trade secrecy to EPA in connection with a chemical otherwise required to be disclosed in a report or other filing made under Title III.

"Petitioner" is any person who submits a petition under this regulation requesting disclosure of a chemical identity claimed as trade secret.

"Sanitized" means a version of a document from which information claimed as trade secret or confidential has been omitted or withheld.

"Senior management official" means an official with management responsibility for the person or persons completing the report, or the manager of environmental programs for the facility or establishments, or for the corporation owning or operating the facility or establishments responsible for certifying similar reports under other environmental regulatory requirements.

"Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance. Where the trade name is reported in lieu of the specific chemical identity, the trade name will be treated as the specific chemical identity for purposes of this part.

"Submitter" means a person filing a required report or making a claim of trade secrecy to EPA under sections 303 (d)(2) and (d)(3), 311, 312, and 313 of Title III.

"Substantiation" means the written answers submitted to EPA by a submitter to the specific questions set forth in this regulation in support of a claim that chemical identity is a trade secret.

"Title III" means Title III of the Superfund Amendments and Reauthorization Act of 1986, also titled the Emergency Planning and Community Right-to-Know Act of 1986.

"Trade secrecy claim" is a submittal under sections 303 (d)(2) or (d)(3), 311, 312 or 313 of Title III in which a chemical identity is claimed as trade secret, and is accompanied by a substantiation in support of the claim of trade secrecy for chemical identity.

"Trade secret" means any confidential formula, pattern, process, device, information or compilation of

information that is used in a submitter's business, and that gives the submitter an opportunity to obtain an advantage over competitors who do not know or use it. EPA intends to be guided by the Restatement of Torts, section 757, comment b.

"Unsanitized" means a version of a document from which information claimed as trade secret or confidential has not been withheld or omitted.

"Working day" is any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days; all other days are.

§ 350.3 Applicability of subpart; priority where provisions conflict; interaction with 40 CFR Part 2.

(a) *Applicability of subpart.* Sections 350.1 through 350.27 establish rules governing assertion of trade secrecy claims for chemical identity information collected under the authority of sections 303 (d)(2) and (d)(3), 311, 312 and 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986, and for trade secrecy or business confidentiality claims for information submitted in a substantiation under sections 303 (d)(2) and (d)(3), 311, 312, and 313 of Title III. This subpart also establishes rules governing petitions from the public requesting the disclosure of chemical identity claimed as trade secret, and determinations by EPA of whether this information is entitled to trade secret treatment. Claims for confidentiality of the location of a hazardous chemical under section 312(d)(2)(F) of Title III are not subject to the requirements of this subpart.

(b) *Priority where provisions conflict.* Where information subject to the requirements of this subpart is also collected under another statutory authority, the confidentiality provisions of that authority shall be used to claim that information as trade secret or confidential when submitting it to EPA under that statutory authority.

(c) *Interaction with 40 CFR Part 2, EPA's Freedom of Information Act procedures.* (1) No trade secrecy or business confidentiality claims other than those allowed in this subpart are permitted for information collected under sections 303 (d)(2) and (d)(3), 311, 312 and 313 of Title III.

(2) Except as provided in § 350.25 of this subpart, request for access to chemical identities withheld as trade secret under this regulation is solely through this regulation and procedures hereunder, not through EPA's Freedom of Information Act procedures set forth at 40 CFR Part 2.

(3) Request for access to information other than chemical identity submitted to EPA under this regulation is through EPA's Freedom of Information Act regulations at 40 CFR Part 2.

§ 350.5 Assertion of claims of trade secrecy.

(a) A claim of trade secrecy may be made only for the specific chemical identity of an extremely hazardous substance under sections 303 (d)(2) and (d)(3), a hazardous chemical under sections 311 and 312, and a toxic chemical under section 313.

(b) Method of asserting claims of trade secrecy for information submitted under sections 303 (d)(2) and (d)(3).

(1) In submitting information to the local emergency planning committee under sections 303 (d)(2) or (d)(3), the submitter may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 303.

(2) To make a claim, the submitter shall submit to EPA the following:

(i) A copy of the information which is being submitted under sections 303 (d)(2) or (d)(3) to the local emergency planning committee, with the chemical identity or identities claimed trade secret deleted, and the generic class or category of the chemical identity or identities inserted in its place. The method of choosing generic class or category is set forth in paragraph (f) of this section.

(ii) A sanitized and unsanitized substantiation in accordance with § 350.7 for each chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 303 claims shall be sent to the address specified in § 350.16 of this regulation.

(c) Method of asserting claims of trade secrecy for information submitted under section 311.

(1) Submitters may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 311 on the material safety data sheet or chemical list under section 311.

(2) To assert a claim for a chemical identity on a material safety data sheet under section 311, the submitter shall submit to EPA the following:

(i) One copy of the material safety data sheet which is being submitted to the State emergency response commission, the local emergency planning committee and the local fire department, which shall make it available to the public. In place of the specific chemical identity claimed as trade secret, the generic class or category of the chemical claimed as trade secret shall be inserted. The method of choosing generic class or category is set forth in paragraph (f) of this section.

(ii) A sanitized and unsanitized substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) To assert a claim for a chemical identity on a list under section 311, the submitter shall submit to EPA the following:

(i) An unsanitized copy of the chemical list under section 311. The submitter shall clearly indicate the specific chemical identity claimed as trade secret, and shall label it *"Trade Secret."* The generic class or category of the chemical claimed as trade secret shall be inserted directly below the claimed chemical identity. The method of choosing generic class or category is set forth in paragraph (f) of this section.

(ii) A sanitized copy of the chemical list under section 311. This copy shall be identical to the document in paragraph (c)(3)(i) of this section except that the submitter shall delete the chemical identity claimed as trade secret, leaving in place the generic class or category of the chemical claimed as trade secret. This copy shall be sent by the submitter to the State emergency response commission, the local emergency planning committee and the local fire department, which shall make it available to the public.

(iii) A sanitized and unsanitized substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(4) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(5) Section 311 claims shall be sent to the address specified in § 350.16 of this regulation.

(d) Method of asserting claims of trade secrecy for information submitted under section 312.

(1) Submitters may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 312.

(2) To assert a claim the submitter shall submit to EPA the following:

(i) An unsanitized copy of the Tier II emergency and hazardous chemical inventory form under section 312. (The Tier I emergency and hazardous chemical inventory form does not require the reporting of specific chemical identity and therefore no trade

secrecy claims may be made with respect to that form.) The submitter shall clearly indicate the specific chemical identity claimed as trade secret by checking the box marked "trade secret" next to the claimed chemical identity.

(ii) A sanitized copy of the Tier II emergency and hazardous chemical inventory form. This copy shall be identical to the document in paragraph (d)(2)(i) of this section except that the submitter shall delete the chemical identity or identities claimed as trade secret and include instead the generic class or category of the chemical claimed as trade secret. The method of choosing generic class or category is set forth in paragraph (f) of this section. The sanitized copy shall be sent by the submitter to the State emergency response commission, local emergency planning committee or the local fire department, whichever entity requested the information.

(iii) A sanitized and unsanitized substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 312 claims shall be sent to the address specified in § 350.16 of this regulation.

(e) Method of asserting claims of trade secrecy for information submitted under section 313.

(1) Submitters may claim as trade secret the specific chemical identity of any chemical subject to reporting under section 313.

(2) To make a claim, the submitter shall submit to EPA the following:

(i) An unsanitized copy of the toxic release inventory form under section 313 with the information claimed as trade secret clearly identified. To do this, the submitter shall check the box on the form indicating that the chemical identity is being claimed as trade secret. The submitter shall enter the generic class or category that is structurally descriptive of the chemical, as specified in paragraph (f) of this section.

(ii) A sanitized copy of the toxic release inventory form. This copy shall be identical to the document in paragraph (e)(2)(i) of this section except that the submitter shall delete the chemical identity claimed as trade secret. This copy shall also be submitted to the State official or officials designated to receive this information.

(iii) A sanitized and unsanitized substantiation in accordance with § 350.7 for every chemical identity claimed as trade secret.

(3) If the submitter wishes to claim information in the substantiation as trade secret or business confidential, it shall do so in accordance with § 350.7(d).

(4) Section 313 claims shall be sent to the address specified in § 350.16 of this regulation.

(f) Method of choosing generic class or category for sections 303, 311, 312 and 313. A facility owner or operator claiming chemical identity as trade secret should choose a generic class or category for the chemical that is structurally descriptive of the chemical.

(g) If a specific chemical identity is submitted under Title III to EPA, or to a State emergency response commission, designated State agency, local emergency planning committee or local fire department, without asserting a trade secrecy claim, the chemical identity shall be considered to have been voluntarily disclosed, and non-trade secret.

(h) A submitter making a trade secrecy claim under this section shall submit to entities other than EPA (e.g., a designated State agency, local emergency planning committee and local fire department) only the sanitized or public copy of the submission and substantiation.

§ 350.7 Substantiating claims of trade secrecy.

(a) Claims of trade secrecy must be substantiated by providing a specific answer including, where applicable, specific facts, to each of the following questions with the submission to which the trade secrecy claim pertains. Submitters must answer these questions on the form entitled "Substantiation to Accompany Claims of Trade Secrecy" in § 350.27 of this subpart.

(1) Describe the specific measures you have taken to safeguard the confidentiality of the chemical identity claimed as trade secret, and indicate whether these measures will continue in the future.

(2) Have you disclosed the information claimed as trade secret to any other person (other than a member of a local emergency planning committee, officer or employee of the United States or a State or local government, or your employee) who is not bound by a confidentiality agreement to refrain from disclosing this trade secret information to others?

(3) List all local, State, and Federal government entities to which you have disclosed the specific chemical identity. For each, indicate whether you asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim.

(4) In order to show the validity of a trade secrecy claim, you must identify your specific use of the chemical claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(i) Describe the specific use of the chemical claimed as trade secret, identifying the product or process in which it is used. (If you use the chemical other than as a component of a product or in a manufacturing process, identify the activity where the chemical is used.)

(ii) Has your company or facility identity been linked to the specific chemical identity claimed as trade secret in a patent, or in publications or other information sources available to the public or your competitors (of which you are aware)? If so, explain why this knowledge does not eliminate the justification for trade secrecy.

(iii) If this use of the chemical claimed as trade secret is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the Title III submittal form.

(iv) Explain why your use of the chemical claimed as trade secret would be valuable information to your competitors.

(5) Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, and indicate why such harm would be substantial.

(6)(i) To what extent is the chemical claimed as trade secret available to the public or your competitors in products, articles, or environmental releases?

(ii) Describe the factors which influence the cost of determining the identity of the chemical claimed as trade secret by chemical analysis of the product, article, or waste which contains the chemical (e.g., whether the chemical is in pure form or is mixed with other substances).

(b) The answers to the substantiation questions listed in paragraph (a) of this section are to be submitted on the form in § 350.27 of this subpart, and included with a submitter's trade secret claim.

(c) An owner, operator or senior official with management responsibility shall sign the certification at the end of the form contained in § 350.27. The certification in both the sanitized and unsanitized versions of the substantiation must bear an original signature.

(d) *Claims of confidentiality in the substantiation.* (1) The submitter may claim as confidential any trade secret or

confidential business information contained in the substantiation. Such claims for material in the substantiation are not limited to claims of trade secrecy for specific chemical identity, but may also include claims of confidentiality for any confidential business information. To claim this material as confidential, the submitter shall clearly designate those portions of the substantiation to be claimed as confidential by marking those portions "Confidential," or "Trade Secret." Information not so marked will be treated as public and may be disclosed without notice to the submitter.

(2) An owner, operator, or senior official with management responsibility shall sign the certification stating that those portions of the substantiation claimed as confidential would, if disclosed, reveal the chemical identity being claimed as a trade secret, or would reveal other confidential business or trade secret information. This certification is combined on the substantiation form in § 350.27 with the certification described in paragraph (c) of this section.

(3) The submitter shall submit to EPA two copies of the substantiation, one of which shall be the unsanitized version, and the other shall be the sanitized version.

(i) The unsanitized copy shall contain all of the information claimed as trade secret or business confidential, marked as indicated in paragraph (d)(1) of this section.

(ii) The second copy shall be identical to the unsanitized substantiation except that it will be a sanitized version, in which all of the information claimed as trade secret or confidential shall be deleted. If any of the information claimed as trade secret in the substantiation is the chemical identity which is the subject of the substantiation, the submitter shall include the appropriate generic class or category of the chemical claimed as trade secret. This sanitized copy shall be submitted to the State emergency response commission, a designated State agency, the local emergency planning committee and the local fire department, as appropriate, and made publicly available.

(e) *Supplemental information.* (1) EPA may request supplemental information from the submitter in support of its trade secret claim, pursuant to § 350.11(a)(1). EPA may specify the kind of information to be submitted, or the submitter may submit any additional detailed information which further supports the truth of the information previously supplied to EPA in its initial substantiation, under this section.

(2) The submitter may claim as confidential any trade secret or confidential business information contained in the supplemental information. To claim this material as confidential, the submitter shall clearly designate those portions of the supplemental information to be claimed as confidential by marking those portions "Confidential," or "Trade Secret." Information not so marked will be treated as public and may be disclosed without notice to the submitter.

(3) If portions of the supplementary information are claimed confidential, an owner, operator, or senior official with management responsibility of the submitter shall certify that those portions of the supplemental information claimed as confidential would, if disclosed, reveal the chemical identity being claimed as confidential or would reveal other confidential business or trade secret information.

(4) If supplemental information is requested by EPA and the submitter claims portions of it as trade secret or confidential, then the submitter shall submit to EPA two copies of the supplemental information, an unsanitized and a sanitized version.

(i) The unsanitized version shall contain all of the information claimed as trade secret or business confidential, marked as indicated above in paragraph (e)(2) of this section.

(ii) The second copy shall be identical to the unsanitized substantiation except that it will be a sanitized version, in which all of the information claimed as trade secret or confidential shall be deleted. If any of the information claimed as trade secret in the supplemental information is the chemical identity which is the subject of the substantiation, the submitter shall include the appropriate generic class or category of the chemical claimed as trade secret.

§ 350.9 Initial action by EPA.

(a) When a claim of trade secrecy, made in accordance with § 350.5 of this part, is received by EPA, that information is treated as confidential until a contrary determination is made.

(b) A determination as to the validity of a trade secrecy claim shall be initiated upon receipt by EPA of a petition under § 350.15 or may be initiated at any time by EPA if EPA desires to determine whether chemical identity information claimed as trade secret is entitled to trade secret treatment, even though no request for release of the information has been received.

(c) If EPA initiates a determination as to the validity of a trade secrecy claim, the procedures set forth in §§ 350.11, 350.15, and 350.17 shall be followed in making the determination.

(d) When EPA receives a petition requesting disclosure of trade secret chemical identity or if EPA decides to initiate a determination of the validity of a trade secrecy claim for chemical identity, EPA shall first make a determination that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same submitter and facility, or if it is, that the prior determination upheld the submitter's claim of trade secrecy for that chemical identity at that facility.

(1) If EPA determines that the chemical identity claimed as trade secret is not the subject of a prior trade secret determination by EPA concerning the same submitter and the same facility, or if it is, that the prior determination upheld the submitter's claim of trade secrecy, then EPA shall review the submitter's claim according to § 350.1l.

(2) If such a prior determination held that the submitter's claim for that chemical identity is invalid, and such determination was not challenged by appeal to the General Counsel, or by review in the District Court, or, if challenged, was upheld, EPA shall notify the submitter by certified mail (return receipt requested) that the chemical identity claimed as trade secret is the subject of a prior, final Agency determination concerning the same facility in which it was held that such a claim was invalid. In this notification EPA shall include notice of intent to disclose chemical identity within 10 days pursuant to § 350.18(c) of this subpart. EPA shall also notify the petitioner by regular mail of the action taken pursuant to this section.

§ 350.11 Review of claim.

(a) *Determination of sufficiency.* When EPA receives a petition submitted pursuant to § 350.15, or if EPA initiates a determination of the validity of a trade secrecy claim for chemical identity, and EPA has made a determination, as required in paragraph (d)(1) of § 350.9, then EPA shall determine whether the submitter has presented sufficient support for its claim of trade secrecy in its substantiation. EPA must make such a determination within 30 days of receipt of a petition. A claim of trade secrecy for chemical identity will be considered sufficient if, assuming all of the information presented in the substantiation is true, this supporting

information could support a valid claim of trade secrecy. A claim is sufficient if it meets the criteria set forth in § 350.13.

(1) *Sufficient claim.* If the claim meets the criteria of sufficiency set forth in § 350.13, EPA shall notify the submitter in writing, by certified mail (return receipt requested), that it has 30 days from the date of receipt of the notice to submit supplemental information in writing in accordance with § 350.7(e), to support the truth of the facts asserted in the substantiation. EPA will not accept any supplemental information, in response to this notice, submitted after the 30 day period has expired. The notice required by this section shall include the address to which supplemental information must be sent. The notice may specifically request supplemental information in particular areas relating to the submitter's claim. The notice must also inform the submitter of his right to claim any trade secret or confidential business information as confidential, and shall include a reference to § 350.7(e) of this regulation as the source for the proper procedure for claiming trade secrecy for trade secret or confidential business information submitted in the supplemental information requested by EPA.

(2) *Insufficient claim.* If the claim does not meet the criteria of sufficiency set forth in § 350.13, EPA shall notify the submitter in writing of this fact by certified mail (return receipt requested). Upon receipt of this notice, the submitter may either file an appeal of the matter to the General Counsel under paragraph (a)(2)(i) of this section, or, for good cause shown, submit additional material in support of its claim of trade secrecy to EPA under paragraph (a)(2)(ii) of this section. The notice required by this section shall include the reasons for EPA's decision that the submitter's claim is insufficient, and shall inform the submitter of its rights within 30 days of receiving notice to file an appeal with EPA's General Counsel or to amend its original substantiation for good cause shown. The notice shall include the address of the General Counsel, and the address of the office to which an amendment for good cause shown should be sent. The notice shall also include a reference to § 350.11(a)(2)(i)–(iv) of this subpart as the source on the proper procedures for filing an appeal or for amending the original substantiation.

(i) *Appeal.* The submitter may file an appeal of a determination of insufficiency with the General Counsel within 30 days of receipt of the notice of insufficiency, in accordance with the procedures set forth in § 350.17.

(ii) *Good Cause.* In lieu of an appeal to the General Counsel, the submitter may send additional material in support of its trade secrecy claim, for good cause shown, within 30 days of receipt of the notice of insufficiency. To do so, the submitter shall notify EPA by letter of its contentions as to good cause, and shall include in that letter the additional supporting material.

(iii) Good cause is limited to one or more of the following reasons:

(A) The submitter was not aware of the facts underlying the additional information at the time the substantiation was submitted, and could not reasonably have known the facts at that time; or

(B) EPA regulations and other EPA guidance did not call for such information at the time the substantiation was submitted; or

(C) The submitter had made a good faith effort to submit a complete substantiation, but failed to do so due to an inadvertent omission or clerical error.

(iv) If EPA determines that the submitter has met the standard for good cause, then EPA shall decide, pursuant to paragraph (a) of this section, whether the submitter's claim meets the Agency's standards of sufficiency set forth in § 350.13.

(A) If after receipt of additional material for good cause, EPA decides the claim is sufficient, EPA will determine whether the claim presents a valid claim of trade secrecy according to the procedures set forth in paragraph (b) of this section.

(B) If after receipt of additional material for good cause, EPA decides the claim is insufficient, EPA will notify the submitter by certified mail (return receipt requested) and the submitter may seek review in U.S. District Court within 30 days of receipt of the notice. The notice required by this paragraph shall include EPA's reasons for its determination, and shall inform the submitter of its right to seek review in U.S. District Court within 30 days of receipt of the notice. The petitioner shall be notified of EPA's decision by regular mail.

(v) If EPA determines that the submitter has not met the standard for good cause, then EPA shall notify the submitter by certified mail (return receipt requested). The submitter may seek review of EPA's decision in U.S. District Court within 30 days of receipt of the notice. The notice required in this paragraph shall include EPA's reasons for its determination, and shall inform the submitter of its right to seek review in U.S. District Court within 30 days of receipt of the notice. The petitioner shall be notified of EPA's decision by regular mail.

(b) Determination of trade secrecy. Once a claim has been determined to be sufficient under paragraph (a) of this section, EPA must decide whether the claim is entitled to trade secrecy.

(1) If EPA determines that the information submitted in support of the trade secrecy claim is true and that the chemical identity is a trade secret, the petitioner shall be notified by certified mail (return receipt requested) of EPA's determination and may bring an action in U.S. District Court within 30 days of receipt of such notice. The notice required in this paragraph shall include the reasons why EPA has determined that the chemical identity is a trade secret and shall inform the petitioner of its right to seek review in U.S. District Court within 30 days of receipt of the notice. The submitter shall be notified of EPA's decision by regular mail.

(2) If EPA decides that the information submitted in support of the trade secrecy claim is not true and that the chemical identity is not a trade secret:

(i) The submitter shall be notified by certified mail (return receipt requested) of EPA's determination and may appeal to the General Counsel within 30 days of receipt of such notice, in accordance with the procedures set forth in § 350.17. The notice required by this paragraph shall include the reasons why EPA has determined that the chemical identity is not a trade secret and shall inform the submitter of its appeal rights to EPA's General Counsel. The notice shall include the address to which an appeal should be sent and the procedure for filing an appeal, as set forth in § 350.17(a) of this subpart. The petitioner shall be notified of EPA's decision by regular mail.

(ii) The General Counsel shall notify the submitter by certified mail (return receipt requested) of its decision on appeal pursuant to the requirements in § 350.17. The notice required by this paragraph shall include the reasons for EPA's determination. If the General Counsel affirms the decision that the chemical identity is not a trade secret, then the submitter shall have 30 days from the date it receives notice of the General Counsel's decision to bring an action in U.S. District Court. If the General Counsel decides that the chemical identity is a trade secret, then EPA shall follow the procedure set forth in paragraph (b)(1) of this section.

§ 350.13 Sufficiency of assertions.

(a) A substantiation submitted under § 350.7 will be determined to be

insufficient to support a claim of trade secrecy unless the answers to the questions in the substantiation submitted under § 350.7 support all of the following conclusions. This substantiation must include, where applicable, specific facts.

(1) The submitter has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures. To support this conclusion, the facts asserted must show all of the following:

(i) The submitter has taken reasonable measures to prevent unauthorized disclosure of the specific chemical identity and will continue to take such measures.

(ii) The submitter has not disclosed the specific chemical identity to any person who is not bound by an agreement to refrain from disclosing the information.

(iii) The submitter has not previously disclosed the specific chemical identity to a local, State, or Federal government entity without asserting a confidentiality claim.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person. To support this conclusion, the facts asserted must show all of the following:

(i) *Either:* (A) Competitors do not know or the submitter is not aware that competitors know that the chemical whose identity is being claimed trade secret can be used in the fashion that the submitter uses it, and competitors cannot easily duplicate the specific use of this chemical through their own research and development activities; or

(B) Competitors are not aware or the submitter does not know whether competitors are aware that the submitter is using this chemical in this fashion.

(ii) The fact that the submitter manufactures, imports or otherwise uses this chemical in a particular fashion is not contained in any publication or other information source (of which the submitter is aware) available to competitors or the public.

(iii) The non-confidential version of the submission under this title does not contain sufficient information to enable competitors to determine the specific chemical identity withheld therefrom.

(iv) The information referred to in paragraph (a)(3)(i)(A) of this section, is of value to competitors.

(v) Competitors are likely to use this information to the economic detriment of the submitter and are not precluded from doing so by a United States patent.

(vi) The resulting harm to submitter's competitive position would be substantial.

(4) The chemical identity is not readily discoverable through reverse engineering. To support this conclusion, the facts asserted must show that competitors cannot readily discover the specific chemical identity by analysis of the submitter's products or environmental releases.

(b) The sufficiency of the trade secrecy claim shall be decided entirely upon the information submitted under § 350.7, or § 350.11(a)(2)(ii).

§ 350.15 Public petitions requesting disclosure of chemical identity claimed as trade secret.

(a) The public may request the disclosure of chemical identity claimed as trade secret by submitting a written petition to the address specified in § 350.16.

(b) The petition shall include:

(1) The name, address, and telephone number of the petitioner;

(2) The name and address of the company claiming the chemical identity as trade secret; and

(3) A copy of the submission in which the submitter claimed chemical identity as trade secret, with a specific indication as to which chemical identity the petitioner seeks disclosed.

(c) EPA shall acknowledge, by letter to the petitioner, the receipt of the petition.

(d) Incomplete petitions. If the information contained in the petition is not sufficient to allow EPA to identify which chemical identity the petitioner is seeking to have released, EPA shall notify the petitioner that the petition cannot be further processed until additional information is furnished. EPA will make every reasonable effort to assist a petitioner in providing sufficient information for EPA to identify the chemical identity the petitioner is seeking to have released.

(e) EPA shall make a determination on a petition requesting disclosure, in accordance with § 350.11 and § 350.17, within nine months of receipt of such petition.

§ 350.16 Address to send trade secrecy claims and petitions requesting disclosure.

All claims of trade secrecy under sections 303 (d)(2), (d)(3), 311, 312, and 313 and all public petitions requesting disclosure of chemical identities claimed as trade secret should be sent to the following address: U.S. Environmental Protection Agency, Emergency Planning and Community Right-to-Know Program, P.O. Box 70266, Washington, DC 20024–0266.

