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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: May 24, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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Presidential Documents

Title 3—

The President

Proclamation 6117 of April 20, 1990

National Recycling Month, 1990

By the President of the United States of America

A Proclamation

Recognizing the importance of proper solid waste management to protecting human health and the environment, many communities across the United States have launched effective recycling efforts. Many have established very successful voluntary programs. There now exist across the United States facilities for recycling scrap metals, paper, and glass.

Despite this progress, Americans are still not recycling enough municipal waste. It is estimated that only 10 percent of the Nation's municipal solid waste is recycled, while some 80 percent is deposited in landfills and some 10 percent is incinerated. Because the Nation is generating an increasing amount of solid waste each year—currently 160 million tons annually—the amount of available landfill space is dramatically decreasing.

Recycling municipal solid waste not only helps to preserve our limited landfill space, but also yields a number of other immediate and long-term benefits. For example, recycling reduces the need to remove additional resources from their natural environment and thus helps to prevent the environmental harm created by such extraction efforts. Recycling also saves energy and frequently provides a less costly alternative to landfills and incineration. The materials recovered through recycling can often be used by local communities to generate increased revenue.

Every American can play a role in solving the Nation's solid waste disposal problems by recycling—either through municipal programs or through voluntary drives sponsored by local service organizations. Because recycling is not complete until recovered materials are used in manufacturing new products for consumer use, individuals, business owners, and government managers can contribute to recycling by purchasing such products and by supporting the development of markets for recycled goods.

Whether as a member of a private household, business, or civic organization, each of us can help to reach the goal of 25 percent waste reduction and recycling by 1992. While each community's ability to meet this goal may vary, such efforts constitute important strides toward eliminating America's solid waste problems.

In recognition of the importance of recycling solid waste, the Congress, by Senate Joint Resolution 250, has designated April 1990 as "National Recycling Month" and has authorized and requested the President to issue a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim April 1990 as National Recycling Month. I urge the people of the United States to observe this month by undertaking recycling efforts in their own households and businesses, by actively participating in community recycling efforts, and by teaching their children about the benefits of such efforts. I also urge community leaders to consider the advantage of a comprehensive recycling program as a means of managing municipal solid waste.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of April, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 90-9747
Filed 4-23-90; 3:21 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Apr. 20 on signing Proclamation 6117, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 16).

Presidential Documents

Proclamation 6118 of April 23, 1990

National Volunteer Week, 1990

By the President of the United States of America

A Proclamation

Henry David Thoreau once observed that "goodness is the only investment that never fails." His fellow Americans have long agreed. Today millions of our citizens are carrying on a time-honored tradition of voluntary service and giving—a tradition that is as old as the Nation itself.

It was volunteers who won America's independence, and it was neighbors helping each other on the frontier who enabled our nascent Republic to develop into the great and mighty Nation whose strength and prosperity now extend from shore to shore. Indeed, volunteers have been a powerful force behind the development of our Nation's laws and institutions ever since our ancestors first cradled the light of liberty and self-government. Volunteers have shaped our educational system; they have established and maintained our libraries and museums; they have helped to provide for the public safety; and they have furnished indispensable support to our churches and other religious organizations.

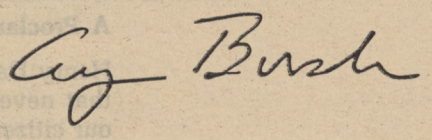
It is fitting that we pause to honor America's volunteers each spring, as we celebrate this season of hope and renewal. Through their continuous efforts to strengthen and enrich our communities, volunteers not only bring hope to others but also renew our faith in the ideals upon which this Nation was founded. By reaffirming the dignity and worth of the individual and the power of collective action, volunteers help the United States to experience a "new birth of freedom" each day. Time and again, these generous and hardworking individuals demonstrate that ours is, indeed, a "government of the people, by the people, and for the people."