§ 350.17 Appeals.

(a) *Procedure for filing appeal.* A submitter may appeal an EPA determination under §§ 350.11 (a)(2)(i) or (b)(2)(i), by filing an appeal with the General Counsel. The appeal shall be addressed to: The Office of General Counsel, U.S. Environmental Protection Agency, Contracts and Information Law Branch, Room 3600M, LE–132G, 401 M Street, SW., Washington, DC 20460.

The appeal shall contain the following:

(1) A letter requesting review of the appealed decision; and

(2) A copy of the letter containing EPA's decision upon which appeal is requested.

(b) Appeal of determination of insufficient claim.

(1) Where a submitter appeals a determination by EPA under § 350.11(a)(2)(i) that the trade secrecy claim presents insufficient support for a finding of trade secrecy, the General Counsel shall make one of the following determinations:

(i) The trade secrecy claim at issue meets the standards of sufficiency set forth in § 350.13; or

(ii) The trade secrecy claim at issue does not meet the standards of sufficiency set forth in § 350.13.

(2) If the General Counsel reverses the decision made by the EPA office handling the claim, the claim shall be processed according to § 350.11(a)(1). The General Counsel shall notify the submitter of the determination on appeal in writing, by certified mail (return receipt requested). The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal and the reasons for such decision.

(3) If the General Counsel upholds the determination of insufficiency made by the EPA office handling the claim, the submitter may seek review in U.S. District Court within 30 days after receipt of notice of the General Counsel's determination. The General Counsel shall notify the submitter of its determination on appeal in writing, by

certified mail (return receipt requested). The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal and the reasons for such decision, and a statement of the submitter's right to seek review in U.S. District Court within 30 days of receipt of such notice. The petitioner shall be notified by regular mail.

(c) *Appeal of determination of no trade secret.* (1) If a submitter appeals from a determination by EPA under § 350.11(b)(2) that the specific chemical identity at issue is not a trade secret, the General Counsel shall make one of the following determinations:

(i) The assertions supporting the claim of trade secrecy are true and the chemical identity is a trade secret; or

(ii) The assertions supporting the claim of trade secrecy are not true and the chemical identity is not a trade secret.

(2) If the General Counsel reverses the decision made by the EPA office handling the claim, the General Counsel shall notify the submitter of its determination on appeal in writing, by certified mail (return receipt requested). The appeal determination shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, a statement of the decision on appeal and the reasons for such decision. The General Counsel shall send the petitioner the notice required in § 350.11(b)(1).

(3) If the General Counsel upholds the decision of the EPA office which made the trade secret determination, the submitter may seek review in U.S. District Court within 30 days of receipt of notice of the General Counsel's decision. The General Counsel shall notify the submitter of the determination on appeal in writing, by certified mail (return receipt requested). The notice shall include the date the appeal was received by the General Counsel, a statement of the decision appealed from, the basis for the appeal determination, that it constitutes final Agency action concerning the chemical identity trade secrecy claim, and that such final Agency action may be subject to review in U.S. District Court within 30 days of receipt of such notice. The General Counsel shall notify the petitioner by regular mail.

§ 350.18 Release of chemical identity determined to be non-trade secret; notice of intent to release chemical identity.

(a) Where a submitter fails to seek review within U.S. District Court within 20 days of receiving notice of a determination of the General Counsel under § 350.17(b)(3) of this subpart that the trade secrecy claim is insufficient, or under § 350.17(c)(3) of this subpart that chemical identity claimed as trade secret is not entitled to trade secret protection, EPA may furnish notice of intent to disclose the chemical identity claimed as trade secret within 10 days by furnishing the submitter with the notice set forth in paragraph (d) of this section by certified mail (return receipt requested).

(b) Where a submitter fails to seek review within U.S. District Court within 20 days of receiving notice of an EPA determination under § 350.11(a)(2)(iv)(B), or § 350.11(a)(2)(v) of this regulation, or fails to pursue appeal to the General Counsel within 20 days after being notified of its right to do so under § 350.11(a)(2)(i) or § 350.11(b)(2)(i), EPA may furnish notice of intent to disclose the chemical identity claimed as trade secret within 10 days by furnishing the submitter with the notice set forth in paragraph (d) of this section by certified mail (return receipt requested).

(c) Where EPA, upon initial review under § 350.9(d), determines that the chemical identity claimed as trade secret in a submittal submitted pursuant to this part is the subject of a prior final Agency determination concerning a claim of trade secrecy for the same chemical identity for the same facility, in which such claim was held invalid, EPA shall furnish notice of intent to disclose chemical identity within 10 days by furnishing the submitter with the notice set forth in paragraph (d) of this section by certified mail (return receipt requested).

(d) EPA shall furnish notice of its intent to release chemical identity claimed as trade secret by sending the following notification to submitters, under the circumstances set forth in paragraphs (a), (b), and (c) of this section. The notice shall state that EPA will make the chemical identity available to the petitioner and the public on the tenth working day after the date of the submitter's receipt of written notice (or on such later date as the Office of General Counsel may establish), unless the Office of General Counsel has first been notified of the submitter's commencement of an action in Federal court to obtain judicial review of the determination at issue, and to obtain preliminary injunctive relief against disclosure, or, where applicable, as described in paragraph (b) of this section, of commencement of an appeal to the General Counsel. The notice shall further state that if Federal court action is timely commenced, EPA may nonetheless make the information available to the petitioner and the public (in the absence of an order by the court to the contrary), once the court has denied a motion for a preliminary injunction in the action or has otherwise upheld the EPA determination, or, that if Federal court action or appeal to the General Counsel is timely commenced, EPA may nonetheless make the information available to the petitioner and the public whenever it appears to the General Counsel, after reasonable notice to the submitter, that the submitter is not taking appropriate measures to obtain a speedy resolution of the action.

§ 350.19 Provision of information to States.

(a) Any State may request access to trade secrecy claims, substantiations, supplemental substantiations, and additional information submitted to EPA. EPA shall release this information, even if claimed confidential, to any State requesting access if:

(1) The request is in writing;

(2) The request is from the Governor of the State; and

(3) The State agrees to safeguard the information with procedures equivalent to those which EPA uses to safeguard the information.

(b) The Governor of a State which receives access to trade secret information under this section may disclose such information only to State employees.

§ 350.21 Adverse health effects.

The Governor or State emergency response commission shall identify the adverse health effects associated with each of the chemicals claimed as trade secret and shall make this information available to the public. The material safety data sheets submitted to the State emergency response commissions may be used for this purpose.

§ 350.23 Disclosure to authorized representatives.

(a) Under section 322(f) of the Act, EPA possesses the authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to trade secret or confidential treatment under this part. Such authority may be exercised only in accordance with paragraph (b) of this section.

(b)(1) A person under contract or subcontract to EPA or a grantee who performs work for EPA in connection with Title III or regulations which implement Title III may be considered an authorized representative of the

United States for purposes of this § 350.23. Subject to the limitations in this § 350.23(b), information to which this section applies may be disclosed to such a person if the EPA program office managing the contract, subcontract, or grant first determines in writing that such disclosure is necessary in order that the contractor, subcontractor or grantee may carry out the work required by the contract, subcontract or grant.

(2) No information shall be disclosed under this § 350.23(b) unless this contract, subcontract, or grant in question provides:

(i) That the contractor, subcontractor or the grantee and the contractor's, subcontractor's, or grantee's employees shall use the information only for the purpose of carrying out the work required by the contract, subcontract, or grant, and shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected submitter or of an EPA legal office, and shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request by the EPA program office, whenever the information is no longer required by the contractor, subcontractor or grantee for the performance of the work required under the contract, subcontract or grant, or upon completion of the contract, subcontract or grant;

(ii) That the contractor, subcontractor or grantee shall obtain a written agreement to honor such terms of the contract or subcontract from each of the contractor's, subcontractor's or grantee's employees who will have access to the information, before such employee is allowed such access; and

(iii) That the contractor, subcontractor or grantee acknowledges and agrees that the contract, subcontract or grant provisions concerning the use and disclosure of confidential business information are included for the benefit of, and shall be enforceable by, both EPA and any covered facility having an interest in information concerning it supplied to the contractor, subcontractor or grantee by EPA under the contract or subcontract or grant.

(3) No information shall be disclosed under this § 350.23(b) until each affected submitter has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than 5 working days) to submit its comments. Such notice shall include a description of the information to be disclosed, the identity of the contractor, subcontractor or grantee, the contract, subcontract or grant number, if any, and the purposes to be served by the disclosure. This notice may be published in the **Federal Register** or may be sent to individual submitters.

(4) The EPA program office shall prepare a record of disclosures under this § 350.23(b). The EPA program office shall maintain the record of disclosure and the determination of necessity prepared under paragraph (b)(1) of this section for a period of not less than 36 months after the date of the disclosure.

§ 350.25 Disclosure in special circumstances.

Other disclosure of specific chemical identity may be made in accordance with 40 CFR 2.209.

§ 350.27 Substantiation form to accompany claims of trade secrecy, instructions to substantiation form.

(a) The form in paragraph (b) of this section must be completed and submitted as required in § 350.7(a).

(b) Substantiation form to accompany claims of trade secrecy.

BILLING CODE 6560-50-M

United States Environmental Protection Agency
Washington, DC 20460

EPA

Substantiation To Accompany Claims of Trade Secrecy Under the Emergency Planning and Community Right-To-Know Act of 1986

Form Approved
OMB No. 2050-0078
Approval expires 10-31-90

Paperwork Reduction Act Notice

Public reporting burden for this collection of information is estimated to vary from 27.7 hours to 33.2 hours per response, with an average of 28.8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Part 1. Substantiation Category

1.1 Title III Reporting Section (check only one)

☐ 303 ☐ 311 ☐ 312 ☐ 313

1.2 Reporting Year 19____

1.3 Indicate Whether This Form Is (check only one)

1.3a. ☐ Sanitized

(answer 1.3.1a below)

1.3.1a. Generic Class or Category

1.3b. ☐ Unsanitized

(answer 1.3.1b. and 1.3.2b. below)

1.3.1b. CAS Number

						–			–	

1.3.2b. Specific Chemical Identity

Part 2. Facility Identification Information

2.1 Name

2.2 Street Address

2.3 City, State, and ZIP Code

2.4 Dun and Bradstreet Number

		–				–				

Part 3. Responses to Substantiation Questions

3.1 Describe the specific measures you have taken to safeguard the confidentiality of the chemical identity claimed as trade secret, and indicate whether these measures will continue in the future.

3.2 Have you disclosed the information claimed as trade secret to any other person (other than a member of a local emergency planning committee, officer or employee of the United States or a State or local government, or your employee) who is not bound by a confidentiality agreement to refrain from disclosing this trade secret information to others?

☐ **Yes** ☐ **No**

3.3 List all local, State, and Federal government entities to which you have disclosed the specific chemical identity. For each, indicate whether you asserted a confidentiality claim for the chemical identity and whether the government entity denied that claim.

Government Entity	Confidentiality Claim Asserted		Confidentiality Claim Denied	
	Yes	No	Yes	No

3.4 In order to show the validity of a trade secrecy claim, you must identify your specific use of the chemical claimed as trade secret and explain why it is a secret of interest to competitors. Therefore:

(i) Describe the specific use of the chemical claimed as trade secret, identifying the product or process in which it is used. (If you use the chemical other than as a component of a product or in a manufacturing process, identify the activity where the chemical is used.)

(ii) Has your company or facility identity been linked to the specific chemical identity claimed as trade secret in a patent, or in publications or other information sources available to the public or your competitors (of which you are aware)?

☐ **Yes** ☐ **No**

If so, explain why this knowledge does not eliminate the justification for trade secrecy.

(iii) If this use of the chemical claimed as trade secret is unknown outside your company, explain how your competitors could deduce this use from disclosure of the chemical identity together with other information on the Title III submittal form.

3.4 (iv) Explain why your use of the chemical claimed as trade secret would be valuable information to your competitors.

3.5 Indicate the nature of the harm to your competitive position that would likely result from disclosure of the specific chemical identity, and indicate why such harm would be substantial.

3.6 (i) To what extent is the chemical claimed as trade secret available to the public or your competitors in products, articles, or environmental releases?

3.6 (ii) Describe the factors which influence the cost of determining the identity of the chemical claimed as trade secret by chemical analysis of the product, article, or waste which contains the chemical (e.g., whether the chemical is in pure form or is mixed with other substances).

Part 4. Certification (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined the information submitted in this and all attached documents. Based on my inquiry of those individuals responsible for obtaining the information, I certify that the submitted information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential would, if disclosed, reveal the chemical identity being claimed as a trade secret, or would reveal other confidential business or trade secret information. I acknowledge that I may be asked by the Environmental Protection Agency to provide further detailed factual substantiation relating to this claim of trade secrecy, and certify to the best of my knowledge and belief that such information is available. I understand that if it is determined by the Administrator of EPA that this trade secret claim is frivolous, EPA may assess a penalty of up to $25,000 per claim.

I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law.

4.1 Name and official title of owner or operator or senior management official	
4.2 Signature *(All signatures must be original)*	4.3 Date Signed

BILLING CODE 6560-50-C

Instructions for Completing the EPA Trade Secret Substantiation Form

General Information

EPA requires that the information requested in a trade secret substantiation be completed using this substantiation form in order to ensure that all facility and chemical identifier information, substantiation questions, and certification statements are completed. Submitter-devised forms will not be accepted. Incomplete substantiations will in all likelihood be found insufficient to support the claim, and the claim will be denied. *Moreover, the statute provides that a submitter who fails to provide information required will be subject to a $10,000 fine.* For the submitter's own protection, therefore, the EPA form must be used and completed in its entirety.

The statute for section 322 establishes a two-phase process in which the submitter must do the following:

1. At the time a report is submitted, the submitter must present a complete set of assertions that (if true) would be sufficient to justify the claim of trade secrecy; and

2. If the claim is reviewed by EPA, the submitter will be asked to provide additional factual information sufficient to establish the truthfulness of the assertions made at the time the claim was made.

In making its assertions of trade secrecy, a submitter should provide, where applicable, descriptive factual statements. Conclusory statements of compliance (such as positive or negative restatements of the questions) may not provide EPA with enough information to make a determination and may be found insufficient to support a claim.

What May Be Withheld

Only the specific chemical identity required to be disclosed in sections 303, 311, 312, and 313 submissions may be claimed trade secret on the Title III submittal itself. (Other trade secret or confidential business information included in answer to a question on the substantiation may be claimed trade secret or confidential, as described below.)

Location information claimed as confidential under section 312(d)(2)(F) should *not* be sent to EPA; this should only be sent to the SERC, LEPC, and the fire department, as requested.

Sanitized and Unsanitized Copies

You must submit this form to EPA in sanitized and unsanitized versions, along with the sanitized and unsanitized copies of the submittal that gives rise to this trade secrecy claim (except for the section 303 submittal, and for MSDSs under section 311). The *unsanitized* version of this form contains specific chemical identity and CAS number and may contain other trade secret or confidential business information, which should be clearly labeled as such. Failure to claim other information trade secret or confidential will make that information publicly available. In the *sanitized* version of this form, the specific chemical identity and CAS number must be replaced with the chemical's generic class or category and any other trade secret or confidential business information should be deleted. *You should also send sanitized copies of the submittal and this form to relevant State and local authorities.*

Each question on this form must be answered. *Submitters are encouraged to answer in the space provided.* If you need more space to answer a particular question, please use additional sheets. If you use additional sheets, be sure to include the number (and if applicable, the subpart) of the question being answered and write your facility's Dun and Bradstreet Number on the lower right-hand corner of each sheet.

When the Forms Must be Submitted

The sanitized and unsanitized report forms and trade secret substantiations must be submitted to EPA by the normal reporting deadline for that section (e.g., section 313 submissions for any calendar year must be submitted on or before July 1 of the following year).

Where to Send the Trade Secrecy Claim

All trade secrecy claims should be sent to the following address: U.S. Environmental Protection Agency, Emergency Planning and Community Right-to-Know Program, P.O. Box 70266, Washington, DC 20024–0266.

In addition, you must send sanitized copies of the report form and substantiation to relevant State and local authorities. States will provide addresses where the copies of the reports are to be sent.

Packaging of Claim(s)

A completed section 322 claim package must include four items, packaged in the following order:

1. An unsanitized trade secret substantiation form.

2. A sanitized trade secret substantiation form.

3. An unsanitized 312 or 313 report (it is not necessary to create an unsanitized section 303 submittal or MSDS for submission under section 311).

4. A sanitized (public) section 303, 311, 312, or 313 or report.

It is important to securely fasten together (binder clip or rubber band) each of the reporting forms and substantiations for the particular chemical being claimed trade secret. This process will make it clear that a claim is physically complete when submitted. When submitters submit claims for more than one chemical, EPA requests that the four parts associated with each chemical be assembled as a set and each set for different chemicals be kept separate within the package sent to EPA. Following these guidelines permits the Agency to make the appropriate determinations of trade secrecy, and to make public only those portions of each submittal required to be disclosed.

How to Obtain Forms and Other Information

Additional copies of the Trade Secret Substantiation Form may be obtained by writing to: Emergency Planning and Community Right-to-Know Program, U.S. Environmental Protection Agency, WH–562A, 401 M Street, SW., Washington, DC 20460.

Instructions for Completing Specific Sections of the Form

Part 1. Substantiation Category

1.1 Title III Reporting Section. Check the box corresponding to the section for which this particular claim of trade secrecy is being made. Checking off more than one box for a claim is *not* permitted.

1.2 Reporting Year. Enter the year to which the reported information applies, not the year in which you are submitting the report.

1.3a Sanitized. If this copy of the submission is the "public" or sanitized version, check this box and complete 1.3.1a. which asks for generic class or category. Do *not* complete the information required in the unsanitized box (1.3b.).

1.3.1a Generic Class or Category. You must complete this if you are claiming the specific chemical identity as a trade secret and have marked the box in 1.3a. The generic chemical name must be structurally descriptive of the chemical.

1.3b Unsanitized. Check the box if this version of the form contains the specific chemical identity or any other trade secret or confidential business information.

1.3.1b CAS Number. You must enter the Chemical Abstract Service (CAS) registry number that appears in the appropriate section of the rule for the chemical being reported. Use leading place holding zeros. If you are reporting

a chemical category (e.g., copper compounds), enter N/A in the CAS number space.

1.3.2b Specific Chemical Identity. Enter the name of the chemical or chemical category as it is listed in the appropriate section of the reporting rule.

Part 2. Facility Identification Information

2.1–2.3 Facility Name and Location. You must enter the name of your facility (plant site name or appropriate facility designation), street address, city, State and ZIP Code in the space provided. You may not use a post office box number for this location.

2.4 Dun and Bradstreet Number. You must enter the number assigned by Dun and Bradstreet for your facility or each establishment wthin your facility. If the establishment does not have a D & B number, enter N/A in the boxes reserved for those numbers. Use leading place holding zeros.

Part 3. Responses to Substantiation Questions

The six questions posed in this form are based on the four statutory criteria found in section 322(b) of Title III. The information you submit in response to these questions is the basis for EPA's initial determination as to whether the substantiation is sufficient to support a claim of trade secrecy. EPA has indicated in § 350.13 of the final rule the specific criteria that it regards as the legal basis for evaluating whether the answers you have provided are sufficient to warrant protection of the chemical identity. You are urged to review those criteria before preparing answers to the questions on the form.

Part 4. Certification

An *original* signature is required for each trade secret substantiation submitted to EPA, both sanitized and unsanitized. It indicates the submitter is certifying that the particular substantiation provided to EPA is complete, true, and accurate, and that it is intended to support the specific trade secret claim being made. Noncompliance with this certification requirement may jeopardize the trade secret claim.

4.1 Name and Official Title. Print or type the name and title of the person who signs the statement at 4.2.

4.2 Signature. This certification must be signed by the owner or operator, or a senior official with management responsibility for the person (or persons) completing the form. An *original* signature is required for each trade secret substantiation submitted to EPA, both sanitized and unsanitized. Since the certification applies to all information supplied on the forms, it should be signed only after the substantiation has been completed.

4.3 Date. Enter the date when the certification was signed.

Appendix A—Restatement of Torts Section 757, Comment b

b. Definition of trade secret. A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business (see section 759) in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Secrecy. The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his secret. Matters which are completely disclosed by the goods which one markets cannot be his secret. Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business know it. He may, without losing his protection, communicate it to employees involved in its use. He may likewise communicate it to others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the process or formula by independent invention and are keeping it secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are: (1) The extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Novelty and prior art. A trade secret may be a device or process which is patentable; but it need not be that. It may be a device or process which is clearly anticipated in the prior art or one which is merely a mechanical improvement that a good mechanic can make. Novelty and invention are not requisite for a trade secret as they are for patentability. These requirements are essential to patentability because a patent protects against unlicensed use of the patented device or process even by one who discovers it properly through independent research. The patent monopoly is a reward to the inventor. But such is not the case with a trade secret. Its protection is not based on a policy of rewarding or otherwise encouraging the development of secret processes or devices. The protection is merely against breach of faith and reprehensible means of learning another's secret. For this limited protection it is not appropriate to require also the kind of novelty and invention which is a requisite of patentability. The nature of the secret is, however, an important factor in determining the kind of relief that is appropriate against one who is subject to liability under the rule stated in this section. Thus, if the secret consists of a device or process which is a novel invention, one who acquires the secret wrongfully is ordinarily enjoined from further use of it and is required to account for the profits derived from his past use. If, on the other hand, the secret consists of mechanical improvements that a good mechanic can make without resort to the secret, the wrongdoer's liability may be limited to damages, and an injunction against future use of the improvements made with the aid of the secret may be inappropriate.

Subpart B—Disclosure of Trade Secret Information to Health Professionals

§ 350.40 Disclosure to health professionals.

(a) *Definitions.* "Medical emergency" means any unforeseen condition which a health professional would judge to require urgent and unscheduled medical attention. Such a condition is one which results in sudden and/or serious symptom(s) constituting a threat to a person's physical or psychological well-being and which requires immediate medical attention to prevent possible deterioration, disability, or death.

(b) The specific chemical identity, including the chemical name of a hazardous chemical, extremely hazardous substance, or a toxic chemical, is made available to health professionals, in accordance with the applicable provisions of this section.

(c) *Diagnosis or Treatment by Health Professionals in Non-Emergency Situations.* (1) An owner or operator of a facility which is subject to the requirements of sections 311, 312, and 313, shall, upon request, provide the

specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to a health professional if:

(i) The request is in writing;

(ii) The request describes why the health professional has a reasonable basis to suspect that:

(A) The specific chemical identity is needed for purposes of diagnosis or treatment of an individual,

(B) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(C) Knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

(iii) The request contains a confidentiality agreement which includes:

(A) A description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(B) A statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need authorized in paragraph (c)(1)(ii) of this section and will not release the information under any circumstances, except as authorized by the terms of the confidentiality agreement or by the owner or operator of the facility providing such information.

(iv) The request includes a certification signed by the health professional stating that the information contained in the statement of need is true.

(2) Following receipt of a written request, the facility owner or operator to whom such request is made shall provide the requested information to the health professional promptly.

(d) *Preventive Measures and Treatment by Local Health Professionals.* (1) An owner or operator of a facility subject to the requirements of sections 311, 312, and 313, shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, epidemiologist, or nurse) if:

(i) The requester is a local government employee or a person under contract with the local government;

(ii) The request is in writing;

(iii) The request describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of chemicals that may reasonably be anticipated to cause an observed health effect.

(iv) The request contains a confidentiality agreement which includes:

(A) A description of the procedures to be used to maintain the confidentiality of the disclosed information; and

(B) A statement by the health professional that he will not use the information for any purpose other than the health needs asserted in the statement of need authorized in paragraph (d)(1)(iii) of this section and will not release the information under any circumstances except as may otherwise be authorized by the terms of such agreement or by the owner or operator of the facility person providing such information.

(v) The request includes a certification signed by the health professional stating that the information contained in the statement of need is true.

(2) Following receipt of a written request, the facility owner or operator to whom such request is made shall promptly provide the requested information to the local health professional.

(e) *Medical Emergency.* (1) An owner or operator of a facility which is subject to the requirements of sections 311, 312, and 313, must provide a copy of a material safety data shreet, an inventory form, or a toxic chemical release form, including the specific chemical identity if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if the treating physician or nurse determines that:

(i) A medical emergency exists as to the individual or individuals being diagnosed or treated;

(ii) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and,

(iii) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

(2) Owners or operators of facilities must provide the specific chemical identity to the requesting treating physician or nurse immediately following the request, without requiring a written statement of need or a confidentiality agreement in advance.

(3) The owner or operator may require a written statement of need and a written confidentiality agreement as soon as circumstances permit. The written statement of need shall describe in reasonable detail the factors set forth in paragraph (e)(1) of this section. The written confidentiality agreement shall be in accordance with paragraphs (c)(1)(iii) and (f) of this section.

(f) *Confidentiality Agreement.* The confidentiality agreement authorized in paragraphs (c)(1)(iii), (d)(1)(iv) and (e)(3) of this section:

(i) May restrict the use of the information to the health purposes indicated in the written statement of need;

(ii) May provide for appropriate legal remedies in the event of a breach of the agreement; and

(iii) May not include requirements for the posting of a penalty bond.

(g) Nothing in this regulation is meant to preclude the parties from pursuing any non-contractual remedies to the extent permitted by law, or from pursuing the enforcement remedy provided in section 325(e) of Title III.