This week we salute the millions of volunteers who help to ensure that their fellow Americans enjoy freedom from injustice and freedom from fear and want. They are a force of nearly half of our adult citizens who devote their time to uplifting those encumbered by substance abuse, homelessness, and illiteracy. They are older men and women who comfort chemically dependent "boarder babies" in our inner-city hospitals. They are young professionals who befriend AIDS victims or disadvantaged children in need of positive role models. They are couples who counsel and shelter single mothers or foster children, and they are teenagers who collect canned goods for needy families. Because of dedicated volunteers like these, there is no problem in America that is not being solved somewhere.

Whether expressed as small acts of kindness toward a neighbor or as a lifelong commitment to a noble cause, the goodness and generosity of the American people is one of our Nation's greatest strengths. Thus, it is with great appreciation and pride that I salute the 80 million Americans who serve as volunteers. These individuals have moved us all by the strength of their convictions; they have gently challenged us through their example of selflessness and concern for others; and they have shown us that any definition of a successful life must include serving others.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of April 22 through April 28, 1990, as National Volunteer Week. I ask all Americans to join in saluting and thanking our Nation's volunteers, as well as the organizations that support their efforts. I also encourage every American to take part in appropriate events and activities in observance of National Volunteer Week and in celebration of all that volunteers do for our country throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of April, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-9782
Filed 4-23-90; 4:51 pm]
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Editorial note: For the President's remarks of Apr. 23 on signing Proclamation 6118, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 17).

Presidential Documents

Proclamation 6119 of April 23, 1990

Loyalty Day, 1990

By the President of the United States of America

A Proclamation

Our Nation is firmly rooted in the timeless ideals enshrined in our Constitution and so eloquently expressed in our Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The success of our great experiment in self-government is testimony not only to the binding truth of these words, but also to the determination of those who have ever since struggled to uphold them. Dedicated to these ideals, the United States has grown and prospered. It has withstood the test of time and the bitter crucible of war, standing as a model of freedom and a source of hope for oppressed peoples around the world.

Each May 1, on Loyalty Day, we remember in a special way those Americans who have given their lives in defense of this country and the principles for which it stands. We also pay tribute to our veterans and current members of the Armed Forces; their bravery and desire to serve likewise reflect great love for others and genuine loyalty to the United States.

Throughout the year, these outstanding men and women—and, indeed, Americans of all ages and from every walk of life—express their loyalty to our country through countless acts of patriotism and selflessness. By honoring their oath to uphold and defend the Constitution, military personnel, elected officials, and civil servants help to preserve our rich heritage of freedom. Students who recite the Pledge of Allegiance in school, and parents and educators who teach their children about our Nation's history and system of government, help to ensure that this heritage is ever strengthened and renewed.

Today, we remind ourselves that the principles upon which our Nation is founded are worthy of our abiding faith and fidelity. Our allegiance to this Nation is pledged freely—indeed, proudly—because it is allegiance to a noble ideal, one reaffirming the God-given dignity and worth of the individual and the freedom He has envisioned for each of us.

Over the years, our unwavering devotion to the principles of individual liberty and representative government has made the United States a light of hope and a place of refuge for millions of people around the world. We now take pride in knowing that the ideas planted on this soil more than 200 years ago continue to inspire brave hearts in other lands. In countries that once suffered under the heavy shadow of totalitarianism, freedom-loving men and women are beginning to enjoy the blessings of liberty and self-determination. Their triumph is a poignant reminder of the power of faith and the importance of our continued commitment to democratic ideals.

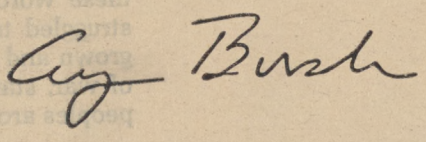
As we observe Loyalty Day, let us reaffirm our belief in the ideals enshrined in our Declaration of Independence and in our Constitution, so that we may continue to be one Nation under God, a Nation worthy of His continued mercy and favor. As Thomas Jefferson once noted:

These principles form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation. The wisdom of our sages and the blood of our heroes have been devoted to their attainment. They should be the creed of our political faith, the text of civil instruction, the touchstone by which we try the services of those we trust; and should we wander from them in moments of error or alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety.