(h) The health professional receiving the trade secret information may disclose it to EPA only under the following circumstances: The health professional must believe that such disclosure is necessary in order to learn from the Agency additional information about the chemical necessary to assist him in carrying out the responsibilities set forth in paragraphs (c), (d), and (e) of this section. Such information comprises facts regarding adverse health and environmental effects.

[FR Doc. 88-17029 Filed 7-26-88; 10:28 am]

BILLING CODE 6560-50-M

federal register

Friday
July 29, 1988

Part III

Department of Health and Human Services

National Institute of Health

Recombinant DNA Research; Action Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Action Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of action under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth an action to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

EFFECTIVE DATE: July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities, National Institutes of Health, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, (301) 770–0131.

SUPPLEMENTARY INFORMATION: Today an action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. This proposed action was published for comment in the **Federal Register** of August 11, 1987 (52 FR 29800), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on September 21, 1987. A transcript of that meeting is available from the Office of Recombinant DNA Activities at the address given above.

In accordance with Section IV–C–1–b of the NIH Guidelines, this action has been found to comply with the NIH Guidelines and to present no significant risk to health or the environment.

Part I of this announcement provides background information on the action. Part II provides a summary of the action of the Director, NIH.

I. Decision on Action Under NIH Guidelines

Proposal to Add Bacillus stearothermophilis to Appendix C–V

Drs. Richard Novick and June Polak of the Public Health Research Institute of the City of New York, Inc. requested that *Bacillus stearothermophilis* be added to Appendix C–V, *Extrachromosomal Elements of Gram Positive Organisms.* Information on genetic exchange involving this organism was provided in the submission.

This proposal was published in the August 11, 1987, **Federal Register** (52 FR 29800) for public comment. No comments on the proposal were received.

The RAC considered this proposal at the September 21, 1987 meeting. By a vote of eighteen in favor, none opposed, and no abstentions, the RAC recommended approval of the proposal.

I accept this recommendation and Appendix C–V has been modified accordingly.

II. Summary of Action

Revision of Appendix C–V

Appendix C–V, *Extrachromosomal Elements of Gram Positive Organisms,* is modified by the addition of *Bacillus stearothermophilis* to the list of organisms.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: July 22, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 88–17030 Filed 7–27–88; 8:45 am]

BILLING CODE 4140–01–M

federal register

Friday
July 29, 1988

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Part 3470

Fees, Rentals, and Royalties; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3470

[A-660-08-4121-02]

Fees, Rentals, and Royalties

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: Subpart 3473 of Title 43 of the Code of Federal Regulations sets out, among other things, the royalty requirements for all Federal coal leases. The proposed rulemaking would eliminate the latitude the Secretary now has when setting the royalty rate for underground coal leases by requiring that the royalty rate for all underground coal leases be set at a flat percent of the value of coal removed. Additionally, the proposed rule will remove the requirement that Federal coal lease royalty rates be set on an individual case basis. The proposed changes would decrease the Bureau's administrative workload and analytical costs at the time of lease readjustment.

The final rulemaking effecting these changes will be published after the close of the 60-day comment period provided for herein. All comments received during the comment period will be carefully considered and addressed in the final rulemaking, with any changes made as result of the comments on the proposed rulemaking being made part of the final rulemaking.

DATE: Comments on the proposed rulemaking should be submitted by September 27, 1988. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Paul W. Politzer, (202) 343-7722

or

Phillip C. Perlewitz, (202) 343-7753.

SUPPLEMENTARY INFORMATION: Section 6 of the Federal Coal Leasing Amendments Act of August 4, 1976 (FCLAA), amended section 7 of the Mineral Leasing Act of 1920, as amended (MLA), and states in part: "A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations." Departmental regulation 43 CFR 3473.3-2(a)(1) provides that: "Royalty rates shall be determined on an individual case basis", and the following provision of 43 CFR 3473.3-2(a)(3) states: "A lease shall require payment of a royalty of not less than 8 percent of the value of coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant."

In 1985, the application of 8 percent to a readjustment was challenged in the United States District Court of Utah (Coastal States Energy Co. vs. Watt, 629 F. Supp. 9). The Court found the application appropriate. However, upon appeal the United States Court of Appeals for the 10th Circuit, while affirming that conclusion, held that the Department of the Interior was required to consider the flexibility of regulations allowing for a lesser amount than 8 percent if conditions warranted (816 F.2d 502 (1987)) and remanded it back to the Department. The Court stated:

> * * * it is error for the Bureau of Land Management to automatically fix the readjusted rate for all underground coal at 8%. Such completely ignores the ensuing proviso in the same regulation that a lesser amount, but not less than 5%, may be set, "if conditions warrant."
>
> * * * That part of the judgment only is reversed, and that particular matter only shall, by order of the district court, be remanded to IBLA with direction that further proceedings be in accord with this opinion.

Given this mandate, the Assistant Secretary for Lands and Minerals Management requested a study to analyze the various factors that should be considered in assessing the proper underground royalty rate for coal and also how to avoid the ambiguity inherent in the current regulations. The Bureau of Land Management has recently completed a draft study of the issues associated with the underground royalty rate. The results of the draft study indicate that considerable changes have occurred in market conditions and expectations for underground Federal coal.

The Findings and Observations of this draft study entitled "Review of Issues for Setting Royalty Rates on Federal Underground Coal Leases" are contained in Chapter VII which reads:

The current royalty rate for underground coal was determined more than 10 years ago through a process which included legislative direction, technical analysis, public review and comment, and formal rule-making. Care was taken to achieve a balance between the various Federal Coal Management Policy objectives, considerations, market conditions and expectations at that time. For the purposes of this analysis, it is assumed that the Congressional response to the prevailing conditions was appropriate, and that the Department's analysis and rule-making that led to a prescription of an 8 percent royalty for underground coal was also correct at that time. However, in 1987, the 10th Circuit Court mandated the Department to review whether or not 8 percent was still appropriate. The Department has responded by reviewing policies and regulations in light of a possible change in the relevant market conditions underlying the initial balance between objectives. If conditions were found to be largely unchanged, no further action would be necessary. Materially different market conditions, however, may signal a need for regulatory action.

It should be stressed that the most important issue for the Department to consider is future coal development, not current and short-term profitability. In order to predict future development, we must ask what a mine could earn, given current costs, under new contracts, or under contracts likely to exist when the mine could earn, given current costs, under new contracts, or under contracts likely to exist when the mine investment is committed. The analysis in Chapter V, "Market Changes and Expectations," indicates that there are underground mines operating profitably. It also indicates, however, that as many as 50 percent of the presently-operating mines may not have been opened if the investment decision were to be made under current market conditions and expectations—and this assumes no further cost increases or market price declines. Further, it assumes that contracts could be negotiated even though no new contracts have been let since 1982 as noted in Chapter VI.

For a variety of reasons, the current market situation for underground coal may not be attractive, from the point of view of new investment, as it once was. A comparison of the current market and market outlook to those characteristic of the mid-to-late 1970s, when the question of the appropriate underground royalty rate was last examined, suggests:

- From an overall industry perspective, production forecasts are significantly lower than those made in mid 1970s through the early 1980s, though the projections for underground coal were relatively accurate for the time period analyzed.
- Although contract prices initially increased, as expected, no new long term contracts have been negotiated since 1982 and spot market contract prices have been falling since the early 1980's,
- Although production and delivery of underground coal under existing long-term contracts gives the perception of continuing market recovery, the minimal interest in

negotiating new long-term contracts for the purchase of underground coal suggests the recovery has leveled off.

• Relative differences in the delivered prices of various coals, including new transportation competition in the Powder River Basin, may have reduced the effective geographic market size for underground coal.

The profitability of the on-going operations, stemming from old contracts, contrasted with the apparent lack of profitable opportunities based on the lack of any demand for current contracts indicates there may be an incremental trade-off between current royalty revenues and future development. At present it is unclear what the magnitude of this trade-off would be. It is diffucult to determine with any exactitude such small margins in this environment. Careful consideration should be given to these issues in any determinations regarding underground coal royalties.

Although our analysis has dealt primarily with efficiency issues, the changing market conditions that we outline also raise an equity issue which the Secretary is authorized to consider. Existing operations utilizing state of the art technology and having already acquired long term contracts negotiated under market expectations of early 1980's can make adequate profits at the current royalty rate (see Chapter VI). However, a Market demand for new underground coal contracts has not existed since 1982 and new mine operators may find it very difficult to obtain a contract and the negotiated price given spot market trends could be considerably lower. The profits under such contracts would also be lower. If the 8 percent royalty represented an equitable division of the profits in the mid-to-late 1970s, it is now appropriate to consider whether the distribution continues to be equitable.

Issues to consider in adopting a regulatory policy establishing a flat royalty rate for underground coals leases at the time of lease issuance or readjustment, as opposed to the current regulations which allow flexibility 'if conditions warrant,' are as follows:

• The mining of less economic reserves as the result of the royalty rate.

• The relationship between the risk of mining underground coal and increased competition in the industry.

• Certainty as to what royalty rate would be applied to all underground coal leases for the lease term, and its impact on administrative burden and industry planning.

• The impacts associated with disruption of the socioeconomic infrastructure resulting from premature mine closure.

• The equitable sharing of revenues between the public and private sectors from coal production given the change in market conditions and expectations.

• States' share of Mineral Leasing Act revenues.

• The potential number of appeals and court challenges to lease readjustments.

• The potential for royalty rate reduction requests under Section 39 of the MLA.

As custodian of the nation's Federal coal resources, the Department of the Interior has an obligation to see that these resources are developed to the greatest mutual benefit of the nation, the coal-producing regions and the coal industry. There has been sufficient change in market conditions to suggest that a prudent land manager consider the propriety of a royalty rate set more than 10 years ago. Given the lack of a demand for long term contracts and the anticipated change toward low or falling prices in the future market for coal, new profit margins may be smaller than existing profit margins. If this is true, then the net (after royalties are paid) return to the producer may be declining, both absolutely as well as relative to required capital investment. Such a decline would certainly result in a reduction in coal development investment. Therefore, it may be appropriate to consider the option of a lower royalty rate for underground coal, consistent with prevailing and expected market conditions. Such consideration should be based on an evaluation of the objectives of the Federal Coal Management Program, as discussed in Chapter III, the effect of lowering the royalty rate on those objectives, and indications of what royalty rate the market is setting in similar, non-Federal regions.

Copies of the entire study can be obtained from the Bureau of Land Management, Office of Public Affairs, 1800 C Street NW., Room 5600, Washington, DC 20240.

The proposed rulemaking would: (1) Eliminate the current process the Bureau of Land Management now utilizes of setting Federal coal lease royalty rates on an individual case basis; and (2) remove the current provision under which the Secretary of the Interior can now set a lower underground coal lease royalty rate at the time of lease issuance or readjustment. The proposed changes would decrease the Bureau's administrative workload and analytical costs at the time of lease readjustment. It costs approximately $30,000 to $50,000 per workyear per underground coal lease to conduct an individual case analysis of the lease royalty rate at the time of lease readjustment. There are at present 334 underground Federal coal leases. Only 53 of these Federal coal leases issued prior to FCLAA have not yet had their terms and conditions readjusted. Of these 53 leases, 5 are in production at this time. The cost savings to the Federal Government of not having to conduct an individual case analysis on these 53 leases to determine whether conditions warrant a lease royalty rate of less than 8 percent, but not less than 5 percent at the time of lease readjustment, would be approximately 2.24 million dollars.

The Department is considering alternatives for a flat royalty rate to be applied to coal removed from Federal lease by underground methods: 8 percent or 5 percent of the value of the coal. This flat rate would be applied to all newly issued coal leases and to existing coal leases upon their next regularly scheduled readjustment. Should a rate other than 8% be deemed appropriate, the Department is also considering whether the flat rate should be made available to leases which have been issued, or readjusted after FCLAA or which are in the readjustment process. This rate would only be available prospectively, subsequent to final rulemaking, and would require submittal of a request for modification of the royalty rate from each lessee.

Comments and associated rationale are invited from the public on whether either of the two flat rates or any flat rate in between these limits should be applied to Federal underground coal leases and whether the flat rate, if less than 8%, should be applied to existing leases which have an 8% royalty rate prior to their next readjustment. After consideration of the comments, a determination will be made as to what the fixed rate will be and to which leases it will be applied. That rate will be set in the final rulemaking without further notice.

Regardless of which rate is set, Federal coal lessees seeking further temporary short-term royalty relief when and if economic conditions warrant may do so by applying for a royalty rate reduction in accordance with section 39 of MLA (30 U.S.C. 209 (1982)), codified at 43 CFR 3485.2(c) and 3473.3–2(d).

The principal author of this proposed rulemaking is Pamela J. Lewis, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic impacts of this proposed rulemaking would not exceed the economic threshold of Executive Order 12291 and the rulemaking would affect all underground lessees equally, regardless of their size.

This rulemaking contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3470

Coal management provisions and limitations, Lessee qualification requirements, Fees, rentals, and royalties, Bonds, Lease terms.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), it is proposed to amend Part 3470, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3470—[AMENDED]

1. The authority citation for Part 3470 continues to read:

Authority: 30 U.S.C. 181 *et seq.*, and 30 U.S.C. 351–359 and 99 Stat. 1266.

2. Section 3473.3–2 is amended by removing paragraph (a)(1), by redesignating paragraphs (a) (2) through (4) as paragraphs (a) (1) through (3), and by revising redesignated paragraph (a)(2) to read as follows:

§ 3473.3–2 Royalties.

* * * * *

(a) * * *

(2) A lease shall require payment of a royalty of [Number to be inserted upon final rulemaking] percent of the value of coal removed from an underground mine.

* * * * *

James E. Cason,

Deputy Assistant Secretary of the Interior.

June 13, 1988.

[FR Doc. 88–17155 Filed 7–28–88; 8:45 am]

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federal register

Friday
July 29, 1988

Part V

Commodities Futures Trading Commission

17 CFR Part 30

Foreign Option Transactions; Orders for Montreal, Singapore and Sydney; Final Rules

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions; Singapore International Monetary Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts traded on the Singapore International Monetary Exchange ("SIMEX") to be offered and sold to persons located in the United States. This order is issued pursuant to Commission Rule 30.3(a), 52 FR 28980, 28998 (August 5, 1987), which makes it unlawful for any person to engage in the offer and sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States.[1]

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.[2] Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.3(a) Permitting Option Contracts Traded on the Singapore International Monetary Exchange To Be Offered and Sold in the United States Thirty Days after Notice to the Commission and Publication in the Federal Register of the Option Contracts to be Traded.

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign options to persons located in the United States.[3] Specifically, Rule 30.3(a) provides that:

> [N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28988.

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban,[4] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[5] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[6]

By separate letters dated September 3, 1987, the Singapore International Monetary Exchange ("SIMEX") and its regulator, the Monetary Authority of Singapore ("MAS"), requested that the Commission authorize the offer and sale of option contracts traded on SIMEX to persons located in the United States. By letter dated September 29, 1987, the Commission advised that the request on behalf of the SIMEX would be addressed pursuant to Commission Rule 30.3(a).

In issuing this Order, the Commission has considered: (1) The availability of certain information relevant to preventing abuses in the trading of option contracts on SIMEX including, but not limited to, trade confirmation data, data necessary to trace offshore funds, firm-specific data related, among other things, to good standing, fitness of principals and financial condition, and data related to sales practices in respect of such products;[7] (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including undertakings or arrangements by the appropriate foreign entity for the fulfillment of sales practice compliance obligations commensurate with those which apply to domestic products with respect to firms engaged in the offer and sale of its foreign option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer and sale of such products occurring within the jurisdiction where the option is traded; and (4) the regulatory environment in which such foreign options are traded.

In determining that SIMEX's showing with respect to the foregoing matters is sufficient to warrant the issuance of the Order herein, the Commission notes that as it acquires further experience it may determine that other considerations are also relevant. To this end, the Commission expects to continue to monitor the offer and sale of the products subject to this Order.[8]

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[1] Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

[2] In considering requests under Rule 30.3(a), the Commission notes that it has received a significant number of comments that the offer and sale of foreign options should be permitted. *See* advance notice of proposed rulemaking, 49 FR (July 25, 1984), proposed rules, 51 FR 12104 (April 8, 1986) and final rules, 52 FR 28980 (August 5, 1987). The Commission continues to welcome comments on this process. On this same date, the Commission also has issued orders authorizing certain option contracts traded on the Montreal Exchange and the Singapore International Monetary Exchange to be offered and sold in the United States.

[3] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[4] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. 99–641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect.

[5] 52 FR 28980, 28998.

[6] 51 FR 12104, 12105.

[7] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed" *See* 43 FR 16155 (April 17, 1978).

[8] In this connection, the Commission notes that it has not sought to analyze the individual option contracts under the requirements which apply to the designation of an option contract proposed to be traded on a United States contract market. In

Continued

Based upon the representations of SIMEX and MAS contained in their letters dated September 3, 1987, separate letters from MAS dated December 21, 1987, and February 4, 1988, and the memorandum from the Division of Trading and Markets to the Commission dated July 5, 1988 ("Staff Memorandum"), and pursuant to Commission Rule 30.3(a), the Commission hereby authorizes the offer and sale in the United States of options traded on SIMEX subject to the following conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any SIMEX option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to this Order;

(2) That MAS and SIMEX represent that all transactions with respect to the option(s) referenced in such notice [9] will be governed by the Singapore Futures Trading Act, the Regulations thereunder and SIMEX option rules as more particularly discussed in the Staff Memorandum and that the MAS and SIMEX provide the Commission with information as to all material changes thereto promptly;

(3) That options on futures on stock indictes [10] and options on futures on foreign government debt securities [11] will not be permitted to be offered and sold hereunder absent certain additional procedures;

(4) That options traded pursuant to this Order may only be offset on SIMEX or another market with respect to which the Commission has approved a linkage arrangement with SIMEX;

(5) That options traded pursuant to the Order herein may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered and sold by persons doing business in the United States pursuant to the Commission's interim order issued on January 29, 1988 (53 FR 3338 (Feb. 5, 1988)); and

(6) If experience demonstrates that the continued effectiveness of this Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in this Order, as appropriate, on its own motion. In such event, appropriate arrangements to service existing positions will be made.

This Order is issued based on the information provided to the Commission and its staff as set forth herein and in the Staff Memorandum. Any changes or material omissions might require the Commission to reconsider the authorization granted in this Order.

Issued in Washington, DC, on July 20, 1988.

Jean A. Webb,

Secretary of the Commission.

Memorandum

July 5, 1988.

To: The Commission.

From: The Division of Trading and Markets.

Suject: Order Under Commission Rule 30.3(a) Permitting Certain Option Contracts Traded on the Singapore International Monetary Exchange to be Offered and Sold in the United States.

Recommendation: That the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting option contracts traded on the Singapore International Monetary Exchange to be offered and sold in the United States upon thirty days notice.

Other Divisions and Offices Consulted:
Division of Economic Analysis
Division of Enforcement
Office of the Executive Director
Office of the General Counsel

I. Introduction

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign option products to persons located in the United States. [1] Specifically, Rule 30.3(a) provides that:

> [N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28988

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban, [2] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. [3] In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States. [4] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange in determining whether to authorize transactions in specific foreign exchange-traded options. [5]

By separate letters dated September 3, 1987, the Singapore International Monetary Exchange ("SIMEX") and the regulatory authority which governs that exchange, the Monetary Authority of Singapore ("MAS"), requested that the Commission authorize the offer and sale of option contracts traded on SIMEX to

particular, the Commission has not analyzed whether these instruments would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i) (1987), or other criteria relating to the specific terms and conditions of such foreign option contract. *See* 17 CFR 33.4. The Commission, however, has plenary authority with respect to option products. *See* section 4c of the Act.

[9] The option contracts which will initially be offered and sold pursuant to this Order are Options on Eurodollar Futures, Options on Japanese Yen Futures and Options on Deutschemark Futures.

[10] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[11] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12-8 promulgated thereunder.

[1] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[2] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed". *See* 43 FR 16155 (April 17, 1978).

[3] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. 99-641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect.

[4] 52 FR 28980, 28998. Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

[5] 51 FR 12104, 12105.

persons located in the United States. By letter dated September 29, 1987, the Commission advised that the request on behalf of SIMEX would be addressed pursuant to Commission Rule 30.3(a).

II. Recommendation

The Division of Trading and Markets ("Division") has carefully reviewed and considered the application of SIMEX to offer and sell option products traded on SIMEX in the United States, in particular addressing: (1) The availability of certain information relevant to preventing abuses in the trading of such contracts; (2) the arrangements in place for deterring sales practice abuses; (3) the ability of United States customers to redress grievances with respect to the conduct of trading and other offshore activities relevant to the offer and sale of SIMEX option products; and (4) the regulatory environment in which such options are traded. As discussed more fully below, based upon its determinations with respect to the foregoing matters, and subject to the terms and conditions specified herein, the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting certain option contracts traded on SIMEX to be offered and sold in the United States. [6]

III. Discussion

Information Sharing

Prior to the imposition of the options ban in 1978, the ability of the Commission to address problems which occurred with respect to the offer and sale of certain ostensibly foreign options in the United States was impeded by the inaccessibility of information from their purported jurisdiction of origin. As a consequence, in determining to lift the options ban with respect to foreign products, the Commission indicated that a primary consideration would be the availability of transaction information.[7] In connection with the petition of SIMEX under Rule 30.3(a), MAS has advised the Commission in a letter dated December 21, 1987, and the Commission in a letter to MAS dated January 14, 1988 has acknowledged, that MAS will share with the Commission, on an "as needed" basis, information relevant to SIMEX option transactions proposed to be entered into with or on behalf of United States customers pursuant to Rule 30.3(a). The foregoing exchange of correspondence confirms that the Commission's assessment of need will be determinative. The assurances of MAS concerning information sharing on an as needed basis extend, but are not limited, to information as to trade confirmations, offshore funds committed to SIMEX option transactions, firm-related fitness (such as standing to do business and financial condition), and the sales practices of firms selling from Singapore into the United States. MAS also has provided the Commission with further assurances that the secrecy provisions of the Singapore banking laws will not interfere with its sharing of information with the Commission concerning options trading activities. In addition, MAS and SIMEX [8] have each represented that all statements that were made with respect to information sharing in connection with the Commission's consideration of proposed rules submitted by the Chicago Mercantile Exchange ("CME") to implement the CME–SIMEX linkage extend equally and without restriction to transactions in options trade on SIMEX.[9]

Sales Practice Audits

In developing its pilot program for domestic exchange-traded options, the Commission specifically required as a condition of designation that the contract market seeking approval of an option adequately provide for the monitoring and detection of sales practice abuses.[10] As such abuses ultimately contributed to the banning of options trading altogether in 1978, the Commission has indicated that any options offered in the United States must be subject to an adequate sales practice audit program.[11] In this connection, SIMEX represents that it has adopted rules, discussed more fully below, regarding option sales practices including, but not limited to, customer complaints, supervision of employees and accounts, solicitation, notification of disciplinary actions, risk disclosure, discretionary accounts and promotional material, which are virtually identical to rules of the CME with respect to the same subjects.[12] Additionally, MAS represents that will ensure that sales practice audits of firms in Singapore selling SIMEX options into the United States will be conducted on a regular basis.[13] SIMEX also has made arrangements with the National Futures Association ("NFA"), which NFA has confirmed by letter dated June 10, 1988, to assure that the sales practices of firms located in the United States engaged in such activities will be audited.[14]

Dispute Resolution

In considering linkage arrangements intended in part to foster trading among domestic and foreign markets, the Commission has indicated that a material factor in its decision to approve such arrangements was the existence of a mechanism to permit United States customers to seek relief for disputes occurring in the linked jurisdiction.[15] The availability of a forum to address complaints with respect to trade execution also is relevant to any determination to lift the ban on foreign option products. This is because the provision of such a forum evidences the relevant foreign jurisdiction's intention to afford practical mechanisms to address complaints originating with customers not located in that jurisdiction and to assure a fair trading environment. In this connection, in its March 2, 1984 telex to the Commission

[6] *See* attached list of option contracts and terms and conditions. The Division believes that review of the individual foreign option contracts should be limited at this time to the regulatory issues discussed above and should not include an analysis of whether these foreign option contracts would meet the Commission's economic purpose tests, 17 CFR 33.4(a)(5)(i) (1987), or other criteria relating to the specific terms and conditions of the option contract. *See* 17 CFR 33.4.

[7] 52 FR 28980, 28988.

[8] *See* letter from Ang Swee Tian, General Manager, SIMEX, dated September 3, 1987 and letter from Koh Beng Seng, Director, Banking and Financial Institutions Department, MAS, dated February 4, 1988.

[9] In this regard, in connection with the Commission's consideration of the CME–SIMEX mutual offset system, MAS specifically had confirmed the Commission's understanding that:

SIMEX will have the same powers for requiring the disclosure of positions as does the CME and * * * the secrecy provisions of the Singapore Banking Laws will not apply in trading involving gold and financial futures on SIMEX. Necessary surveillance information will be readily available from SIMEX to the [Commission] or MAS for purposes of intermarket supervision to further the prevention of manipulation, fraud or in an enforcement proceeding. *See* telex from MAS to Commission dated March 2, 1984 conforming Commission telex to MAS dated February 17, 1984.

[10] *See* 46 FR 54500, 54502 (November 3, 1981).

[11] *Id.*

[12] *See* SIMEX rules AA02–AA06 and AA08 discussed, *infra*.

[13] *See* letter from MAS dated February 4, 1988.

[14] On January 14, 1988, the Commission approved amendments to NFA's Bylaws and the adoption of new Bylaws to provide for the regulation of the foreign futures and option activities of NFA members and associates. By letter dated June 10, 1988 from Daniel A. Driscoll, Vice-President of the NFA, to Andrea M. Corcoran, Director, Division of Trading and Markets, the NFA confirmed that the NFA and U.S. exchanges which are a party to a joint sales practice audit agreement will provide sales practice audit services addressing sales of SIMEX options.

[15] *See* staff memorandum ("Staff Memorandum") dated August 28, 1984, analyzing CME-SIMEX linkage at p. 51; *see also* staff memorandum dated August 1, 1986, analyzing the Commodity Exchange, Inc.—Sydney Futures Exchange linkage at p. 22.

in connection with the mutual offset system, MAS confirmed that:

SIMEX will establish an arbitration system similar to that of the CME which will be available to U.S. citizens for resolution of disputes and further that U.S. citizens have access to the Singapore judicial system for actions involving Singaporeans, just as citizens of other nations may use U.S. courts in actions against U.S. citizens.

In December 1984, the Board of Directors of SIMEX approved rules which established an arbitration system for the resolution of disputes involving transactions on SIMEX or pursuant to the mutual offset system with CME. Pursuant to these rules, SIMEX maintains a forum for resolution of disputes arising out of transactions conducted on SIMEX, including the mutual offset system with CME.[16] All claims not exceedings $15,000 (approximately US$7,500), submitted no more than one year since the party making the claim knew or should have known of the act or transaction that is the subject of the dispute, are arbitrable under these rules. MAS has confirmed in its letter of December 21, 1987, that although all parties have the right to be present when the arbitration board appointed pursuant to SIMEX rules hears a case, such presence is not mandatory. Under the rules, the arbitration board must consider all written documents submitted under oath or affirmation in resolving disputes committed to arbitration. Thus, a foreign futures and option customer may arbitrate a claim using documentary evidence only.

Regulatory Environment

When options were originally banned in the United States, they had not been subjected to a full regulatory program. It is appropriate, therefore, to inquire as to whether the market which proposes to offer option products in the United States has a regulatory structure which addresses market integrity and the sales practices of firms doing business with United States firms or customers.[17] This review is for the purpose of establishing the existence of a supervised marketplace and does not constitute a comparability analysis of the nature required under Rule 30.10 for certain other relief the Commission may accord under its foreign futures and option rules.[18] This review was facilitated by the detailed scrutiny given SIMEX during the Commission's consideration of the rules submitted by the CME to implement the mutual offset system linkage agreement between the CME and SIMEX.[19] In reviewing that application, the Commission's staff analyzed, among other things, the customer protection, market surveillance and trade practice surveillance rules of the Exchange. The Staff Memorandum [20] concluded that the systems and rules adopted by SIMEX, if observed, afforded many of the protections found on regulated United States markets. Rule enforcement reviews conducted to date of the CME have reported no significant deficiencies in the operation of the CME–SIMEX linkage.

Subsequent to the Commission's approval of the CME–SIMEX mutual offset system, Singapore adopted the Singapore Futures Trading Act of 1986 and Regulations thereunder, copies of which have been provided to the Commission. The MAS and SIMEX represent that the Singapore Futures Trading Act and the Regulations promulgated thereunder establish a regulatory environment which parallels that established under the Commodity Exchange Act and Commission rules in terms of the subjects addressed, the content of the statutory and regulatory provisions and the provisions for effecting compliance therewith. Specifically, in support of the SIMEX application to sell its option products within the United States, MAS and SIMEX represent that the Singapore Futures Trading Act of 1986 and the Regulations thereunder are intended to promote market integrity and to provide a fair trading environment for Singapore futures and option products, as follows:

a. Authorization of Exchanges (Fitness of the Marketplace)

Section 4 of the Singapore Futures Trading Act vests sole authority for the establishment of exchanges in a governmental body, the Monetary Authority of Singapore. Before MAS may designate an entity as a futures exchange, it must be satisfied that, among other things, the futures exchange has business rules to ensure that: (1) Standards for membership, including procedures for the expulsion, suspension or discipline of members for conduct inconsistent with just and equitable principles in connection with the transaction of business are maintained; (2) obligations arising out of futures contracts entered into on that exchange will be honored; (3) floor trading practices are fair and properly supervised; (4) adequate measures have been taken to prevent manipulation and excessive speculation; (5) adequate provision has been made to record and publish details of trading; (6) a compensation fund or other system acceptable to MAS has been established to compensate customers who suffer loss as a result of theft by persons entrusted with customer funds; and (7) generally the exchange is capable of carrying on business with due regard to the interests and protection of the public. These rules establish trading standards and also require the maintenance of trading records essential to effective information sharing with respect to option transactions.

b. Licensing of Firms And Personnel (Fitness Standards For Professionals)

Sections 10–24 of the Singapore Futures Trading Act establish licensing standards for futures brokers, trading advisers, pool operators and their representatives. The licensing procedure for persons dealing with the public is set forth in the Second Schedule of the Regulations promulgated pursuant to the Singapore Futures Trading Act. For example, Form 3, Application for Futures Broker's License, requires, *inter alia*, the disclosure of controlling interests in the broker, a detailed description of its organization, prior licenses or revocations of licenses, convictions, bankruptcies and previous employment history of principals for the past 5 years. Under sections 14 and 15 of the Singapore Futures Trading Act, MAS has the authority either to refuse to grant or renew a license under certain conditions, including the failure to disclose information, a previous bankruptcy or conviction of offenses involving fraud or dishonesty, or to

[16] *See* Chapter 6, SIMEX Rules, and "Your Right to Arbitration," a SIMEX publication.

[17] Although the Commission has not indicated an intention to review the terms and conditions of foreign option products, *see* S. Rep. No. 384, 97th Cong., 2d Sess. 45–46 (1982), the Commission's authority with respect to options is plenary.

[18] 52 FR 28980, 29001.

[19] In generally excluding transactions executed pursuant to a linkage agreement between one or more foreign boards of trade and a United States contract market from the application of the foreign futures and option rules, the Commission noted that linked transactions and the regulatory environment in which such transactions occur would be separately subject to Commission review under section 5a(12) of the Act. Specifically, Rule 30.3(a) reads, in part, as follows:

* * * *And, provided further*, That, with the exception of the disclosure and antifraud provisions set forth in §§ 30.6 and 30.9 of this part, the provisions of this part shall not apply to transactions executed on a foreign board of trade, and carried for or on behalf of a customer at a designated contract market, subject to an agreement with or rules of a contract market which permit positions in a commodity interest which have been established in one market to be liquidated on another market.

[20] Staff Memorandum at p. 67.

grant or renew a license subject to conditions. These rules are intended to establish a standard of fitness for market professionals who handle customer money and deal with the public.

c. Financial Requirements (Fitness Standards For Firms)

Regulation 12 sets forth minimum financial requirements for futures brokers. In essence, Regulation 12(1) requires that an amount equal to the higher of S$250,000 (US$122,500) or 10% of mandatory segregated customer funds be maintained at all times.[21] (Segregated funds include money, securities or property received by a futures broker to margin, guarantee or secure contracts in futures trading or accruing to a customer as a result of such trading.) In addition, Regulation 12(2) requires futures brokers to file quarterly financial reports, including statements of financial condition, computation of adjusted net capital and segregation requirements and location of segregated funds. *See* Forms 21, 22 and 23 in the Second Schedule of the Regulations. These rules establish a standard of financial fitness which is relevant to the expectation that members will comply with applicable rules and the capacity of members to meet their obligations in the marketplace.

d. Treatment of Customer Funds And Property

Section 37 of the Singapore Futures Trading Act defines customer funds as all money, securities or property received by a futures broker to margin, guarantee or secure contracts in futures trading, or accruing to a customer as a result of such trading. That section of the Act and Regulation 15 thereunder require a futures broker to treat and deal with customer funds as belonging to that customer and prohibit commingling of customer funds with the broker's own funds.[22] Under section 25 of the Act and Regulation 15(1), each futures broker is required to keep books and records which accurately disclose all customer transactions and trace the flow of funds. In addition, Regulation 15(3)(1) restricts the investment of customer funds to Singapore Government securities, any debt instruments of the government of the country in which the market or futures exchange where the futures broker normally transacts its business is situated, and any securities or instruments as MAS from time to time may prescribe. Certified audits of accounts are mandated by section 27 of the Singapore Futures Trading Act for futures brokers. An auditor for a futures broker is required under section 28 to notify MAS if at any time the auditor becomes aware of any adverse financial matter. These rules provide certain protections for customer funds committed to trading on SIMEX. These rules may also assist in tracing funds offshore that are the subject of actions in the United States.

e. Market Integrity

Section 42 of the Singapore Futures Trading Act authorizes MAS or an exchange, with the approval of MAS, to establish position and trading limits to diminish or prevent excessive speculation. Regulation 16 provides that the position limits for "futures contracts" [23] listed on SIMEX shall be the quantity determined by SIMEX and approved by MAS. In addition, SIMEX maintains a large trader reporting system similar to that maintained by the Commission.[24] Sections 50–57 of the Singapore Futures Trading Act prohibit offenses such as false trading, bucketing, manipulation and fraudulent or deceptive devices, and provide for penalties of up to a S$100,000 (US$49,000) fine and seven years imprisonment.

f. Other Customer Protections

Section 39 of the Singapore Futures Trading Act requires customers to be provided with a risk disclosure statement in a form mandated by MAS. Regulations 17 and 18 require futures brokers to provide confirmation statements and monthly account statements to their customers. Regulations 19, 20 and 21 establish business conduct standards for firms which include performance disclosure and disclosure of conflicts of interest where appropriate.

g. SIMEX Option Rules

SIMEX has submitted its option rules [25] which it represents are virtually identical to the rules of the CME. These rules contemplate that SIMEX takes responsibility for ensuring sales practice compliance by its members, maintains fair requirements for executions, and monitors the financial soundness of its members. SIMEX represents that it maintains in effect and enforces rules which:

(1) Prohibit members from soliciting or accepting option orders from any person who the member has reason to believe may be soliciting orders in contravention of the Singapore Futures Trading Act.[26] *Compare* SIMEX rule AA10 with CME rule 1010.

(2) Define exercise conditions—exercise by buyer, assignment of exercise notices by the clearing house, and exercise or assignment under emergency conditions. *Compare* SIMEX rule XX02 with CME rules 5002 and 5003.

(3) Require clearing members to adopt written procedures for allocating option exercise notices in a fair and non-preferential manner. *Compare* SIMEX rule AAO9 with CME rule 1009.

(4) Define put and call options, expiration date, out-of-the-money options, in-the-money options and exercise or strike price. *Compare* SIMEX definitions with CME Chapter 10.

(5) Require the full payment of premiums. *Compare* SIMEX rule AAO7 with CME rule 1007.

(6) Require members to record all customer complaints and send a copy of each complaint and its resolution to SIMEX. *Compare* SIMEX rule AAO2 with CME rule 1002.

(7) Require clearing members to have written procedures for supervising customer accounts, including the solicitation thereof. *Compare* SIMEX rule AAO3 with CME rule 1003.

(8) Require members to notify SIMEX of any disciplinary actions concerning the offer or sale of options. *Compare* SIMEX rule AAO4 with CME rule 1004.

(9) Require clearing members to submit option promotional material to SIMEX. *Compare* SIMEX rule AAO8 with CME rule 1008.

(10) Require the distribution of a mandatory options risk disclosure statement to customers and receipt of acknowledgment from the customer. Also require the disclosure of all commissions, fees and other costs prior to entering into the first option transaction. *Compare* SIMEX rule AAO5 with CME rule 1005.

(11) With respect to discretionary accounts, require that customers are provided with an

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[21] Conversions at June 21, 1988 as published in the *Washington Post*, June 22, 1988.

[22] Although margin is not required for purchased put or call options, the full premium must be paid in cash. SIMEX does maintain margin requirements on short option positions. *See* SIMEX rule AA07 and terms and conditions of options on foreign currency futures traded on SIMEX, attached.

[23] The term "futures contract" is defined under section 2 of the Singapore Futures Trading Act to include commodity options. SIMEX Rule 532 authorizes SIMEX to establish position limits on options.

[24] *See* Agreement for the Creation of a Mutual Offset System between the Chicago Mercantile Exchange and the Singapore International Monetary Exchange Limited, June 28, 1984, p. 22.

[25] In his February 4, 1988 letter to the Commission, Koh Beng Seng, Director, Banking and Financial Institutions Department, MAS, represented that SIMEX rules relating to option contracts on Eurodollar futures came into force on September 25, 1987, while those relating to option contracts on the Deutschemark and Yen futures contracts became effective on November 27, 1987. These are the option contracts which are the subject of SIMEX's petition of September 3, 1987.

[26] Sections 54 and 55 of the Singapore Futures Trading Act prohibit the employment of any fraudulent or deceptive devices in connection with any transaction or fraudulently inducing trading in a futures contract.

explanation of the nature and risks of the strategy or strategies to be used with that account, that an officer approve in writing the discretionary authority prior to trading and that discretionary orders be identified. *Compare* SIMEX rule AAO6 with CME rule 1006.

These rules generally address the regulatory concerns the Commission identified in setting forth conditions for the designation of U.S. contract markets in options. *See* Commission Rule 33.4. In this connection, MAS and SIMEX specifically represent that the regulatory environment governing transactions on SIMEX provides many of the protections found on regulated United States markets.

IV. Conclusion

Based upon the foregoing, the representations of SIMEX and MAS contained in their separate letters dated September 3, 1987, letters from MAS dated December 21, 1987, and February 4, 1988, and pursuant to Commission Rule 30.3(a), the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order authorizing the offer and sale in the United States of options traded on SIMEX subject to the following terms and conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any SIMEX option product in the United States will be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to the order;

(2) That MAS and SIMEX represent that all transactions with respect to the option(s) referenced in such notice will be governed by the Singapore Futures Trading Act of 1986 and Regulations thereunder, and SIMEX option rules as more particularly discussed in this Staff Memorandum and that MAS and/or SIMEX will provide the Commission with information as to all material changes therein promptly;

(3) That options on futures on stock indices [27] and options on futures on foreign government debt securities [28] will not be permitted to be offered and sold absent certain additional procedures;

(4) That options traded pursuant to the order may only be offset on SIMEX or another market with respect to which the Commission has approved a linkage arrangement with SIMEX;

(5) That options traded pursuant to the order may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered and sold by persons doing business in the United States pursuant to the Commission's interim order issued on January 29, 1988 (53 FR 3338 (Feb. 5, 1988)); and

(6) If experience demonstrates that the continued effectiveness of the order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject thereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted therein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in the order, as appropriate, on its own motion.

SIMEX has specified that the following option contracts, the terms and conditions for which are attached hereto, will initially be offered and sold in the United States: Options on Eurodollar Futures, Options on Japanese Yen Futures and Options on Deutschemark Futures. As noted in condition (6) above, the Division recommends that the Commission retain the authority to terminate the order granting authorization to offer and sell SIMEX options in the United States or to take such other steps as may be appropriate in light of the circumstances. In that connection, if the order is approved by the Commission, the Division intends to monitor the offer and sale of SIMEX options to persons in the United States pursuant to the terms of the recommended order and to make recommendations for further action to the Commission, as appropriate in light of the operation of that program.

Contract: Options on Eurodollar Futures.
Ticker Symbols:
Calls: CE
Puts: PE
Contract Value: One Eurodollar Futures Contract.
Contract Months: March, June, September, December.
Strike Price: 50-point intervals for Eurodollar levels below 91.00 and 25-point intervals for Eurodollar levels above 91.00.
Minimum Price Fluctuation: 0.01 Eurodollar point (US$25) except that trades may occur at a price of US$1-if such trades result in the liquidation of position for both parties to the trade.
Price Limit: None.
Trading Hours: 8:30 am to 5:20 pm (Singapore time) (same as for Eurodollar futures).
Last Trading Day: Same date and time as the underlying Eurodollar futures (i.e. the second London business day before the third Wednesday of the contract month).
News Vendor Reference: Reuters—SMOA to SMOZ.

Telerate—27800 to 27840.

Notes:

Strike Prices

When a new contract month is listed for trading, there will be Put and Call strike prices in a range of 1.50 index points above and below the nearest strike price to the underlying futures price. For example, if the March ED futures closed at 91.38 on the previous day, the strikes listed for March Puts and Calls would be: 90.00, 90.50, 91.00, 91.25, 91.50, 91.75, 92.00, 92.25, 92.50, 92.75 and 93.00.

A new strike price will be listed for both Puts and Calls when the underlying futures price touches within half a strike price interval of either the second highest or second lowest strike prices. As an example, if the March Eurodollar futures price touches 91.63 after the options are listed as in the above example, then a new strike price at 93.25 will be listed for Puts and Calls the next day. (No new options will be listed, however, with less than 10 calendar days until expiration.)

Minimum Margin

No margin is required for Put or Call option buyers, but the full premium must be paid in cash. Check with your broker for margins on short option positions and combinations of option/futures positions.

Exercise Procedure

Option buyers may exercise on any trading day. Check with your brokerage firm for its exercise procedure.

Exercise results in a long futures position for a Call buyer or a Put seller, and a short futures position for a Put buyer or a Call seller. The futures position is effective on the trading day immediately following exercise, and is marked-to-market to the settlement that day.

Expiration

Options expire at 5:00 p.m. on the last trading day. *However,* your broker may set a considerably earlier cut-off time for exercising expiring options. Always check with your broker for exercise deadlines. A Eurodollar option that is in-the-money and has not been liquidated or exercised prior to the termination of trading shall be exercised automatically (in the absence of contrary instructions delivered to the SIMEX clearing house by 5:00 p.m. on the expiration date).

[27] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[28] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12-8 promulgated thereunder.

CONTRACT SPECIFICATIONS [1]

	Trading unit	Strike price	Premium quotations	Ticker symbols	Minimum price fluctuation (tick size)	Trading hours
Options on JY futures.	One Japanese yen futures contract (covering JY12,500,000) of the specified contract month.	Intervals of .01¢ (eg. $.0042, $.0043, $.0044).	Quotations are cents per Japanese yen. A quote of .0050¢ represents an option price of $625. ($.000050 × JY12,500,000).	Calls: CY; Puts: PY	0001¢ ($.000001), equal to $12.50 (same as JY futures).	8:15 a.m. to 5:05 p.m Singapore time (same as JY futures)
Options on DM futures.	One deutschemark futures contract (covering DM125,000) of the specified contract month.	Numbers in whole cent intervals.	Quotations are cents per deutschemark. A quote of. 50¢ represents an option price of $625. ($.0050 × DM125,000).	Calls: CM; Puts: PM.	.01¢ ($.0001), equal to $12.50 (same as DM futures).	8:20 a.m to 5:10 p.m. Singapore time (same as DM futures)

Newsvendor References:
Reuters: Eurodollar—SMOA to SMOZ; Japanese Yen—SMRE to SMRZ; Deutschemark—SMQA to SMQZ.
Telerate: Eurodollar—27800 to 27807; Japanese Yen—27808 to 27817; Deutschemark—27818 to 27827.
[1] Contract specifications are subject to change. Please check with your broker to confirm this information.

Specifications Common to All SIMEX Options on Currency Futures

Months Traded

March, June, September, December & Serial Months + + For options that expire in months other than those in the March quarterly cycle, i.e. serial month options, the underlying futures contract is the next Futures contract in the March quarterly cycle. Listing for the serial month cycle includes the spot month, the first deferred, and the second deferred contract months. This is in addition to the contract month options currently listed in the March quarterly cycle. (e.g. Feb, Mar, Apr, Jun, Sep options are listed; when Feb options expire, Mar, Apr, May, Jun, & Sep options will be listed.)

Daily Price Limit

None.

Strike Price

For Options in the March quarterly cycle, when a new contract month is listed for trading, there will be nine put and call strike prices: the nearest strike to the underlying futures price, the next four higher and the next four lower. For example, if the March DM price closes at $.3651 on the previous day, the strikes listed for March puts and calls will be: 33¢, 34¢, 35¢, 36¢, 37¢, 38¢, 39¢, 40¢, 41¢.

A new strike price will be listed for both puts and calls when the underlying futures price touches within half a strike price interval of either the fourth highest or fourth lowest strike prices. As an example, if the March DM futures price touched .3751 after the options are listed as in the above example, then a new stike price at 42¢ will be listed for puts and calls the next day. (No new options will be listed, however, with less than 10 calendar days until expiration.)

For Options not in the March quarterly cycle, the Exchange shall list put and call options at any exercise price listed for trading in the next March quarterly cycle futures option that is nearest the expiration of the option. Options may be listed for trading up to and including the termination of trading.

Last Day of Trading

Two Fridays before the third Wednesday of the contract month. If that Friday is an Exchange holiday, the last trading day will be the business day immediately preceding.

Minimum Margin

No margin required for put or call options buyers, but the full premium must be paid in cash. Check with your broker for margins on short option positions and combination option/futures positions.

Exercise Procedure

Option buyers may exercise on any trading day. Check with your brokerage firm for its exercise procedure.

Exercise results in a long futures position for a call buyer or a put seller, and a short futures position for a put buyer or a call seller. The futures position is effective on the trading day immediately following exercise, and is marked-to-market to the settlement that day. If the futures position is not offset prior to the expiration of trading in the futures contract, delivery of physical currency will result or be required.

Expiration

Options expire at 7:30 p.m. on the last trading day. However, your broker may set a considerably earlier cut-off time for exercising expiring options. Always check with your broker for exercise deadlines.

There is no automatic exercise of the expiring in-the-money currency options by the SIMEX Clearing House.

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

2. Appendix B is added to Part 30 to read as follows:

Appendix B—Option Contracts Permitted To Be Offered and Sold in the U.S. pursuant to § 30.3(a)

Exchange

Singapore International Monetary Exchange (SIMEX).

Type of contract

Options on Eurodollar, Japanese yen, and Deutschemark futures.

FR date and citation

July 29, 1988; 53 FR _____.

[FR Doc. 88-16726 Filed 7-28-88; 8:45 am]
BILLING CODE 6351-01-M

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17 CFR Part 30

Foreign Option Transactions; Sydney Futures Exchange

AGENCY: Commodity Futures Trading Commission.
ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts traded on the Sydney Futures Exchange to be offered and sold to persons located in the United States. This order is issued pursuant to Commission Rule 30.3(a), 52 FR 28980, 28998 (August 5, 1987), which makes it unlawful for any person to engage in the offer and sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States.[1]

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading

[1] Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

Commission, 2033 K Street NW., Washington, DC 20581.[2] Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.3(a) Permitting Option Contracts Traded on the Sydney Futures Exchange To Be Offered and Sold in the United States Thirty Days after Notice to the Commission and Publication in the Federal Register of the Option Contracts To Be Traded

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign options to person located in the United States.[3] Specifically, Rule 30.3(a) provides that:

[N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28988.

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban,[4] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[5] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[6]

By letter dated October 13, 1987, the Sydney Futures Exchange ("Exchange") requested that the Commission authorize the offer and sale of option contracts traded on the Exchange to persons located in the United States. By letter dated March 16, 1988, the Commission advised that the request on behalf of the Exchange would be addressed pursuant to Commission Rule 30.3(a).

In issuing this Order, the Commission has considered: (1) The availability of certain information relevant to preventing abuses in the trading of option contracts on the Exchange including, but not limited to, trade confirmation data, data necessary to trace offshore funds, firm-specific data related, among other things, to good standing, fitness of principals and financial condition, and data related to sales practices in respect of such products;[7] (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including undertakings or arrangements by the appropriate foreign entity for the fulfillment of sales practice compliance obligations commensurate with those which apply to domestic products with respect to firms engaged in the offer and sale of its foreign option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer and sale of such products occurring within the jurisdiction where the option is traded; and (4) the regulatory environment in which such foreign options are traded.

In determining that the Exchange's showing with respect to the foregoing matters is sufficient to warrant the issurance of the Order herein, the Commission notes that as it acquires further experience it may determine that other considerations are also relevant. To this end, the Commission expects to continue to monitor the offer and sale of the products subject to this Order.[8]

Based upon the representations of the Exchange contained in its letters dated October 13, 1987 and May 13, 1988, a separate letter from the Exchange's regulator, the National Companies and Securities Commission ("NCSC"), dated May 27, 1988, and the memorandum from the Division of Trading and Markets to the Commission dated July 5, 1988 ("Staff Memorandum"), and pursuant to Commission Rule 30.3(a), the Commission hereby authorizes the offer and sale in the United States of options traded on the Exchange subject to the following conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any Exchange option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to this Order;

(2) That the Exchange and NCSC represent that all transactions with respect to the option(s) referenced in such notice [9] will be governed by the Futures Industry Act, the Futures Industry(New South Wales) Code, the regulations thereunder and Exchange option rules as more particularly discussed in the Staff Memorandum and that they will provide the Commission with information as to all material changes thereto promptly;

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[2] In considering requests under Rule 30.3(a), the Commission notes that it has received a significant number of comments that the offer and sale of foreign options should be permitted. *See* advance notice of proposed rulemaking, 49 FR (July 25, 1984), proposed rules, 51 FR 12104 (April 8, 1986) and final rules, 52 FR 28980 (August 5, 1987). The Commission continues to welcome comments on this process. On this same date, the Commission also has issued orders authorizing certain option contracts traded on the Montreal Exchange and the Singapore International Monetary Exchange to be offered and sold in the United States.

[3] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[4] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. 99–641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect.

[5] 52 FR 28980, 28998.

[6] 51 FR 12104, 12105.

[7] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed". *See* 43 FR 16155 (April 17, 1978).

[8] In this connection, the Commission notes that it has not sought to analyze the individual option contracts under the requirements which apply to the designation of an option contract proposed to be traded on a United States contract market. In particular, the Commission has not analyzed whether these instruments would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i), or other criteria relating to the specific terms and conditions of such foreign option contract. *See* 17 CFR 33.4. The Commission, however, has plenary authority with respect to option products. *See* section 4c of the Act.

[9] The option contracts which will initially be offered and sold pursuant to this Order are Options on 90-Day Bank Accepted Bill Futures, Options on Ten-Year Treasury Bond Futures and Options on Australian Dollar Futures.

(3) That options on futures on stock indices [10] and options on futures on foreign government debt securities [11] will not be permitted to be offered and sold hereunder absent certain additional procedures;

(4) That options traded pursuant to this Order may only be offset on the Exchange or another market with respect to which the Commission has approved a linkage arrangement with the Exchange;

(5) That options traded pursuant to the Order herein may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered and sold by persons doing business in the United States pursuant to the Commission's interim order issued on January 29, 1988 (53 FR 3338 (Feb. 5, 1988)); and

(6) That, notwithstanding any rules of the Exchange or the NCSC, options traded pursuant to this Order may only be offered and sold to foreign futures and options customers if each futures commission merchant receives from each such customer the full amount of each option premium at the time the option is purchased; and

(7) If experience demonstrates that the continued effectiveness of this Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in this Order, as appropriate, on its own motion. In such event, appropriate arrangements to service existing positions will be made.

This Order is issued based on the representations made and information provided to the Commission and its staff as set forth herein and in the Staff Memorandum. Any changes or material omissions might require the Commission to reconsider the authorization granted in this Order.

Issued in Washington, DC on July 20, 1988.

Jean A. Webb,

Secretary of the Commission.

Memorandum

July 5, 1988.

To: The Commission.

From: The Division of Trading and Markets

Subject: Order Under Commission Rule 30.3(a) Permitting Certain Option Contracts Traded on the Sydney Futures Exchange to be Offered and Sold in the United States.

Recommendation: That the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting option contracts traded on the Sydney Futures Exchange to be offered and sold in the United States upon thirty days notice.

Other Divisions and Offices Consulted:
Division of Economic Analysis,
Division of Enforcement,
Office of the Executive Director,
Office of the General Counsel.

I. Introduction

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign option products to persons located in the United States.[1] Specifically, Rule 30.3(a) provides that:

[N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28988.

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban,[2] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission.[3] In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[4] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange in determining whether to authorize transactions in specific foreign-exchange traded options.[5]

By letter dated October 13, 1987, the Sydney Futures Exchange ("Exchange" or "SFE") requested that the Commission authorize the offer and sale of option contracts traded on the Exchange to persons located in the United States. By letter dated March 16, 1988, the Commission advised the Exchange that its request would be addressed pursuant to Commission Rule 30.3(a)

II. Recommendation

The Division of Trading and Markets ("Division") has carefully reviewed and considered the application of the Exchange to offer and sell option products traded on the Exchange in the United States, in particular addressing: (1) The availability of certain information relevant to preventing abuses in the trading of such contracts; (2) the arrangements in place for deterring sales practice abuses; (3) the ability of United States customers to redress grievances with respect to the conduct of trading and other offshore activities relevant to the offer and sale of Exchange products; and (4) the regulatory environment in which options are traded. As discussed more fully below, based upon its determinations with respect to the foregoing matters, and subject to the terms and conditions specified herein, the Division of Trading and Markets recommends that the Commission publish in the **Federal Register** this memorandum and approve

[10] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[11] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12-8 promulgated thereunder.

[1] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option" "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[2] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed". *See* 43 FR 16155 (April 17, 1978).

[3] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("CEA") has been removed, *see* Futures Trading Act of 1986, Pub. L. No. 99-641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the CEA, remains in effect.

[4] 52 FR 28980, 28998. Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

[5] 51 FR 12104, 12105.

and publish the attached order permitting certain option contracts traded on the Exchange to be offered and sold in the United States.[6]

III. Discussion

Information-Sharing

Prior to the imposition of the options ban in 1978, the ability of the Commission to address problems which occurred with respect to the offer and sale of certain ostensibly foreign options in the United States was impeded by the inaccessibility of information from their purported jurisdiction of origin. As a consequence, in determining to lift the options ban with respect to foreign products, the Commission indicated that a primary consideration would be the availability of transaction information.[7] In connection with the petition of the Exchange under Rule 30.3(a), the Exchange, through its counsel, Philip McB. Johnson, and the National Companies and Securities Commission (NCSC), the regulatory authority which governs the Exchange, have each advised the Commission by separate letters dated May 13, 1988 and May 27, 1988, respectively, that they will share with the Commission, on an "as needed" basis, information relevant to such petition with respect to Exchange option transactions proposed to be entered into with or on behalf of customers located in the United States. The foregoing exchange of correspondence confirms that the Commission's assessment of need will be determinative. The assurances of NCSC and the Exchange concerning information-sharing on an as-needed basis extend, but are not limited, to information as to trade confirmations, offshore funds committed to Exchange option transactions, firm-related fitness (such as standing to do business and financial condition), and the sales practices of firms selling from Australia into the United States. NCSC and the Australian Attorney-General also have provided the Commission with assurances that Austrilia's blocking statute or any similar law should not create an obstacle to the sharing of the aforesaid information.[8] In addition, NCSC has represented that all statements that were made with respect to information-sharing in connection with the Commission's consideration of proposed rules submitted by the Commodity Exchange, Inc. ("COMEX") to implement the linkage between COMEX and the Exchange ("COMEX-Sydney linkage") extend equally and without restriction to transactions in options traded on the Exchange.[9]

Sales Practice Audits

In developing its pilot program for domestic exchange-traded options, the Commission specifically required as a condition of designation that the contract market seeking approval of an option contract adequately provide for the monitoring and detection of sales practice abuses.[10] As such abuses ultimately contributed to the banning of options trading altogether in 1978, the Commission has indicated that any options offered in the United States must be subject to an adequate sales practice audit program.[11] In this connection, the Exchange represents that it has adopted rules, discussed more fully below, that regulate option sales practices including, but not limited to, customer complaints, supervision of employees and accounts, solicitation, notification of disciplinary actions, risk disclosure, discretionary accounts and promotional material, in a manner similar to rules of contract markets in the United States.[12] Additionally, the Exchange represents that it will ensure that sales practice audits of firms in Australia selling Exchange options into the United States will be conducted on a regular basis.[13] The Exchange also has made arrangements with the National Futures Association ("NFA"), which NFA has confirmed by letter dated June 10, 1988, to assure that the sales practices of firms located in the United States engaged in such activities will be audited.[14]

Dispute Resolution

In considering linkage arrangements intended in part to foster trading among domestic and foreign markets, the Commission has indicated that a material factor in its decision to approve such arrangements was the existence of a mechanism to permit United States customers to seek relief for disputes occurring in the linked jurisdiction.[15] The availability of a forum to address complaints with respect to trade execution also is relevant to any determination to lift the ban on foreign option products. This is because the provision of such a forum evidences the relevant foreign jurisdiction's intention to afford practical mechanisms to address complaints originating with customers not located in that jurisdiction and to assuring a fair trading environment.

In its petition of October 13, 1987, the Exchange represented that customers may resolve disputes either through Exchange arbitration proceedings or judicial process. Section 46(2)(a)(xvii) of the Futures Industry Act of 1986 ("Act") and the Futures Industry (New South Wales) Code ("Code")[16] require the Exchange to facilitate the resolution of customer disputes. To this end, the Exchange has established an arbitration program to provide a method for the fair and impartial settlement of disputes that members and their customers are unable to resolve among themselves. The Exchange has represented in its petition that this arbitration program would be fully available to United States option customers of Australian brokers who are members of the Exchange.[17]

Arbitration of customers' claims is mandatory for members of the Exchange (Exchange Article 40.2) but is not mandatory for customers (*see* Exchange Article 40.1(a)(iii)). Pursuant to Exchange Article 40.1(a), a dispute must be arbitrated at the insistence of the customer unless:

(1) Adjudication of the dispute requires the presence of any person whether as witness or

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[6] *See* attached list of option contracts and terms and conditions. The Division believes that review of the individual foreign option contracts should be limited at this time to the regulatory issues discussed above and should not include an analysis of whether these foreign option contracts would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i) (1987), or other criteria relating to the specific terms and conditions of the option contracts. *See* 17 CFR 33.4.

[7] 52 FR 28980, 28988.

[8] *See* Letter to the Commission dated May 27, 1988 from R.J. Schoer, Executive Director of the NCSC, with attached letter from the Australian Attorney-General's Department.

[9] *See* letter to the Commission dated May 27, 1988 from R.J. Schoer, Executive Director of the NCSC.

[10] *See* 46 FR 54500, 54502 (November 3, 1981).

[11] *Id.*

[12] *See* discussion of Exchange option rules *infra*.

[13] *See* letter from the Exchange dated May 13, 1988.

[14] On January 14, 1988, the Commission approved amendments to NFA's Bylaws and the adoption of new Bylaws to provide for the regulation of the foreign futures and options activities of NFA members and associates. By letter dated June 10, 1988 from Daniel A. Driscoll, Vich-President of the NFA, to Andrea M. Corcoran, Director, Division of Trading and Markets, the NFA confirmed that the NFA and U.S. exchanges which are a party to a joint sales practice audit agreement will provide sales practice audit services addressing sales of Exchange options.

[15] *See* staff memorandum ("Staff Memorandum") dated August 1, 1988 analyzing COMEX-Sydney linkage at p. 22. *See also* staff memorandum dated August 28, 1984 analyzing Chicago Mercantile Exchange—Singapore International Monetary Exchange linkage at p. 51.

[16] The Futures Industry Act of 1986 is an Act of the Australian Commonwealth Parliament. In order that its provisions may apply to participating States, each State has passed an enabling act which essentially makes the Futures Industry Act apply as the law of that particular State. The Futures Industry (New South Wales) Code makes the Act applicable to that State. Hereinafter, for ease of discussion, reference to the Code should be read to include its counterpart in the 1986 Act.

[17] *See* Exchange petition of October 13, 1987.

otherwise over whom the Exchange has no jurisdiction, except where that person is available to appear before the arbitrator or otherwise to participate in the arbitration as required, and consents to cooperate in the arbitration process; or

(2) The dispute arose more than twelve months before the arbitration was commenced.[18]

Generally, a conference will be held before the arbitration in an attempt to reach a satisfactory resolution of the dispute, or at least to narrow the grounds of dispute between the parties. Where a party to an arbitration is a non-resident of Australia the dispute may be decided by the arbitrator "solely upon the basis of * * * the pleadings and any affidavits filed by the parties * * * *" (Exchange Article 40.8). The Exchange had stated in its petition that where the facts warrant such an arbitration without a hearing, U.S. foreign option customers would be encouraged to avail themselves of this procedure, which would alleviate the burden of their having to attend an arbitration hearing. By letter dated April 26, 1988, counsel for the Exchange represented that:

SFE Article 40.8, which sets forth the "on the papers" alternative to a formal hearing, leaves some flexibility with the Arbitration Committee to refuse a request for that procedure * * *. We are advised, however, that such a refusal has never occurred and that it is highly unlikely that it ever will occur. There might be an occasion where, to avoid manifest injustice (such as where a fair ruling cannot be made without assessing the credibility and demeanor of a complainant), an appearance is necessary but, as noted above, the Arbitration Committee has not had such a situation and, indeed, it strongly favors "on the paper" adjudications whenever possible as more expeditious, economical and manageable than formal hearings.

The decision of the arbitrator is generally final and is subject to review in the Australian courts only on very limited grounds. If a party believes that the decision of the arbitrator was based on a misconstruction or misinterpretation of the Articles, By-Laws or Trading Etiquette of the Exchange, a "Notice of Reference" can be filed, upon payment of a filing fee, in order to appeal the matter to the Board of the Exchange for its decision. The Board considers the matter solely on the pleadings already lodged by the parties and on the written submissions of the parties concerning the Notice of Reference and does not conduct a hearing. Consequently, presence of the parties is not required for such review. (Exchange Article 40.17).

A member of the Exchange who fails to comply with an arbitration award is subject to disciplinary action under the Articles and By-Laws of the Exchange. The prevailing party to the arbitration may also obtain a judgment in any court of competent jurisdiction to enforce the arbitration award. An arbitrator's decision may include an award as to the payment of costs, fees and expenses, including legal costs and other expenses incurred by the Exchange. (Exchange Article 40.18(c)). The expenses of witnesses are to be borne by each party unless otherwise provided in the award of the arbitrator. Exchange Article 40.18(c).[19]

Regulatory Environment

When options were originally banned in the United States, they had not been subjected to a full regulatory program. It is appropriate, therefore, to inquire as to whether the market which proposes to offer option products in the United States has a regulatory structure which addresses market integrity and the sales practices of firms doing business with United States firms or customers.[20] This review is for the purpose of establishing the existence of a supervised marketplace and does not constitute a comparability analysis of the nature required under Rule 30.10 for certain other relief the Commission may accord under its foreign futures and option rules.[21] This review was facilitated by the detailed level of scrutiny given the Exchange in connection with the Commission's review of the linkage agreement between the COMEX and the Exchange.[22] In reviewing that application, the Commission's staff analyzed, among other things, the customer protection, market surveillance and trade practice surveillance rules of the Exchange. The Staff Memorandum [23] concluded that the systems and rules adopted by the Exchange, if observed, afforded many of the protections found on regulated United States markets. Although trading volume under the linkage is not substantial, rule enforcement reviews conducted to date of COMEX have reported no significant deficiencies in the operation of the COMEX-Sydney linkage.

The operations of the Exchange and its members are regulated directly by the NCSC pursuant to the authority of Australia's Futures Industry Act of 1986 and the Futures Industry (New South Wales) Code. Specifically, in support of the Exchange's application to sell its option products within the United States, the Exchange represents that the Act and Code are intended to promote market integrity and to provide a fair trading environment for Exchange futures and option products, as follows:

a. Authorization of Exchange (Fitness of the Marketplace)

Part III of the Code empowers a Ministerial Council to approve the establishment of futures exchanges,[24] clearing houses [25] and futures associations.[26] Pursuant to section 46 of the Code, an entity will be recognized as a futures exchange by the Ministerial Council if it is satisfied that the rules of the entity make satisfactory provision for, among other things: (1) Standards of training and experience for membership; (2) standards of business conduct so as to ensure efficiency, honesty and fair practice; (3) standards for the expulsion, suspension or disciplining of members; (4) the inspection and audit of the accounting records of members; (5) the equitable and expeditious settlement of claims between members and between members and customers; and (6) conduct of the business of the proposed futures exchange with due regard for the interests and protection of the public. The Ministerial Council also must determine that "the interests of the

[18] Article 40.1(a) as restated in the Exchange's petition dated October 13, 1987.

[19] Alternatively, a customer may elect to commence legal proceedings instead of submitting the dispute for arbitration. Under certain circumstances the arbitrator may order that a matter be the subject of legal proceedings rather than arbitration (*e.g.*, if the dispute involves complex legal questions). *See* Exchange petition of October 13, 1987.

[20] Although the Commission has not indicated an intention to review the terms and conditions of foreign option products, *see* S. Rep. No. 384, 97th Cong., 2d Sess. 45–46 (1982), the Commission's authority with respect to options is plenary.

[21] 52 FR 28980, 29001.

[22] In generally excluding transactions executed pursuant to a linkage agreement between one or more foreign boards of trade and a United States contract market from the application of the foreign futures and option rules, the Commission noted that linked transactions and the regulatory environment in which such transactions occur would be separately subject to Commission review under section 5a(12) of the CEA. Specifically, Rule 30.3(a) reads, in part, as follows:

* * * *And, provided further*, That, with the exception of the disclosure and antifraud provisions set forth in §§ 30.6 and 30.9 of this part, the provisions of this part shall not apply to transactions executed on a foreign board of trade, and carried for or on behalf of a customer at a designated contract market, subject to an agreement with and rules of a contract market which permit positions in a commodity interest which have been established in one market to be liquidated on another market.

[23] Staff Memorandum dated August 1, 1986. *See* pp. 61, 73–74, 92 and 98–99.

[24] Code sections 45 and 46.

[25] Code sections 47 and 48.

[26] Code section 50.

public will be served by granting the application." *See* section 46(2) of the Code.

Oversight of the Exchange is performed by the NCSC. Pursuant to section 54 of the Code, all business rules [27] of an exchange are to be submitted to the NCSC, which has twenty-eight days in which to disallow such a rule. Pursuant to § 56(1) of the Code, the NCSC may, for the purpose of maintaining orderly markets in futures contracts,[28] order an exchange to close, suspend, limit or defer trading in futures contracts or take other actions as directed by the NCSC. Such orders may be enforced by judicial proceedings under section 58 of the Code. Section 56(1) also grants the NCSC authority to close, suspend or condition trading if it finds that such action is, among other things, "in the public interest." *See also* section 56(2)(a) of the Code. These rules establish trading standards and also require the maintenance of trading records essential to effective information-sharing with respect to option transactions.

b. Licensing of Firms and Personnel (Fitness Standards for Professionals)

Part IV of the Code grants licensing powers to the NCSC, which is authorized by sections 66, 67, and 77 of the Code to grant and revoke licenses for futures brokers, futures brokers' representatives, futures advisers and futures advisers' representatives.[29] A futures broker's license or a futures adviser's license may be granted if, among other things, the applicant is not insolvent, has not been convicted of an offense involving fraud within the prior ten years, presents satisfactory educational qualifications or experience and is not otherwise disqualified under the Code. (section 66(1) of the Code.) A representative's license may be granted if the NCSC does not have reason to believe that the applicant will not perform honestly and fairly. (section 67 of the Code.) The application process requires the submission of a personal questionnaire which requires the disclosure of, among other things, past experience, license refusals, convictions and disciplinary actions. (*See* Futures Industry Forms 3 and 4, Futures Industry Regulations (applications for licenses). The NCSC may revoke or suspend a license if the licensee becomes insolvent, is convicted of an offense involving fraud or dishonesty, becomes mentally or physically incompetent to manage its affairs, fails to disclose required information to the NCSC, makes false representations to the NCSC, is disqualified as a licensee under another law, contravenes a condition of a license or does not perform effectively, honestly or fairly. *See* sections 77–78 of the Code. These rules are intended to establish a standard of fitness for market professionals who handle customer money and deal with the public.

c. Financial Requirements (Fitness Standards for Firms)

The Code does not prescribe minimum capital requirements which generally are a measure of liquidity as a condition to registration. Exchange rules do, however, establish minimum "tangible asset" requirements as a condition of membership. *See* Exchange Rules, Article 4.6(4)(b) (A$50,000 (US$41,000) for full associates and A$20,000 (US$16,400) for introducing broker associates), Article 4A.7A(4)(b) (A$50,000 (US$41,000) for local members) and Article 3.6(3)(a) (A$250,000 (US$205,000) for floor members who, pursuant to Article 3.2(c), are required to be clearing members).[30] Moreover, the registration process requires an applicant to provide the NCSC a detailed statement (current within the last fourteen days before the application date) of assets and liabilities, as well as a current audited balance sheet. (*See* Futures Industry Form 3, Futures Industry Regulations.) Based upon a review of this information, the NCSC may condition the grant of a license by, for example, including conditions and restrictions relating to the financial position of the licensee, whether in relation to the business of dealing in futures contracts or otherwise. (Code section 69(4).) Moreover, section 69(5) of the Code makes clear that such conditions may include a requirement that the assets of the licensee include assets of a particular kind and that the licensee maintain assets of a specified minimum value.

Brokers and advisers are required to file with the NCSC an annual statement (Code section 74), which discloses assets and liabilities (*See* Form 8, Futures Industry Regulations (annual statement)). The Code also requires brokers to appoint auditors (Code section 92(1)), to grant auditors full right of access to records (Code section 96(1)), to maintain separate account records (Code sections 86, 90) and, generally, to produce those records to the NCSC when so requested (Code section 90(a)). These rules establish a standard of financial fitness which is relevant to the expectation that members will comply with applicable rules and the capacity of members to meet their obligations in the marketplace.

d. Treatment of Customer Funds and Property

Section 86(3) of the Code requires a broker to deposit funds or property received from or on behalf of a customer in a segregated customer account (that is, an account which can not be used to fund obligations other than those of the customer) on or before the next day after such money or property is received by the broker.[31] Section 86(5) of the Code permits investments of customer funds in any manner in which trustees are authorized by Australian law to invest trust funds; in short term money market dealer instruments; or in a bank account paying interest. These rules provide certain protections for customer funds committed to trading on the Exchange and may also assist in tracing funds that are the subject of United States actions.

e. Market Integrity

As previously noted, section 56 of the Code authorizes NCSC to exercise emergency powers to, among other things, close a futures market or suspend trading of a particular contract if such act is deemed in the public interest. In addition, section 55(1) of the Code requires the Exchange to "take all steps, and do all things, necessary to ensure an orderly and fair market * * *." In that regard, the Exchange has represented in its petition that it has an affirmative surveillance program which is designed to detect activity that may lessen competitive trading or conduct by floor traders that may take advantage of customers, including whether a floor trader has taken the other side of a customer's order contrary to Exchange rules, whether any floor trader is engaging in trading which is intended to have the effect of creating an artificial

[27] Section 4(1) of the Code defines "business rules" of an exchange as rules, regulations and by-laws governing the activities and conduct of the exchange and its members, of each clearing house and its members and of other persons in relation to each futures market maintained by the exchange.

[28] Section 4(1) of the Code defines "futures contract" to include an option.

[29] The Code defines a futures adviser as a person who conducts a business for the purpose of advising other persons concerning futures contracts, the definition of which includes a futures option or specified exchange-traded options. (Section 4(1) of the Code.)

[30] Conversions at June 21, 1988 as published in the *Washington Post*, June 22, 1988.

[31] All option contracts are marked-to-market on a daily basis and margin calls are made when the net margin position exceeds 25% of the total deposit liability. *See* Option by-law Opt. 7.

price, whether non-competitive trading is occurring, whether trading is taking place in excess of the Exchange's speculative limits, where applicable, and whether there is any indication of floor traders trading ahead of their customers or otherwise failing to give customers proper execution of their orders.[32]

In addition to the above, the Exchange maintains a reportable position requirement which is defined as "any open position in a futures contract or an option contract in a commodity in any one delivery month which at the close of trading on a business day equals or exceeds 250 futures contracts or options (or both) or such lesser number of futures contracts or options (or both) as may from time to time be determined by the Board [of Directors] to be the Reportable Position Level." (*See* Exchange Article 1.1.)

f. Other Customer Protections

Part V of the Code establishes minimum standards for the conduct of futures business, such as: requiring the delivery of a disclosure document before accepting a person as a client (Code section 87), written confirmations to customers (Code section 83(2)–(4)), monthly customer statements (Code section 84), special statements for discretionary accounts (Code section 84(3)); prohibiting a broker from taking the other side of an order without consent (Code section 85(3)); and proscribing fraud (Code section 135).[33]

Part VII of the Code requires the establishment of a fidelity fund by futures exchanges and futures associations.[34] Pursuant to this authority, the Exchange has established such a fund which, as of March 31, 1988, had A$2,570,000 in assets (US$2,107,400). The fidelity fund assets are intended to compensate persons who have lost money or property by virtue of "defalcation or * * * fraudulent misuse of money or property" by contributing fund members (*i.e.*, Exchange members). (Code section 116.) The maximum amount payable generally is A$500,000 (US$410,000), although payments exceeding that limit may be made under certain circumstances. *See* sections 116(7) and 116(9) of the Code.

The Division notes that the Exchange is the only foreign market which has petitioned under Rule 30.3(a) for the offer and sale of its option products which permits customer margining of premiums and further notes that the Division intends to monitor closely this requirement and to recommend adjustments, as appropriate. The Division therefore recommends that the Commission adopt a condition to this order to require the full payment of option premiums by foreign option customers of a futures commission merchant. (This does not affect the manner of premium payments by FCMs to clearing members or by clearing members to the clearing organization, however.) As the Commission stated when it adopted Rule 33.4(a)(2) (17 CFR 33.4(a)(2) (1987)):

> A critical distinction between options and futures contracts traditionally has been that, with respect to options, the one-time payment of a premium gives the option purchaser the right, over a fixed period of time, to elect the exercise of the option without incurring any additional obligations on his option contract. In contrast, the purchaser's initial payment of margin on a futures contract is recognized as the deposit of earnest money to insure performance of the contract, but does not represent the full extent of the purchaser's potential liability on the futures contract. The Commission's determination to prohibit the margining of all option premiums is intended to preserve this critical distinction and is viewed by the Commission as essential to the protection of option purchasers who otherwise could reasonably expect that an initial payment of margin on an option contract constituted the full extent of their obligation on the option.
>
> 46 FR 54500, 54504 (November 3, 1981).

g. Exchange Option Rules.

The rulebook submitted by the Exchange contains rules of general application as well as rules specific to options. These rules contemplate that the Exchange takes responsibility for sales practice compliance of its members, maintains fair requirements for executions, and monitors the financial soundness of its members. The Exchange represents that it maintains in effect and enforces rules which:

(1) Establish standardized terms of option contracts (unit of trading, expiration, hours of trading, delivery). *See, e.g.*, Bylaw BAB.100–BAB.107 (90 Day Bank Bills).

(2) Establish exercise conditions and procedures for the allocation of exercise notices. *See, e.g.*, Bylaw BAB.105–BAB.107; TB.100–TB.107; *see also* Bylaws Opt. 5 and Opt. 6.

(3) Define option terms, including in-the-money and out-of-the-money options. Trading Etiquette TE.1.1.

(4) Require the payment of the option premium, Bylaw Opt. 2(b), which is itself margined. *See* Bylaw Opt. 7 (deposits and margins).

(5) Require the execution of a customer agreement prior to a member accepting a person as a client as well as the distribution of a risk disclosure document as mandated by Section 87 of the Code. *See, e.g.*, Article 4.6(4)(h) (Associate Members); *see also* Form 4, Part B, Schedules (customer agreements).

(6) Require members to act in a manner consistent with the promotion and protection of the goodwill and public image of the Exchange; to maintain accurate accounting records; to maintain accurate trade records; and to co-operate with the Exchange Committee for Inspection and Audit. *See, e.g.*, Article 4.6.

(7) Require members to refer any arbitrable dispute to arbitration in accordance with Exchange rules. *See, e.g.*, Article 4.6(3)(d), and otherwise to use its best efforts to settle disputes in a manner consistent with upholding the goodwill and public image of the Exchange and its members. *See, e.g.*, Article 4.6(3)(e).

(8) Prohibit advertising in any manner which may be false, misleading or prejudicial to the goodwill and public image of the Exchange, its members and markets. *See e.g.*, Article 4.6(4)(m).

(9) Prohibit any unsolicited business communication or writing to any person other than a client without first obtaining written Exchange approval. *See, e.g.*, Article 4.6(4)(n).

(10) Prohibit a member from operating discretionary account on behalf of a client unless authorized in writing. *See* Bylaw G.21(a). *See also* Form 2, Part B, Schedules. With respect to such discretionary accounts, Exchange Bylaw G.32(d) requires the Exchange member to:

(i) Ensure that only persons who have been approved as Registered Representatives under Article 37 at the request of that member shall exercise discretion in respect of that account;

(ii) Maintain a full and complete record of each exercise of the discretionary authority showing the name of the client, the details of the futures contract, the date and time of the transaction being effected and the name of the Registered Representative placing the order;

(iii) Unless otherwise separately agreed to in writing by the client, forward to the client a written confirmation of all transactions undertaken for the account, together with written advice of the financial results of each position closed out; and a current account statement and an open position statement as of the end of each month; and

(iv) Ensure that the transactions effected for a discretionary account are not excessive in size of frequency having regard to the nature of the financial resources of the account and the market involved.

These rules generally address the regulatory concerns the Commission identified in setting forth conditions for the designation of U.S. contract markets in options. *See* Commission Rule 33.4. In this connection, the Exchange represents that the regulatory environment governing transactions of the Exchange provides many of the

[32] *See* Exchange petition of October 13, 1987 and Exchange Article 13.

[33] *See* discussion of specific Exchange option rules, *infra*.

[34] A futures association is a corporate body, analogous to NFA, approved by the Ministerial Council under § 50 of the Code (*see* Code section 4(1) and section 50).

protections found on regulated United States markets.

IV. Conslusion

Based upon the foregoing, the representations of the Exchange and NCSC contained in their letters dated May 13, 1988 and May 27, 1988, respectively, and pursuant to Commission Rule 30.3(a), the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order authorizing the offer and sale in the United States of options traded on the Exchange subject to the following terms and conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any Exchange option product in the United States will be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to the order;

(2) That NCSC and the Exchange represent that all transactions with respect to the option(s) referenced in such notice will be governed by the Futures Industry Act, the Code and Exchange option rules as more particularly discussed in the Staff Memorandum and that NCSC and the Exchange will provide the Commission with information as to all material changes therein promptly;

(3) That options on futures on stock indices [35] and options on futures on foreign government debt securities [36] will not be permitted to be offered and sold absent certain additional procedures;

(4) That options traded pursuant to the order may only be offset on the Exchange or another market with respect to which the Commission has approved a linkage arrangement with the Exchange;

(5) That options traded pursuant to the order may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered by persons doing business in the United States pursuant to the Commission's interim order issued on January 29, 1988 (53 FR 3338 (Feb. 5, 1988));

(6) That, notwithstanding any rules of the Exchange or the NCSC, options traded pursuant to the order may only be offered and sold to foreign futures and options customers if each futures commission merchant receives from each such customer the full amount of each option premium at the time the option is purchased; and

(7) If experience demonstrates that the continued effectiveness of the order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in the order, as appropriate, on its own motion.

The Exchange has specified that the following option contracts, the terms and conditions for which are attached hereto, will initially be offered and sold in the United States: Options on 90-Day Bank Accepted Bill Futures, Options on Ten-Year Treasury Bond Futures and Options on Australian Dollar Futures. As noted in condition (7) above, the Division recommends that the Commission retain the authority to terminate the order granting authorization to offer and sell Exchange options in the United States or to take such other steps as may be appropriate in light of the circumstances. In that connection, if the order is approved by the Commission, the Division intends to monitor the offer and sale of Sydney Futures Exchange options to persons in the United States pursuant to the terms of the recommended order and to make recommendations for further action to the Commission, as appropriate in light of the operation of that program.

Sydney Futures Exchange Contract Specifications

Options Contracts

Options on 90-Day Bank Accepted Bill Futures

Contract Unit: One $A500,000 face value 90-day bank accepted bill futures contract for a specified contract month on the Sydney Futures Exchange.

Exercise Prices: Set at intervals of 0.50% per annum yield. New option exercise prices created automatically as the underlying futures contract price moves.

Premiums: Quoted in yield per cent per annum.

Contract Months: Put and call options available on the three nearest months of the "major" calendar cycle (March, June, September and December).

Expiry: At 12.00 noon on the Friday one week prior to the settlement day for the corresponding futures contract.

Exercise of Options: Options may be exercised on any business day up to and including the day of expiry. In-the-money options are automatically exercised at expiry.

Options on Ten-Year Treasury Bond Futures

Contract Unit: One $A100,000 face value, 12% coupon, ten-year Treasury bond futures contract for a specified contract month on the Sydney Futures Exchange.

Exercise Prices: Set at intervals of 0.25% per annum yield. New option exercise prices created automatically as the underlying futures contract price moves.

Premiums: Quoted in yield per cent per annum.

Contract Months: Put and call options available on the two nearest months of the "major" calendar cycle (March, June, September and December).

Expiry: At 12.00 noon on the last day of trading in the underlying futures contract (the fifteenth day of the month or the next succeeding business day).

Exercise of Options: Options may be exercised on any business day up to and including the day of expiry. In-the-money options are automatically exercised at expiry.

Options on Australian Dollar Futures

Contract Unit: One Australian dollar futures contract of face value $A100,000.

Exercise Prices: Set at intervals of $0–01 (U.S.) New option exercise prices are created automatically as the underlying futures contract price moves.

Premiums: Quoted in $(U.S.) per $(Australia).

Contract Months: Options are available in the two nearest of the contract months in the "major" cycle for the Australian dollar futures contract (March, June, September and December).

Expiry: Options expire at 5:30 p.m. on the second Wednesday of the delivery month. Futures contracts expire on the following Wednesday.

Exercise of Options: Options may be exercised on any business day up to and including the day of expiration. In-the-money options are automatically exercised at expiration.

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amdned as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

2. Appendix B is amended by adding the following entry alphabetically:

[35] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the CEA.

[36] *See* section 2a(1) of the CEA, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder.

Appendix B—Option Contracts Permitted To Be Offered and Sold in the U.S. pursuant to § 30.3(a)

Exchange

* * * * *

Sydney Futures Exchange.

Type of contract

* * * * *

Options on 90-day Bank Accepted Bill futures, Ten-year Treasury bond futures, Australian dollar futures.

FR date and citation

* * * * *

July 29, 1988; 53 FR _____.

[FR Doc. 88-16728 Filed 7-28-88; 8:45 am]

BILLING CODE 6351-01-M

17 CFR Part 30

Foreign Option Transactions; Montreal Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts traded on the Montreal Exchange to be offered and sold to persons located in the United States. This order is issued pursuant to Commission Rule 30.3(a), 52 FR 28980, 28998 (August 5, 1987), which makes it unlawful for any person to engage in the offer and sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States.[1]

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.[2] Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.3(a) Permitting Option Contracts Traded on the Montreal Exchange To Be Offered and Sold in the Unied States Thirty Days After Notice to the Commission and Publication in the Federal Register of the Option Contracts To Be Traded

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign options to persons located in the United States.[3] Specifically, Rule 30.3(a) provides that:

> [N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28988.

In this regard, in view of the history of abuses in the options markets prior to the imposition of the options ban,[4] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[5] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[6]

By letter dated October 7, 1987, the Montreal Exchange ("Exchange") requested that the Commission authorize the offer and sale of option contracts traded on the Exchange to persons located in the United States. By letter dated Janaury 6, 1988, the Commission advised that the request on behalf of the Exchange would be addressed pursuant to Commission Rule 30.3(a).

In issuing this Order, the Commission has considered: (1) The availability of certain information relevant to preventing abuses in the trading of option contracts on the Exchange including, but not limited to, trade confirmation data, data necessary to trace offshore funds, firm-specific data related, among other things, to good standing, fitness of principals and financial condition, and data related to sales practices in respect of such products;[7] (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including undertakings or arrangements by the appropriate foreign entity for the fulfillment of sales practice compliance obligations commensurate with those which apply to domestic products with respect to firms engaged in the offer and sale of its foreign option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer and sale of such products occurring within the jurisdiction where the option is traded; and (4) the regulatory environment in which such foreign options are traded.

In determining that the Exchange's showing with respect to the foregoing matters is sufficient to warrant the issuance of the Order herein, the

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[1] Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

[2] In considering requests under Rule 30.3(a), the Commission notes that it has received a significant number of comments that the offer and sale of foreign options should be permitted. *See* advance notice of proposed rulemaking, 49 FR (July 25, 1984), proposed rules, 51 FR 12104 (April 8, 1986) and final rules, 52 FR 28980 (August 5, 1987). The Commission continues to welcome comments on this process. On this same date, the Commission also has issued orders authorizing certain option contracts traded on the Montreal Exchange and the Singapore International Monetary Exchange to be offered and sold in the United States.

[3] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[4] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. 99-641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect.

[5] 52 FR 28980, 28998.

[6] 51 FR 12104, 12105.

[7] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed". *See* 43 FR 16155 (April 17, 1978).

Commission notes that as it acquires further experience it may determine that other considerations are also relevant. To this end, the Commission expects to continue to monitor the offer and sale of the products subject to this Order.[8]

Based upon the representations of the Exchange contained in its letters dated October 7, 1987 and June 24, 1988, a separate letter from the Commission des valeurs mobilieres du Quebec ("CVMQ"), the Exchange's regulator, dated June 10, 1988 and the memorandum from the Division of Trading and Markets to the Commission dated July 5, 1988 ("Staff Memorandum"), and pursuant to Commission Rule 30.3(a), the Commission hereby authorizes the offer and sale in the United States of options traded on the Exchange subject to the following conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any Exchange option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to this Order;

(2) That the CVMQ and the Exchange represent that all transactions with respect to the option(s) referenced in such notice [9] will be governed by the Quebec Securities Act, the Regulations thereunder and Exchange option rules as more particularly discussed in the Staff Memorandum and that they will provide the Commission with information as to all material changes thereto promptly;

(3) That options on futures on stock indices [10] and options on futures on foreign government debt securities [11] will not be permitted to be offered and sold hereunder absent certain additional procedures;

(4) That options traded pursuant to this Order may only be offset on the Exchange or another market with respect to which the Commission has approved a linkage arrangement with the Exchange;

(5) That options traded pursuant to the Order herein may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered and sold by persons doing business in the United States pursuant to the Commission's interim order issued on January 29, 1988 (53 FR 3338 (Feb. 5, 1988)); and

(6) If experience demonstrates that the continued effectiveness of this Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in this Order, as appropriate, on its own motion. In such event, appropriate arrangement to service existing positions will be made.

This Order is issued based on the representations made and information provided to the Commission and its staff as set forth herein and in the Staff Memorandum. Any changes or material omissions might require the Commission to reconsider the authorization granted in this order.

Issued in Washington, DC on July 20, 1988.

Jean A. Webb,

Secretary of the Commission.

Memorandum

July 5, 1988.

To: The Commission.

From: The Division of Trading and Markets.

Subject: Order Under Commission Rule 30.3(a) Permitting Certain Option Contracts Traded on the Montreal Exchange to be Offered and Sold in the United States.

Recommendation: That the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting option contracts traded on the Montreal Exchange to be offered and sold in the United States upon thirty days notice.

Other Divisions and Offices Consulted: Division of Economic Analysis, Division of Enforcement, Office of the Executive Director, Office of the General Counsel.

I. Introduction

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer and sale of foreign option products to persons located in the United States.[1] Specifically, Rule 30.3(a) provides that:

> [N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *. 52 FR 28988.

In this regard, in view of the history of abuses in the options market prior to the imposition of the options ban,[2] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission.[3] In adopting the final rules which implement that procedure, the Commission stated that notwithstanding the enactment of Part 30, which provides a regulatory framework to govern transactions in both foreign futures *and* foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer and sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered and sold in the United States.[4] As a consequence, Rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign

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[8] In this connection, the Commission notes that it has not sought to analyze the individual option contracts under the requirements which apply to the designation of an option contract proposed to be traded on a United States contract market. In particular, the Commission has not analyzed whether these instruments would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i), or other criteria relating to the specific terms and conditions of such foreign option contract. *See* 17 CFR 33.4. The Commission, however, has plenary authority with respect to option products. *See* section 4c of the Act.

[9] The option contracts which will initially be offered and sold pursuant to this Order are the International Options Clearing Corporation ("IOCC") Foreign Currency Options (British Pounds, Deutschemarks, Japanese Yen, Swiss Francs), IOCC Canadian Dollar Options, IOCC Gold Options and IOCC Platinum Options.

[10] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[11] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12-8 promulgated thereunder.

[1] Rule 30.1(b) defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[2] *See* 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed or whether they simply had been "bucketed". *See* 43 FR 16155 (April 17, 1978).

[3] Although the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("Act") has been removed, *see* Futures Trading Act of 1986, Pub. L. 99-641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition in Commission Rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect.

[4] 52 FR 28980, 28998. Notwithstanding the prohibition in Commission Rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission Rule 32.4(a), 17 CFR 32.4(a) (1987), may continue to be offered and sold.

exchange in determining whether to authorize transactions in specific foreign-exchange traded options.[5]

By letter dated October 7, 1987, the Montreal Exchange ("Exchange") requested that the Commission authorize the offer and sale of option contracts traded on the Exchange to persons located in the United States. By letter dated January 6, 1988, the Commission advised the Exchange that its request would be addressed pursuant to Commission Rule 30.3(a).

II. Recommendation

The Division of Trading and Markets ("Division") has carefully reviewed and considered the application of the Montreal Exchange to offer and sell option products traded on the Exchange in the United States, in particular addressing: (1) The availability of certain information relevant to preventing abuses in the trading of such contracts; (2) the arrangements in place for deterring sales practice abuses; (3) the ability of United States customers to redress grievances with respect to the conduct of trading and other offshore activities relevant to the offer and sale of Exchange products in the United States; and (4) the regulatory environment in which such options are traded. As discussed more fully below, based upon its determinations with respect to the foregoing matters and subject to the terms and conditions specified herein, the Division recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order permitting certain option contracts traded on the Montreal Exchange to be offered and sold in the United States.[6]

III. Discussion

Information-Sharing

Prior to the imposition of the options ban in 1978, the ability of the Commission to address problems which occurred with respect to the offer and sale of certain ostensibly foreign options in the United States impeded by the inaccessibility of information from their purported jurisdiction of origin. As a consequence, in determining to lift the options ban with respect to foreign products, the Commission indicated that a primary consideration would be the availability of transaction information.[7] In this regard, the Commission has received confirmations from both the Exchange and its Canadian regulator, the Commission des valeurs mobilieres du Quebec ("CVMQ"),[8] that the CVMQ and the Exchange will share with the Commission, on an "as needed" basis and without restriction, information relevant to Exchange option transactions proposed to be entered into with or on behalf of United States customers. The foregoing exchange of correspondence confirms that the Commission's assessment of need for requested information will be determinative. The assurances of the CVMQ and Exchange concerning information-sharing on an as-needed basis extend, but are not limited, to information as to trade confirmations, offshore funds committed to Exchange option transactions, firm-related fitness (such as standing to do business and financial condition), and the sales practices of firms selling from Canada into the United States. The CVMQ also has provided the Commission with assurances that the secrecy provisions of the Canadian blocking laws, and in particular, the Access to Information Act [9] will not interfere with its sharing of information with the Commission concerning options trading activities including, without limitation, information concerning the execution and pricing of Exchange options.[10] In addition, the Exchange [11] has represented that all statements that were made with respect to information-sharing in connection with the Commission's consideration of prior requests by the Exchange to offer and sell Exchange options in the United States under the trade option exemption will be unconditionally applicable to other transactions in options traded on the Exchange.[12]

Sales Practice Audits

In developing its pilot program for domestic exchange-traded options, the Commission specifically required as a condition of designation that the contract market seeking approval of an option adequately provide for the monitoring and detection of sales practice abuses.[13] As such abuses ultimately contributed to the banning of options trading altogether in 1978, the Commission has indicated that any options offered in the United States must be subject to an adequate sales practice audit program.[14] In this connection, the Exchange represents that it has adopted rules, discussed more fully below, that regulate option sales practices including, but not limited to, review and response to customer complaints, supervision of employees and accounts, solicitation, notification of disciplinary actions, risk disclosure, solicitation of discretionary accounts and promotional material, in a manner similar to rules of U.S. contract markets.[15] Additionally, the Exchange has represented that it will conduct sales practice audits of firms in Canada selling Exchange options into the United States on a regular basis.[16] The Exchange also has made arrangements with the National Futures Association ("NFA"), which NFA has confirmed by letter dated June 10, 1988, to assure that the sales practices of firms located in the United States engaged in such activities will be audited.[17]

Dispute Resolution

In considering linkage arrangements intended in part to foster trading among domestic and foreign markets, the Commission has indicated that a material factor in its decision to approve such arrangements was the existence of a mechanism to permit United States customers to seek relief for disputes occurring in the linked jurisdiction.[18]

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[5] 41 FR 12104, 12105.

[6] *See* attached list of option contracts and terms and conditions. The Division believes that review of the individual foreign option contracts should be limited at this time to the regulatory issues discussed above and should not include an analysis of whether these foreign option contracts would meet the Commission's economic purpose test, 17 CFR 33.4(a)(5)(i) (1987), or other criteria relating to specific terms and conditions of the option contracts. *See* 17 CFR 33.4.

[7] 52 FR 28980, 28988.

[8] Letters dated June 10, 1988 from Paul Guy, Chairman of the CVMQ, to Andrea M. Corcoran, Director, Division of Trading and Markets, and June 24, 1988 from Philip McB. Johnson, counsel for the Exchange, to the Commission.

[9] An Act Representing Access to Documents Held by Public Bodies and the Protection of Personal Information, Statutes of Quebec, 1982, Chapter 30, as amended.

[10] Letter to Andrea M. Corcoran dated June 10, 1988 from Paul Guy, Chairman of the CVMQ.

[11] *See* letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the Exchange.

[12] In this regard, the CVMQ previously had stated in a letter dated October 30, 1985 from Paul Guy, Chairman of the CVMQ, to Andrea M. Corcoran, that: [The CVMQ] has a long-standing and quite successful information-sharing relationship with the Securities and Exchange Commission in the United States. We are prepared, of course, to maintain a similar relationship with the [Commission].

[13] 46 FR 54500, 54502 (November 3, 1981).

[14] Id.

[15] *See* discussion of the Exchange option rules, *infra*.

[16] Letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the Exchange.

[17] On January 14, 1988, the Commission approved amendments to NFA's Bylaws and the adoption of new Bylaws to provide for the regulation of the foreign futures and options activities of NFA members and associates. By letter dated June 10, 1988 from Daniel A. Driscoll, Vice-President of the NFA, to Andrea M. Corcoran, the NFA confirmed that the NFA and U.S. exchanges which are a party to a joint sales practice audit agreement will provide sales practice audit services addressing sales of Montreal Exchange Options.

[18] *See* staff memorandum dated August 28, 1984 analyzing Chicago Mercantile Exchange—Singapore

Continued

The availability of a forum to address complaints with respect to trade execution also is relevant to any determination to lift the ban on foreign option products. This is because the provision of such a forum evidences the relevant foreign jurisdiction's intention to afford practical mechanisms to address complaints originating with customers not located in that jurisdiction and to assure a fair trading environment. In this regard, in its petition of October 7, 1987, the Exchange represented that customers essentially have four levels at which they may attempt to settle or prosecute a dispute:

Directly with their registered representative or a responsive person within the member firm;

By instituting proceedings in a court of law;

By employing the examination, hearing and settlement procedure of the Exchange; [19] or

By employing the examination, hearing and settlement procedures of the CVMQ.

The Exchange represents that customer complaints brought against a person under the jurisdiction of the Exchange are usually lodged either directly with the Exchange or with the CVMQ which, by agreement, delegates investigation and further action to the Exchange. A customer may seek recourse at the CVMQ once the process at the Exchange level is terminated and the customer has not obtained satisfactory resolution of the complaint. Under the Exchange Rules, a complaint may be lodged by "the Exchange, a member, or a permit holder." (Exchange Rule 4221). Thus, a customer complaint received by the Exchange must, upon preliminary investigation, be found to have merit prior to its being formally lodged, at which point it is the Exchange that in fact takes on the role of "plaintiff." (Exchange Rule 4221).

The Exchange represents that all complaints received by the Exchange are submitted to the Member Regulation Department of the Exchange. The Exchange Examiner and staff of the Department proceed with an investigation of the allegations in light of the regulatory and legal framework of the Exchange, the CVMQ and applicable securities and commodities law. When warranted, the complaint is referred to an internal Exchange Committee mandated to examine the facts and validity of the complaint. If the customer complaint is found to be without merit, the file is closed and the customer is notified to this effect.[20] Where a complaint is found to have merit after the initial investigation of the Exchange, the disciplinary procedures contained in Exchange Rules 4221–4308 apply.

Pursuant to Exchange Rule 4226, the Exchange is authorized to impose the following penalties:

(a) A reprimand;

(b) A fine not exceeding C$100,000 (US$83,100);[21]

(c) Suspension of the rights as a member, approved person or permit holder for such period or periods and upon such conditions, including conditions of reinstatement, as the Governing Committee or a Disciplinary Committee may determine;

(d) Expulsion of a member; revocation of the permit or approval; and

(e) The making of restitution to any person that has suffered a loss as a result of the acts or omissions of a person under the jurisdiction of the Exchange.

The Exchange has represented in its petition that all avenues of recourse available to Canadian customers, including proceedings at the Exchange, the CVMQ, and in the courts, are available to non-Canadian customers on an equal basis with Canadian customers.[22] Where a complaint of alleged wrongdoing of an Exchange member or other approved person is found to have merit, the Exchange's disciplinary procedures normally would apply.

Non-Canadian residents making a complaint which becomes subject to the Exchange's disciplinary procedures, including investigation, hearing and settlement, may not necessarily be compelled to appear in person. However, if the Disciplinary Committee determines it to be necessary, the person making the complaint shall at a minimum provide an authorized representative, such as counsel, to adequately represent the case put forward. In this regard, by letter dated June 24, 1988, the Exchange made clear that U.S. residents may, absent any objection by the defendant,[23] give evidence based solely upon written documentation submitted under oath or affirmation in the absence of any authorized representative. The Exchange further represented that if the facts underlying the proceeding may be established by other evidence, the presence of the customer may not be necessary. Finally, the Exchange also represented that it may arrange for a commissioner to be appointed to take the testimony of a person who resides outside Quebec, which would obviate that person's appearing at the Exchange proceeding. Thus, the testimony of U.S. residents in such proceedings may be arranged to be taken in the U.S.[24]

Regulatory Environment

When options originally were banned in the United States, they had not been subjected to a full regulatory program. It is appropriate, therefore, to inquire as to whether the market which proposes to offer option products in the United States has a regulatory structure which addresses market integrity and the sales practices of firms doing business with

International Monetary Exchange linkage at p. 51 and August 1, 1986 staff memorandum analyzing Commodity Exchange, Inc.—Sydney Futures Exchange linkage at p. 22.

[19] The Exchange hearing procedure is the primary non-judicial dispute resolution mechanism. However, the Exchange arbitration program (which is conceived primarily for member-to-member disputes), established by Exchange Rules 5201–5250, allows non-members to submit to arbitration any dispute with a member that relates to a contract subject to the Exchange rules. *See* Exchange Rule 5205. Pursuant to Sections 5201–5250 of the Exchange's Rules, an arbitration proceeding is conducted before an impartial panel, which is empowered to receive documentary and oral evidence and award damages to an aggrieved customer. "On the papers" hearings can be held with the concurrence of the parties but, as is true of U.S. contract markets under Commission regulations, the Exchange is not obliged to provide such a procedure. Compare Commission Regulation § 180.2(d)(1), 17 CFR 180.2(d)(1) (1987), which allows, but does not compel, U.S. contract markets to establish "on the papers" hearings under certain circumstances, and which allows U.S. contract markets to require the personal appearance of complainants, including and other non-U.S. countries. An Exchange member which fails to comply with an arbitration award is deemed to have committed an act detrimental to the interest and welfare of the Exchange, thus subjecting itself to the full range of the Exchange's disciplinary authority. See Exchange Rule 5207. See letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the Exchange.

[20] The CVMQ has broad oversight authority under Articles 183, 310 and 322 of the Quebec Securities Act to review the Exchange's disciplinary program generally as well as to review specific actions, including a decision not to prosecute a member. *See* letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the Exchange.

[21] Conversions at June 23, 1988, as published in the *Washington Post*, June 24, 1988.

[22] *See* October 7, 1987 petition of the Montreal Exchange, *i.e.*, that U.S. customers will receive no less than "national treatment."

[23] Because the proceeding involving most customer complaints against a member are disciplinary in nature, and may result in penalties as well as restitution, the Exchange is of the view that the member should be able, if the member so desires, to face the accuser. Absent objection, of course, the customer's testimony can be given through sworn affidavit or similar documentation. The Exchange believes that it would be manifestly unjust and unfair to present charges against any person and thereafter deny that person a right to cross-examine the accuser. Compare, *e.g.*, Commission Regulation § 8.17(a)(7), 17 CFR 8.17(a)(7) (1987), (allowing cross-examination of witness at exchange disciplinary hearings). *See* letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the exchange.

[24] *See* letter to the Commission dated June 24, 1988 from Philip McB. Johnson, counsel for the Exchange.

United States firms or customers.[25] This review is for the purpose of establishing the existence of a supervised marketplace and does not constitute a comparability analysis of the nature required under Rule 30.10 for granting exemptions from the Part 30 rules.

In this regard, the Exchange has submitted for the Commission's consideration information relating to the regulatory framework governing futures and option transactions in Quebec.[26] Essentially, as discussed below, the material submitted by the Exchange describes a self-regulatory system subject to governmental oversight by the CVMQ which is intended to promote market integrity and to provide a fair trading environment for Exchange futures and option products, as follows:

a. Authorization of Exchanges (Fitness of the Marketplace)

In order to do business in Quebec, an exchange or clearinghouse must be recognized by the CVMQ as a self-regulatory organization. (QSA Sec. 169). Such recognition is granted by the CVMQ when the CVMQ determines that the organization has adequate financial resources and administrative structures and that the organization's operating rules are in conformity with the QSA. (QSA Sec. 174). In this regard, the constituting documents, by-laws and operating rules of an exchange must provide for: (1) Unrestricted membership for every person who fulfills the conditions of admission; (2) equal access to services for every member; and (3) the disciplining of members or their representatives for breach of Exchange by-laws or operating rules. (QSA Sec. 175).

Any rules which have the effect of limiting competition must be submitted to the CVMQ for its prior approval. (QSA section 176). In addition, all other amendments to the constituting documents, by-laws or operating rules of an exchange must be submitted to the CVMQ for approval (QSA section 177). Such approval is automatic at the expiration of 30 days unless the CVMQ notifies to the contrary (QSA section 178). In this regard, the CVMQ may order an exchange to amend its rules (QSA section 180) or to take other action it deems necessary for the proper operation of the organization or the protection of investors. (QSA section 181). Recognized organizations are required to inform the CVMQ of every decision rendered under delegated powers concerning the admission of new members or disciplinary actions. (QSA section 183). Every recognized organization is required to file audited financial statements yearly (QSA section 184) and to maintain such books and records as the CVMQ may direct. (QSA section 185).

In the case of commodity futures and option contracts, the "issuer" (*i.e.*, the exchange) must be qualified by the CVMQ (QSA Secs. 1 and 67). The qualification process includes the filing of a description of the types of contracts proposed to be traded as well as a disclosure document in the form mandated by CVMQ. (QSA Reg. sections 71 and 73). Contracts may be issued only when the CVMQ approves or does not object to the application within 10 days of receiving the filings. (QSA Reg. section 71.1). These rules foster the maintenance of trading standards essential to meaningful information-sharing with respect to option transactions.

b. Licensing of Firms and Personnel (Fitness Standards for Professionals)

All dealers (*i.e.*, persons acting as brokers or principals, QSA Sec. 5) and advisers, as well as their personnel, are required to register with the CVMQ (QSA secs. 148 and 149). The application process involves the submission of a questionnaire requiring the disclosure of information concerning "fitness," such as education, investment courses or examinations passed, experience, professional references, prior suspensions or disciplinary measures, infractions of laws, convictions, civil proceedings and bankruptcy. The registration process for dealers and advisers includes the submission of financial statements (QSA Reg. section 195) and proof of insurance or bonding. (QSA Reg. section 196). The registration process for representatives of dealers and advisers includes proof of residence in Quebec (QSA Reg. section 204) and the successful completion of a course that demonstrates adequate professional training (QSA Reg. section 205). The CVMQ, after verifying that an applicant meets the conditions established by regulation, will grant registration when the applicant demonstrates that it has the competence and integrity to ensure the protection of investors, is solvent and has the financial resources to ensure the viability of the business. (QSA section 151).

c. Financial requirements (Fitness Standards for Firms)

The QSA regulation establish minimum net capital requirements for dealers as well as advisers.[27] A dealer or adviser is required to keep accounting books and records and retain them for at least five years. (QSA Reg. section 220). Such records must include a detailed specification of each customer's transactions as well as data concerning the firm's financial condition. (QSA Reg. section 222 (dealers and section 224 (advisers)). These rules establish a standard of financial fitness which is relevant to the expectation that members will comply with applicable rules and the capacity of members to meet their obligations in the marketplace.

d. Treatment of Customer Funds and Property

Segregation of customer funds and property in the manner contemplated by the Commodity Exchange Act and Commission rules is not required with respect to option transactions on the Exchange. Customer funds may be used in specified circumstances by the dealer (broker). However, the QSA requires that customer credit balances be maintained so as to be payable on demand. QSA Sec. 168 states that "credit balances appearing in the accounts of clients and not given in guarantee are funds payable on demand; in no case may a dealer use them except to finance his working capital on the

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[25] Although the Commission has not indicated an intention to review the terms and conditions of foreign option products, *see* S. Rep. No. 384, 97th Cong., 2d Sess. 45–46 (1982), the Commission's authority with respect to options is plenary.

[26] The Exchange has submitted the following:

By-Laws and Rules of the Montreal Exchange ("Exchange Rules");

The Quebec Securities Act (Bill 85, Chapter 48) assented to December 16, 1982, as amended February 24, 1987 ("QSA"); and

Quebec Regulations respecting securities (Order in Council 660–83, March 30, 1983), as amended as of January 27, 1987 ("QSA Regs.").

Reference to "securities" in the QSA includes futures and options. As provided in section 2 of the QSA: "The scheme of securities regulation established by the [QSA] and the regulations applies, *mutatis mutandis* to the other forms of investment listed in section 1 * * * [which lists futures and options]."

[27] A dealer with an unrestricted practice must have a net free capital at least equal to the sum of: (1) A proportion of the adjusted liabilities, subject to a minimum of C$75,000 (US$62,318), calculated as follows: (a) 10% of the first C$2,500,000 (US$2,077,250); (b) 8% of the next C$2,500,000; (c) 7% of the next C$2,500,000; (d) 6% of the next C$2,500,000; and (e) 5% of the amount exceeding C$10,000,000 (US$8,310,000); and (2) the amount deductible under the insurance policy or bonding prescribed by QSA Reg. section 213 (*i.e.*, C$1 million (US$831,000) coverage for a dealer with an unrestricted practice; C$100,000 (US$83,100), plus C$50,000 (US$41,545) for each employee, for a dealer selling investment contracts; C$100,000 for a securities adviser) (QSA Reg. section 207). A financial adviser with a restricted practice must have a working capital of at least C$5,000 (US$4,154) (QSA Reg. section 209).

conditions prescribed by regulation."[28] QSA Reg. § 217 provides that a dealer may use free credit balances on the following conditions:

The statement of account sent to the customer must indicate that the funds are being used to finance the dealer's working capital and are payable on demand;

It pays a reasonable interest; and

It may keep such funds only temporarily, with a view to investing them in securities.

However, a dealer who maintains fully paid securities on behalf of a customer and not assigned as security must separate them from other securities. On statements of account and in its registers, it must indicate clearly that such securities are on deposit. (QSA Reg. section 216).

An adviser with an unrestricted practice must keep in a trust account, separate from the adviser's assets, sums received as subscriptions or advance payments, until such time as they are used in accordance with their intended purpose. (QSA Reg. section 218). Otherwise, an adviser may not have securities or cash belonging to its customers in his possession or safekeeping (QSA Reg. section 234).

e. Market Integrity

The Exchange has represented that it has an affirmative surveillance program under the general direction of the Exchange's Floor Committee which is designed to detect activity by floor traders that takes advantage of customers or undermines the integrity of the Exchange. The Floor Committee regulates the trading and conduct on the floor of permit holders, individual members, membership representatives, trading representatives and any other persons associated by employment or contract with a member or permit holder. (Exchange Rule 6043). Under Exchange Rule 6045, the Floor Committee has the authority to interrupt trading whenever the interests of orderly trading so require. The Exchange conducts periodic surveillance of floor activity and regularly reviews the record of trades for any signs of abuses, including:

Front-running (Exchange Rule 6305);

Manipulative or deceptive trading, including creating a false or misleading appearance of active trading or engaging in trading intended to have the effect of creating an artificial price (Exchange Rule 6306);

Not providing best price execution (Exchange Rule 6310); and

Corners in the market (Exchange Rule 6307).

The Floor Committee has the authority to impose fines upon a member for any violation of a rule or floor trading regulation and in addition, may suspend a member's right to trade or expel the member from the trading floor. (Exchange Rule 6048). Any such penalty would not limit the authority of the Governing Committee to impose appropriate penalties or discipline for the same offense. (Exchange Rule 6051).

Other market supervisory powers of the Exchange include the power to establish option position limits (Exchange Rule 11301), including limits on outstanding uncovered short positions (Exchange Rule 11306), as well as general power to impose restrictions "in the interests of maintaining a fair and orderly market." (Exchange Rule 11308).

Although the CVMQ primarily functions in an oversight capacity, that agency is empowered to prescribe a course of action to an exchange if it considers it necessary for the proper operation of the exchange or the protection of investers (QSA Sec. 181).

f. Other Customer Protections

QSA Reg. §215 requires dealers to participate in a contingency fund approved by the CVMQ. The Exchange requires member participation in such a fund, the National Contingency Fund, sponsored by the Exchange and the Calgary, Toronto and Vancouver stock exchanges. (Exchange Rule 101). The Fund's purpose is to maintain public confidence by protecting clients of a member firm from financial loss resulting from the insolvency or bankruptcy of the firm. As of June 1988, the Fund had assets of C$35.6 million (US$29.6 million), which could be increased by unlimited assessments upon its members.[29] In the case of insolvency, individual customers with valid claims are entitled to receive full recovery of amounts owed to them, without dollar limit.[30] In addition, Exchange Rules 5126–5132 establish a brokers' clearing fund, financed by assessments of Exchange members, for the purpose of compensating members for bona-fide losses resulting from uncleared trades.

Exchange Rules 7156 and 7157 require audits of Exchange members' accounts at least once a year (or more often as determined by the Exchange) by auditors approved by the Exchange. Exchange Rule 7161 provides specific minimum guidelines mandating the scope of such audits, which, for example, must include a detailed examination and written confirmation of all client balances, cash deposits, security positions, open contracts, and deposits with clearing houses.

QSA Reg. section 235 mandates that a registered person use the care of a similarly situated informed professional. For example, the registered person must assure that orders are executed at the best price available on Canadian exchanges, unless instructed otherwise. With respect to discretionary accounts, QSA Reg. section 233 requires that transactions be approved in advance by a senior executive of the dealer or adviser. QSA Reg. section 248 requires that a monthly statement be given to customers disclosing the type of instrument, the unit price, amount of transaction and balance at the end of the month.

g. Exchange Option Rules

The rulebook submitted by the Montreal Exchange contains rules of general application, as well as rules specific to options. These rules contemplate that the Exchange takes responsibility for ensuring sales practice compliance of its members, maintaining fair requirements for executions, and monitoring the financial soundness of its members. The Exchange represents that it maintains in effect and enforces rules which:

(1) Establish standardized terms of option contracts (unit of trading, expiration). Exchange Rules 11001–11006.

(2) Establish exercise conditions and fair procedures for the allocation of exercise notices. Exchange Rule 11252.

(3) Require any firm principal ("options principal") and customer representative ("options representative") to be approved by the Exchange as a registered options principal or options representative. Exchange Rules 11102 and 11104. Among other things, a condition to such registration is the successful completion of a registered options principal or representative course, as appropriate. Exchange Rules 11102 and 11106.

(4) Require every registered options principal to be responsible for the operation and supervision of the member firm with respect to option contracts. Such responsibilities include the prior authorization of the opening of every option account, the supervision of all account dealings in options, the prior approval of discretionary orders, and the approval of all advertisements relating to options. Exchange Rule 11103.

[28] QSA Reg. section 207 requires a dealer to maintain net free capital based on the amount of "adjusted liabilities" of the dealer. Since the term adjusted liabilities includes all amounts owed to customers (as well as the firm's other liabilities), the QSA rules essentially establish a reserve requirement which takes into account, among other things, amounts of customer funds used to finance net capital.

[29] *See* letter dated June 16, 1988 from Philip McB. Johnson, counsel for the Exchange, to Robert Rosenfeld, Division of Trading and Markets staff attorney.

[30] *Id.*

(5) Require the execution of an option trading agreement prior to trading in options. Echange Rule 11151. Such option trading agreement must include the current Disclosure Statement for Exchange-Trade Options, the receipt of which shall be evidenced in writing. (*Compare* form in CVMQ Regs. Schedule VII.1p. 77 with Commission Rule 33.7, 17 CFR 33.7 (1987)). The agreement also is required to disclose to customers the methods of allocation of exercise notices. Exchange Rule 11153(d). (The Exchange has a specialized disclosure document for options cleared through the International Options Clearing Corporation ("IOCC")).

(6) Require the disclosure of all costs, fees, premiums, transaction facts (date, amount, location of trade) and option terms and conditions (expiration month, exercise price, settlement date) in a written confirmation statement delivered promptly to the customer. Exchange Rules 11155 and 7455 as made applicable by Exchange Rules 11152 and 11156.

(7) With respect to discretionary accounts, Exchange Rule 11154 requires member firms to comply with Exchange Rules 7476–7500 ("specific provisions on discretionary accounts") which:

(i) Prohibit any person from exercising discretionary authority unless such person has been designated a "portfolio manager," the client has given prior written authorization and the member has accepted the account in writing. Such written authorization must specify the investment objectives of the client. Exchange Rule 7478.

(ii) Require a member firm to designate one or more partners who shall assume supervisory authority for each managed account and to advise the client in writing of the identity of such supervisor. Exchange Rule 7479.

(iii) Make designation as a "portfolio manager" contingent upon the successful completion of the Canadian Securities Course and the Canadian Investment Finance Course, as well as proof of employment for at least five years in a research capacity involving the financial analysis of investments. Exchange Rule 7480.

(iv) Require firms to appoint a Portfolio Management Committee to review at least quarterly the investment policies of a member concerning its managed accounts. Exchange Rule 7481.

(v) Require the quarterly review of managed accounts. Exchange Rule 7482.

(vi) Require the full disclosure of contingency fees to the client. Exchange Rule 7484.

(vii) Prohibit a member from trading for the member's or portfolio manager's own account in reliance upon information concerning discretionary accounts. Exchange Rule 7486.

(8) Require all long positions in options to be paid fully in cash. Exchange Rule 11202. Exchange Rules 11203–11208 establish margin requirements for short option positions.

(9) Require each member to keep an up-to-date record of all written complaints in a central place. The complaint and reply must be retained for two years and be made available to the Exchange upon request. Exchange Rule 7466. In this regard, the Exchange has a formal disciplinary procedure for addressing violations of Exchange rules. *See* (Exchange Rules 4201–4308).

These rules generally address the regulatory concerns the Commission identified in setting forth conditions for the designation of U.S. contract markets in options. *See* Commission Rule 33.4. In this connection, the Exchange specifically represents that the regulatory environment governing transactions on the Exchange provides many of the protections found on regulated United States markets.

IV. Conclusion

Based upon the foregoing, the representations of the Exchange contained in letters dated October 7, 1987 and June 24, 1988, representations of the CVMQ contained in its letter dated June 10, 1988, and pursuant to Commission Rule 30.3(a), the Division of Trading and Markets recommends that the Commission publish in the **Federal Register** this memorandum and approve and publish the attached order authorizing the offer and sale in the United States of options traded on the Montreal Exchange subject to the following terms and conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any Exchange option product in the United States will be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered and sold pursuant to the order;

(2) That the CVMQ and the Exchange represent that all transactions with respect to the option(s) referenced in such notice will be governed by the Quebec Securities Act, the Regulations thereunder and Exchange option rules as more particularly discussed in this Staff Memorandum and that the CVMQ and/or the Exchange will provide the Commission with information as to all material changes therein promptly;

(3) That options on futures on stock indices [31] and options on futures on foreign government debt securities [32] will not be permitted to be offered and sold absent certain additional procedures;

(4) That options traded pursuant to the order may only be offset on the Exchange or another market with respect to which the Commission has approved a linkage arrangement with the Exchange;

(5) That options traded pursuant to the order may only be offered and sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under Rule 30.10 based on comparability of regulation, but may not be offered and sold by persons doing business in the United States pursuant to the Commission's interim order issued January 29, 1988 53 FR 3338 (February 5, 1988); and

(6) If experience demonstrates that the continued effectiveness of the order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject thereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted therein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in the order, as appropriate, on its own motion.

The Exchange has specified that the following option contracts, the terms and conditions for which are attached hereto, will initially be offered and sold in the United States: IOCC Foreign Currency Options (British Pounds, Deutsche Marks, Japanese Yen, Swiss Francs), IOCC Canadian Dollar Options, IOCC Gold Options and IOCC Platinum Options. As noted in condition (6) above, the Division recommends that the Commission retain the authority to terminate the order granting authorization to offer and sell Montreal Exchange options in the United States or to take such other steps as may be appropriate in light of the circumstances. In that connection, if the order is approved by the Commission, the Division intends to monitor the offer and sale of Montreal Exchange options to persons in the United States pursuant to the terms of the recommended order and to make recommendations for further action to the Commission, as appropriate in light of the operation of that program.

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[31] *See* 52 FR 28980, 28982 n.6 and section 2a(1) of the Act.

[32] *See* section 2a(1) of the Act, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder.

IOCC Foreign Currency Options Contract Specifications

Exchange where traded	ME			
	British pounds	Deutsche marks	Japanese yen	Swiss francs
Trading Unit	£5,000	DM 25,000	Y 2,500,00	SF 25,000
Exercise price intervals	U.S. $0.05	US. $0.02	U.S. $0.0002	U.S. $0.02
Minimum premium increment per unit of underlying currency	U.S. $0.0005	U.S. $0.0001	US. $0.000001	U.S. $0.0001
Ticker Symbol	BRP	DMR	Yen	SF

Making delivery of underlying commodity: Payment of underlying currency by deliverer to the account of IOCC at a bank designated by IOCC.

Taking delivery of underlying commodity: Receipt of underlying currency in the receiving broker's account at a bank designated by IOCC.

Expiry months: March, June, September and December.

Exercise cut-off: 5:00 p.m. the third Friday in an expiry month.

Termination of trading in an expiring option: 4:00 p.m. on the Thursday preceding the third Friday in an expiry month.

Trading currency: Premiums and exercise prices quoted in U.S. dollars and cents: settlement in U.S. funds.

Position limits: None.

Normal trading hours: 9:00–16:00 (EST EDT).

Commission charges: As agreed between the client and the broker.

IOCC Canadian Dollar Options Contract Specifications

Exchanges where traded: ME and VSE.

Trading unit: 50,000 Canadian dollars.

Making delivery of underlying commodity: Deposit of certified check at IOCC office.

Taking delivery of underlying commodity: Receipt of check from IOCC to broker.

Expiry months: March, June, September and December.

Exercise cut-off: 5:00 p.m. in Montreal and 4:00 p.m. in Vancouver the third Friday in an expiry month.

Termination of trading in an expiring option: 2:30 p.m. in Monteal and 4:00 p.m. in Vancouver the Thursday preceding the third Friday in an expiry month.

Trading currency: Premiums and exercise prices quoted in U.S. dollars and cents; settlement in U.S. funds.

Exercise prices: Maximum intervals set at U.S. $0.02 per Canadian dollar; normal intervals at U.S. $0.01 per Canadian dollar.

Premium quotations: In increments of U.S. $0.0001 per Candian dollar (i.e. U.S. $5.00 per contract).

Position limits: None

Normal trading hours: On the ME: 9:00–14:30 (EST/EDT) on the VSE: 14:30–19:00 (EST/EDT).

Ticker symbol: CAN.

Commission charges: As agreed between the client and the broker.

IOCC Gold Options Contract Specifications

Exchanges where traded: ME, VSE, EOE.

Trading unit: 10 troy ounces of fine gold bullion per option, of minimum .995 fineness in wafer or bar form, acceptable for good London delivery.

Taking delivery of underlying commodity: Receipt of good London deliverable gold in an account with one of the five full members of the London Gold Market or, at extra cost, in any other gold account elsewhere.

Making delivery of underlying commodity: Deposit of good London deliverable gold in an account with one of the five full members of the London Gold Market.

Expiry months: February, May, August and November.

Exercise cut-off: 5:00 p.m. in Montreal and 5:00 p.m. in Vancouver on the third Friday in an expiry month.

Termination of trading in an expiring option: 2-30 p.m. in Montreal and 4:00 p.m. in Vancouver, on the Thursday preceding the third Friday in an expiry month 2:00 p.m. in Amsterdam on the third Friday in an expiry month.

Trading currency: Premiums and exercise prices quoted in U.S. dollars and cents per ounce: settlement in U.S. funds.

Exercise prices: Minimum intervals set at U.S. $25 per ounce.

Premium quotations: In increments of U.S. $0.10 per ounce (i.e. U.S. $1.00 per contract).

Position limits: 5,000 options on the same side of the market.

Normal trading hours:

On the EOE: 4:30–10:30 (EST/EDT).

On the ME: 9:00–14:30 (EST/EDT).

On the VSE: 14:30–19:00 (EST/EDT).

Ticker symbol:

On the ME & VSE: OR.

On the EOE: GD.

Commission charges: Negotiated.

Specifications for Platinum Options

Exchanges Where Traded: European Options Exchange (Optiebeurs) The Montreal Exchange, Vancouver Stock Exchange, Australian Stock Exchange (Sydney)

Underlying Value: 10 troy ounces of platinum of minimum 0.9995 fineness.

Making Delivery: Deposit of deliverable grade platinum, in the form specified by IOCC, in IOCC's account with institution acting as its delivery depot.

Taking Delivery: Receipt of deliverable grade platinum, in the form specified by IOCC, in an account with institution acting as IOCC's delivery depot or at extra cost, according to other client instructions.

Expiration Months: Next three months falling on the March/June/September/December cycle.

Expiration Date: Monday following the third Friday in an expiration month. Final exercise cutoff for clients on the third Friday of an expiration month, or at the discretion of the broker.

Termination of Trading in an Expiring Series: At the close of each local trading session on the third Friday in an expiration month.

Standard Trading Hours:[1]

Market, Local Time, Greenwich Mean Time

Amsterdam, 10:30–16:30, 09:30–15:30
Montreal, 09:30–14:30, 14:00–19:30
Vancouver, 11:30–16:00, 19:30–24:00
Sydney:

1. Nov.–Mar., 11:00–16:30, 24:00–05:30
2. Apr.–Oct., 10:30–16:00, 01:30–07:00

[1] Greenwich Mean Time (GMT) is the accepted time zone referenc expoint. There is a 1.5 hour trading stop in Sydney during the local midday. In Amsterdam, local trading ends at 14:00 on the third Friday in an expiration month.

Trading Currency: Premiums and exercise prices quoted in U.S. dollars and cents per troy ounce.

Exercise Prices: Minimum intervals set at $US 10 per troy ounce.

Premium Quotations: Increments of $US 0.10 per troy ounce ($US 1 per contract).

Premium and Margin Settlement: Next business day.

Ticker Symbols:

PX (Montreal and Vancouver).

PLA (Amsterdam).

PXA (Sydney).

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

2. Appendix B is amended by adding the following entry alphabetically:

Appendix B—Option Contracts Permitted To Be Offered and Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
Montreal Exchange.	International Options Clearing Corporation foreign currency options (British pounds, Deutschemarks, Japanese yen, Swiss francs), Canadian dollar, gold, and platinum options.	July 29, 1988; 53 FR ____.
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[FR Doc. 88-16727 Filed 7-28-88; 8:45 am]

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federal register

Friday
July 29, 1988

Part VI

Department of Transportation

Research and Special Programs Administration

Inconsistency Ruling No. IR-18; Prince Georges County, MD; Code Section Governing Transportation of Radioactive Materials; Notice of Decision on Appeal

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-29]

Inconsistency Ruling No. IR-18; Decision on Appeal; Prince Georges County, MD; Code Section Governing Transportation of Radioactive Materials

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT or the Department).

ACTION: Notice of decision on appeal.

SUMMARY: In response to the appeal of Prince Georges County from the findings made in Inconsistency Ruling No. IR-18 (52 FR 200, January 2, 1987), that Inconsistency Ruling is affirmed.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590 (Tel: 202/366-4400).

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(a) of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1811(a)) expressly preempts any requirement of a State or political subdivision thereof, which is inconsistent with any requirement of the HMTA or the Hazardous Materials Regulations (HMR) issued thereunder (49 CFR Parts 171-179). Section 107.209(c) of Title 49, Code of Federal Regulations sets forth the following factors which are considered in determining whether a State or political subdivision requirement is inconsistent:

(1) Whether compliance with both the State or political subdivision requirement and the HMTA and the HMR is possible (the "dual compliance" test); and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings and decisions on appeal only address preemption issues under the HMTA and the HMR. They do not address issues of preemption arising under other statutes or under the Commerce Clause of the United States Constitution.

On May 5, 1983, the Government of Prince Georges County, Maryland (the County) filed an application for an administrative ruling seeking a determination as to whether Prince Georges County Code Section 18-187, restricting the movement of radioactive materials into, within, through, and out of the County, is inconsistent with the HMTA or the HMR.

On December 18, 1986, the Director, Office of Hazardous Materials Transportation (hereinafter the "Director" and "OHMT") issued Inconsistency Ruling No. 18 (IR-18), which was published at 52 FR 200 on January 2, 1987. That ruling determined that subsections (b)(2), (c), (d), (e) and (f) of Prince Georges County Code Section 18-187 are inconsistent with the HMTA and the HMR and therefore preempted by section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). The procedural regulations governing issuance of inconsistency rulings are codified in 49 CFR 107.201-107.211

On January 20, 1987, pursuant to 49 CFR 107.211, the County filed an appeal of IR-18 with the Administrator of RSPA. Comments opposing the appeal were filed by the Baltimore Gas and Electric Company

II. The Appeal: Issues and Decisions

A. Introduction

I am issuing this decision in my capacity as Administrator of RSPA. I have thoroughly considered all of the issues raised in the appeal and the comments on the appeal. All of the findings being appealed were discussed exhaustively by the Director in IR-18. I will respond only to the specific issues raised on appeal and generally will not reiterate the discussions in IR-18.

In its appeal, the County raises both general and specific arguments against the findings made in IR-18. I have considered the County's arguments in the order presented.

The County's general arguments are that (1) the HMTA and the HMR are not adequate to regulate the flow of hazardous materials through local jurisdictions, (2) the Director incorrectly assumes that the County's certificate requirement amounts to a routing rule which effectively redirects radioactive materials transportation, and (3) the Director incorrectly concludes that the County Code fails the dual compliance and obstacle tests.

The County's specific arguments challenge the Director's findings of consistency concerning the County's definitions and its requirements concerning communications, information, certification, bonds and penalties.

B. The County's General Arguments

1. The County's first general argument is that "[b]y its own admission, the DOT through the HMTA and HMR is not equipped to adequately regulate and monitor the flow of hazardous waste materials (radioactive material in particular) through local jurisdictions" and that, therefore, DOT should recognize a right in local jurisdictions to establish requirements to prepare safety measures in the event of an emergency.

In IR-18, the Director stated, in discussing the Federal-State relationship in the area of highway transportation safety, that "there are certain aspects of hazardous materials transportation that are not amenable to exclusive nationwide regulation," including safety hazards which are peculiar to a local area. DOT did not "admit" that it cannot adequately regulate but instead stated that "to the extent that nationwide regulations do not adequately address a uniquely local safety hazard, state or local governments can regulate narrowly for the purpose of eliminating or reducing the hazard. The mere claim of uniqueness, however, is insufficient to insulate a non-Federal requirement from the preemption provisions of the HMTA." 52 FR 200. Thus, the Department does recognize a legitimate role for State and local governments in hazardous materials transportation, so long as the non-Federal requirement does not conflict with the national standards.

The County further asserts that "DOT's assumption that the HMTA and HMR are sufficient to assist the state localities in this effort is clearly erroneous." The Department has made no such assumption. The conclusions in IR-18 do not rely on the adequacy of the Federal regulations. Instead, the conclusions in IR-18 are based on the existence of Federal regulations governing specific areas of radioactive materials transportation safety with which the County's requirements are in conflict.

Furthermore, in adopting the HMR, the Department was implementing the express Congressional objectives underlying enactment of the HMTA: (1) "To protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce" (49 App. U.S.C. 1801); and (2) "to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation" (S. Rep. No. 1192, 93d Cong., 2d Sess. 37 (1974)). While the

HMTA did not totally preclude State or local action in the area, Congress apparently intended, to the extent possible, to make such State or local action unnecessary. The comprehensiveness of the HMR restricts the scope of authority historically exercised by State and local governments. The nature, necessity and number of hazardous materials shipments make uniformity of standards a critical factor in the safe transportation of these materials.

2. The County's second general argument is that the Director incorrectly assumed that the County certificate requirement amounts to a routing rule and in effect bans shipments on U.S. 301, a State-designated preferred route. The County argues that in order for a State or local "routing rule" to constitute an inconsistent requirement, it not only must "effectively redirect" the movement of hazardous materials but it must also "significantly 'restrict or delay' transportation," which the County argues its permit requirement does not do.

Appendix A to 49 CFR Part 177, defines a "routing rule" as "any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects."

It is important to understand that Appendix A is not a regulation, but a non-binding statement of agency policy. Thus, IR–18 did not rely upon Appendix A in finding the County's certificate requirement inconsistent, but instead relied on findings of inconsistency with specifically enumerated Federal regulations discussed in IR–18. In any event, the County's interpretation of Appendix A is incorrect. A "routing rule" is any action which effectively redirects *or* otherwise significantly restricts or delays transportation of hazardous materials. Thus, a State or local requirement only "redirecting" transportation constitutes a routing rule.

Furthermore, a local routing rule is not per se inconsistent. Paragraph III.B. of Appendix A provides that a local routing rule that applies to highway route controlled quantity radioactive materials is inconsistent with Part 177 if it prohibits or otherwise affects transportation on routes authorized by Part 177 or authorized by a State routing agency in a manner consistent with Part 177. In IR–18, the Director found the County's certificate requirement to be inconsistent because it would allow the County to ban shipments on State-designated preferred routes. As discussed in IR–18, Maryland has designated preferred routes in accordance with 49 CFR 177.825(b). A preferred route is defined as an Interstate System highway or an alternate route selected by a State routing agency in accordance with the Department's guidelines. Maryland's routes include U.S. 301 and Interstates I–95 and I–495 which run through the County. The Director found that the "permit requirements of section 18–187 would circumvent the State's designation of U.S. 301 by providing the County with an almost unfettered ability to ban shipments on this State-designated route and thereby usurping the State's authority under 49 CFR 177.825(b); it also is inconsistent with that Federal regulation's requirement that highway route controlled quantity radioactive materials be carried on an Interstate System Highway in the absence of a state-designated route." 52 FR 204.

The County also argues that section 18–187 does not attempt to effectively redirect, restrict, delay, or even ban transportation of radioactive materials but is merely to provide notification. The purpose of the County's requirements, however well-intentioned, is not relevant. The County's certificate requirement has the *effect* of redirecting the movement of hazardous materials in order to avoid the County's inconsistent information and permit requirements. Moreover, as discussed at length in IR–18, the County's requirements would ignore the preferred highways designated by the State of Maryland pursuant to 49 CFR 177.825(b). The County argues that any decrease in use of U.S. 301 is attributable to the increased use of Interstates 95 and 495 which are designated (by Maryland) as primary routes and therefore are primarily used. The finding in IR–18 was not based on an actual measurement of traffic on the routes in question, nor is such a measurement required. It is sufficient that the County's requirements would have the effect of circumventing the State's designation of preferred routes and exporting the risk inherent in the transportation of radioactive materials to adjacent jurisdictions. For the reasons discussed above, I conclude that the Director correctly found that the County's certificate requirement is inconsistent with the HMTA and the HMR.

3. The County's third general argument is that the Director incorrectly concludes that the County's certificate requirement fails both the "dual compliance" and "obstacle" tests set forth in 49 CFR 107.209(c). The County asserts that "a transporter can comply with the County's Code certification requirements without violating any of the HMTA or the HMR" and that the certificate requirement "has not proven to redirect traffic to other jurisdictions nor to delay or restrict the transportation of radioactive materials, nor has it proven to be an undue burden or obstacle to the HMTA and HMR." The County also asserts that in IR–18 the Director found that a Michigan permit requirement similar to the County's requirement did not fail the "dual compliance" test, and therefore the County's requirement should not have failed the test.

The County is apparently referring to the statement in IR–8 that "a carrier which complied fully with the [Michigan] rules, thereby obtaining the necessary written approvals, could transport highway route controlled quantity radioactive material via preferred routes in Michigan, and thereby be in compliance with the Federal requirement as well. Consequently, application of the 'dual compliance' test reveals that it is physically possible for a carrier of spent nuclear fuel to comply with both the Federal and the [Michigan] rules." 49 FR 46639, November 27, 1984.

In IR–18, the Director stated that "the essence of section 18–187 is found in subsection (c)(1), which prohibits the transportation in the County of certain classes of radioative materials" unless a County certificate is obtained. 52 FR 202. The Director determined that the County requirement had, in effect, created a new hazard class by the imposition of additional requirements on a subgroup of radioactive materials. The Director further stated that "the regulations here fail to distinguish between highway route controlled quantity radioactive materials, which are regulated under 49 CFR 177.825(b), and radioactive materials for which placarding is required, which is [sic] regulated under 49 CFR 177.825(a). The effect of these County provisions is to bar transportation of radioactive materials which is in compliance with the HMTA and the HMR unless a County Certificate is obtained". 52 FR 203. Thus the Director found that the County's certificate requirement fails the "dual compliance" test because compliance with the Federal requirements would cause the non-Federal requirements to be violated.

I disagree. In this case, as in IR–8, a carrier can comply with the Federal regulations without violating any of the County regulations, and apparently can comply with the County regulations

without violating any of the Federal regulations. Thus, there is no failure to meet the "dual compliance" test. Therefore, I find that the Director erred in determining that the County's certificate requirement violated the "dual compliance" test. However, the Director also found that the County's hazard class designations, extensive advance notification and information requirements, permit processing discretion, and other provisions exceed the Federal requirements, create additional burden or delay, "prevent" presumptively safe shipments (because they are undertaken in compliance with the HMR), and thus are an obstacle to accomplishment of the HMTA and HMR for the reasons detailed in IR–18 itself. 52 FR 203. Accordingly, I affirm the finding that the County's certificate requirement fails the "obstacle" test and thus is inconsistent with the HMTA and the HMR.

C. The County's Specific Arguments

1. Subsection 18–187(b)(2)

The County appeals the finding in IR–18 that subsection (b)(2), the definition of "large quantity radioactive materials", is inconsistent with the HMTA and the HMR.

The term "large quantity radioactive materials" is defined in Section 18–187(b)(2) as "a quantity the aggregate radioactivity of which exceeds that specified in Volume 10 of the Code of Federal Regulations (CFR) Part 71 entitled 'Packaging of Radioactive Material for Transport'; section 71.4(f)". When the County adopted this regulation, the HMR contained a similar definition. However, in a final rule issued on July 1, 1983 (Docket No. HM–169; 48 FR 10218), the term "highway route controlled quantity" was substituted for "large quantity radioactive materials".

The County argues that not only is the County's definition "consistent appearing", it is based on a Federal definition and is therefore consistent. The Director concluded that "use of the superseded terminology could cause confusion and undermine compliance with the HMTA and the HMR". I concur with the Director's conclusion. In a field so extensively regulated by the Federal Government, it would be confusing to those attempting to comply with the HMTA and the HMR to try to distinguish between two different, albeit similar, terms for radioactive material. Such confusion lessens the possibility of compliance.

2. Subsection 18–187(c)(1)

The County appeals the finding in IR–18 that subsections (c)(1)(A–G) (erroneously referred to as (a)(2)(A–G) on page 6 of the Appeal) constitute a system of hazard class designations that is inconsistent with the HMTA and the HMR. The County argues that in IR–8 and IR–12 the Director relied improperly on IR–5 and IR–6, and therefore in IR–18 he should not have relied on the erroneous rulings in IR–8 and IR–12.

The County contends that in IR–8 and IR–12, and in turn IR–18, the Director should not have relied on IR–5 because IR–5 concerned non-radioactive materials hazard classes rather than radioactive materials, and because the definitions in IR–5 overlapped the Federal definitions, whereas the County's definition "merely creates a subclassification".

The rationale articulated in IR–5 and reiterated in IR–8, IR–12 and IR–18 applies without regard to whether the hazard classes concern non-radioactive or radioactive materials, or whether the non-Federal hazard classes overlap or constitute a subset of the Federal hazard classes. The Congressional intent is the promotion of nationwide uniformity in hazardous materials transportation. It is well-settled that hazard class definitions "are the starting point for determining the applicability of nationally uniform requirements", (IR–6, 48 FR 760, January 6, 1983) and that "if every jurisdiction were to assign additonal requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety". (IR–12, 49 FR 46651, November 27, 1984.)

The County also argues that the Director should not have relied on the erroneous ruling in IR–8, which in turn relied on IR–6, because IR–6 dealt with overbroad and subjective non-Federal definitions, whereas the County contends its regulations are clear and unambiguous.

In IR–18, the Director cited IR–8 (not IR–6) for the correct proposition that the Federal role in the definition of hazard classes is exclusive. As stated above, State and local requirements assigned on the basis of hazard classes that differ from the Federal hazard classes increase the likelihood of confusion, lessen the possibility of compliance, and thus decrease public safety. The mere fact that others' definitions arguably may have been more inconsistent does not authorize the County's inconsistent hazard class definitions. Therefore, the County's argument is without merit.

The County argues specifically that subsection 18–187(c)(1)(E), the classification for large quantity radioactive materials, should not have been ruled inconsistent.

For the reasons discussed above under subsection (b)(1), I affirm the Director's finding in IR–18 on this point. The County also contends that subsection 18–187(c)(1)(F) concerning fissile class III materials should not have been ruled inconsistent. The County appears to argue that its hazard class, though different in phraseology than 10 CFR 71.4(d)(3), is a more accurate interpretation, and thus furthers the goal of safe transportation. Again, the Federal role in hazard class definition is exclusive, and the County's argument must fail.

3. Subsections 18–187(c)(2) and 18–187(c)(3)

The County appeals the finding in IR–18 that subsections (c)(2) (D) and (E) fail the dual compliance test because they violate the Federal prohibition against disclosure to non-law enforcement local authorities of schedules and itineraries for specific shipments of specified quantities of radioactive materials which is contained in 10 CFR 73.21 and incorporated by reference in 49 CFR 173.22(c). The County argues that there is only one office to which the information is to be reported, that its employees are local law enforcement authorities, that it is erroneous to assume that they would disclose the information to unauthorized personnel, and that, therefore, the subsections do not fail the "dual compliance" test. While it is true that subsection (c)(2) requires the information to be submitted to a single entity, the County Executive, it does not specify that the information is to be limited to the law enforcement personnel of that office. The County has not provided any information to show that all the employees of the County Executive are law enforcement personnel. Absent such a showing, I concur with the Director's finding in IR–18.

The County also contends that the Ruling erred in finding subsection (c) inconsistent without separately discussing subsections (c)(2)(A–C), (c)(2)(F–G), and (c)(3). Subsection (c)(2) requires information concerning the names of the shipper, carrier, and designee (subsections A, B and F); the type and quantity of radioactive material (subsection (C)); and any other information required by the County Executive which is reasonably related to

the above information (subsection G). With the exception of subsection G, all of this information is required to be provided in advance to the Maryland Governor's Designated Representative for receipt of advance notification of nuclear waste shipments. The requirement is set forth as part of the Nuclear Regulatory Commission (NRC) physical protection regulations (10 CFR 73.37(f)). Section 173.22(c) of the HMR requires shippers to comply with a physical protection plan established under the NRC requirements or equivalent requirements approved by OHMT. To the extent that State or local rules require the submission of the same information as required by the Federal rules, they are redundant, and such "redundancy does not further transportation safety." (IR–2, 44 FR 75571, December 20, 1979). Therefore, I find that subsections (c)(2) (A–C), and (F) constitute obstacles to the accomplishment of the HMTA and are inconsistent.

Although the Director did not specifically discuss in IR–18 every information requirement in subsection (c)(2), he did quote subsection (c)(2)(G), among others, in concluding that the "County's permit system includes extensive and open-ended advance notification requirements [which] exceed Federal requirements, create an additional burden or delay and thus are inconsistent with the HMTA and the HMR" (citations omitted). 52 FR 203, January 2, 1987.

Subsection (c)(3) provides that no certificate may be issued for the transportation of radioactive waste or spent fuel primarily or solely for storage or disposal in the State of Maryland unless the storage or disposal is authorized under State law. Generally, local requirements for compliance with otherwise consistent State requirements are consistent. IR–3 (46 FR 18918, March 26, 1981). While I have not examined the State requirements and do not offer an opinion of their consistency with the HMTA, reliance by local jurisdictions on common State and Federal requirements is not inconsistent with the HMTA. However, because the Director IR–18 found the County's certificate requirement as a whole inconsistent, it was not necessary to make a determination regarding each individual requirement. Therefore, I affirm the Director's finding in IR–18 that subsection (c) is inconsistent with the HMTA.

4. Subsections 18–187(d)(1)(A), 18–187(d)(2), and 18–187(d)(5)

The County appeals the finding in IR–18 that to the extent subsection (d)(1)(A) "represents a local packaging requirement, it is inconsistent." 52 FR 203 (January 2, 1987). The County asserts that "this provision merely requires a 'showing' that the packaging, labeling, and transporting will be in compliance with the Federal regulations. There are absolutely no additional or separate local requirements enumerated in the provisions of the Code nor can this Ruling assume that such requirements exist."

Contrary to the County's assertion, subsection (d)(1)(A) requires a showing that radioactive material has been or will be packaged in conformity with Federal regulations or the regulations of "any other Federal or *County agency having jurisdiction*" (emphasis added). The Director found subsection (d)(1)(A) inconsistent only to the extent that it represents a local packaging requirement. State and local governments may not issue packaging requirements that differ from or add to Federal ones. IR–2 (44 FR 75568, December 20, 1979). Requiring a showing of compliance with unspecified county packaging regulations violates the "dual compliance" test. Therefore, I find the Director correctly determined subsection (d)(1)(A) to be inconsistent with the HMTA and the HMR to the extent it represents a local packaging requirement.

The County also asserts that the Ruling erred in not specifically discussing subsections (d)(2) and (d)(5), and requested that if the Director intended to declare these sections inconsistent, the same argument made in the Appeal regarding certification should be applied to those sections.

Subsection (d)(2) provides that "no certificate shall be issued without a finding that appropriate procedures and precautions exist to protect Prince Georges County and its inhabitants in the event of a transportation accident." The Director discussed subsection (d)(2) (erroneously referring to it as subsection (d)(3)), in stating that "among other fatal defects in section 18–187 are * * * vague prohibitions against such transport in the absence of findings of adequate emergency response capability (section 18–187(d)(3) [sic])." The Director found subsection (d)(2), inconsistent, stating:

> With respect to emergency response, for example, the County neither can shift its own responsibility to carriers, IR–2 (44 FR 75565, December 20, 1979), nor hold carriers hostages to the County's case-by-case determination of its emergency response capabilities. These requirements conflict with the comprehensive OHMT/NRC regulatory system for the transportation of radioactive materials and constitute obstacles to the achievement of the HMTA and HMR. 52 FR 203.

I concur and affirm the Director's finding on this point.

Subsection (d)(5) requires the County Executive to adopt regulations to carry out Code Section 18–187 and establish a fee schedule. The Director did not discuss subsection (d)(5) because it was not necessary to reach that issue in determining the County's certificate requirement as a whole to be inconsistent with the HMTA and the HMR. Generally, regulations to implement and fees to fund inconsistent requirements are themselves inconsistent. IR–8(A), 52 FR 13006 (April 20, 1987); IR–17(A), 52 FR 36200 (September 25, 1987). For the reasons discussed in IR–18 and reiterated in this decision, the County's certificate requirement is inconsistent with the HMTA. Therefore, I find subsection (d)(5) is inconsistent because it is a requirement to implement and fund inconsistent provisions.

5. Subsections 18–187(d)(3) and 18–187(d)(4)

The County appeals the Director's finding in IR–18 that subsection (d)(3) is inconsistent with the HMTA and the HMR. Sbsection (d)(3) provides that the certificate "shall be granted upon a finding that the transporting of such [radioactive] material shall be accomplished in a manner necessary to protect public health and safety of the citizens of the County." The Director found this provision vague and an obstacle to the achievement of the HMTA and the HMR. The County contends that the Director erroneously assumes that even if all the criteria are met, the County still has the discretion to deny the certificate, when in fact, the County has never refused to give a certificate to a carrier who has complied with the provisions of Section 18–187.

The finding was not based on any such erroneous assumption. The finding was based on the vagueness of the threshold criteria themselves and the unbridled discretion to determine when those criteria are satisfied. Therefore, I find that the Director correctly determined subsection (d)(3) to be inconsistent.

The County also appeals the finding that subsection (d)(4) is inconsistent because of the open-ended authority to require escorts. The County argues that its escort provision does not require more than the Federal regulations, and is not a "requirement" but merely an alternative to the County's authority to change dates, routes, and times.

Subsection (d)(4) provides in relevant part:

> The County Executive or his designee may require changes in dates, routes, or time for the transporting of such material or the use of escorts in the transporting of such material if necessary to protect the public health and safety.

The escort provision clearly is a requirement (because, if exercised by the County Executive, it imposes an obligation to act) that fails the "dual compliance" test. As discussed in IR–18, a State or local requirement identical to or facilitating the requirement of the Nuclear Regulatory Commission for front and rear escorts for certain shipments is consistent, but a requirement which goes beyond the NRC's escort provisions is inconsistent with the HMTA and the HMR. 52 FR 203. In the instant case, the County provision does not specify the type or extent of escorts, who is to furnish the escorts, or when they would be required. In short, the County provision is neither identical to, nor does it facilitate compliance with, the Federal requirement. Therefore, I affirm the Director's finding on subsection (d)(4).

6. Subsection 18–187(e)

The County appeals the finding in IR–18 that subsection (e) is inconsistent because it is an indemnification or insurance requirement for transporting radioactive materials that is different from, or in addition to, the Federal requirements. Subsection (e) allows the County to impose a bond in an amount to be determined, or to waive the bond if the applicant proves it has made adequate provision for indemnifying the County for "the costs of cleanup, decontamination, health care, and related expenses" arising from radiation exposure. The County argues that the Director improperly relied on IR–11 and IR–15 by erroneously assuming that the County's bond requirement directly results in the diversion of shipments into other jurisdictions and thus poses an obstacle to the accomplishment of increased hazardous materials transportation safety.

The Director did not rely on IR–15 to find subsection (e) inconsistent. The Director cited the finding in IR–11 (49 FR 46647, November 27, 1984) which relied on the reasoning in IR–10, not IR–15, to reach the conclusion that where a local insurance requirement is not quantified, the effect is to divert shipments to other jurisdictions. As discussed in IR–18, there is no indication that compliance with the motor carrier financial responsibility provisions of 49 CFR Part 387 (which is required by 49 CFR 177.804 of the HMR) would be deemed "adequate" by the County.

The County also contends that the Director erroneously assumed that the County imposes bonds that are higher than allowed by the HMTA and HMR, when in fact the bonds required do not exceed those allowed by the HMTA and the HMR. The County has incorrectly drawn the inference that if the maximum local bond requirements are lower than the Federal requirements then there is no inconsistency. As plainly stated in IR–18, local bond requirements *in addition to* the Federal requirements are inconsistent. The County's bond provision would authorize the County to require a bond of unspecified amount if the County determines that the carrier's level of financial responsibility is not adequate. Such a requirement allows the *ad hoc* exercise of local discretion which may have the effect of diverting shipments to other jurisdictions and increasing the overall risks of radioactive materials transportation. For the reasons discussed above, I affirm the Director's in IR–18 that subsection (e) is inconsistent with the HMTA and the HMR.

7. Subsection 18–187(f)

The County appeals the finding in IR–18 that subsection (f), concerning fines for violations of Section 18–187, is inconsistent. The Director found that while penalties for violating consistent requirements are themselves consistent, penalties for violating inconsistent requirements are inconsistent. 52 FR 204. For the reasons discussed above, I affirm the finding that subsection (f) is inconsistent because it constitutes a penalty for violating inconsistent requirements.

III. Conclusion

For the reasons indicated above and for the reasons set forth by the Director in IR–18 itself, I affirm the determination of the Director of the Office of Hazardous Materials Transportation in IR–18 that subsections (b)(2), (c), (d), (e) and (f) of Prince George's County Code Section 18–187 are inconsistent with the HMTA and the HMR. This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC, on July 21, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

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To designate the week of July 25-31, 1988, as the "National Week of Recognition and Remembrance for Those Who Served in the Korean War." (July 26, 1988; 102 Stat. 880; 2 pages) Price: $1.00