To foster loyalty and love of country, the Congress, by joint resolution approved July 18, 1958 (72 Stat. 369; 36 U.S.C. 162), has designated May 1 of each year as "Loyalty Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 1, 1990, as Loyalty Day and call upon all Americans and patriotic, civic, fraternal, and educational organizations to observe that day with appropriate ceremonies. I also call upon all government officials to display the flag of the United States on all government buildings and grounds on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of April, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-9781
Filed 4-23-90; 4:50 pm]
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Presidential Documents

Presidential Determination No. 90–15 of March 28, 1990

Determination Pursuant to Section 620E(d) of the Foreign Assistance Act of 1961, as Amended

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 620E(d) of the Foreign Assistance Act of 1961, as amended ("the Act") (22 U.S.C. 2375(d)), I hereby determine, pursuant to section 620E(d) of the Act, that provision of assistance to Pakistan under the Act through April 1, 1991, is in the national interest of the United States, and therefore waive the prohibitions of section 669 of the Act (22 U.S.C. 2429) with respect to that period.

You are authorized and directed to transmit this determination, together with the statement setting forth specific reasons therefor, to the Congress immediately.

This determination shall be published in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, March 28, 1990.

[FR Doc. 90–9748
Filed 4–23–90; 3:22 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 55, No. 80
Wednesday, April 25, 1990

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standard for the Surety Bond Guaranty Program

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: The Small Business Administration (SBA) is establishing on an interim basis a three-part size standard for the Surety Bond Guaranty (SBG) Program, only one part of which represents a change. On December 21, 1989, SBA published a comprehensive revision of the rules relating to its size determination program. In general, the Agency's intention was to simplify and clarify its regulations, not to set new size policy or change size standards. Previously size standards for the SBG Program were governed by a three-part provision. The revision simplified this provision into a single size standard of $3.5 million in annual receipts for all applicants for Surety Bond Guaranty assistance. However, some manufacturing companies have been receiving SBGs under the deleted portion of the three-part standard. In order to avoid unintentional injury to such firms and to conform to the original intent of creating no new size standards in the December 21 final rule, SBA is restoring the three-part rule that existed between March 1984 and January 1, 1990.

DATES: *Effective dates:* April 19, 1990 Comments are to be submitted on or before May 25, 1990.

ADDRESSES: Address all comments to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 1441 L Street NW., Room 932, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Alan Odendahl, Size Standards Staff, Tel: (202) 653–6373.

SUPPLEMENTARY INFORMATION: On August 31, 1987, SBA published a Proposed Rule in the **Federal Register** (52 FR 32870–32902) which would reorganize the conceptual framework of size standards, and simplify and clarify the procedural rules governing SBA's size determination program. It was explicitly stated (at 32870) that, "This proposal would not, however, change the specific size standards which apply to particular industries and Standard Industrial Classification Codes."

Among the changes proposed was a simplification of the three-part size standard for the Surety Bond Guaranty Program. The previous regulations, published in the **Federal Register** on February 9, 1984 (49 FR 5024) and subsequently corrected, read as follows (13 CFR part 121.4(h)):

(h) For purposes of surety bond guarantee assistance,

(1) Any construction concern (general or special trade) is small if its annual receipts average for its preceding three fiscal years does not exceed $3.5 million.

(2) Any concern performing a contract for services (including but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual) is small if its annual receipts average for its preceding three fiscal years does not exceed $3.5 million.

(3) For other surety bond guarantee assistance, the provisions of § 121.4 (a) and (b) are applicable in determining eligibility as a small business concern.

(Sections 121.4 (a) and (b) referred to the numerical size standards employed for other forms of financial assistance.)

In the proposed rule of August 31, 1987, the following language (§ 121.802) was substituted for the three-part standard:

[a][3] An applicant, including its affiliates, for Surety Bond Guaranty assistance must not have average annual receipts for its preceding three completed fiscal years in excess of $3.5 million.

The final rule published on December 21, 1989 (54 FR 52634–52675) and effective on January 1, 1990, retained this proposed standard unchanged.

Although the great majority of SBG recipients are either construction concerns or are performing a contract for services and accordingly, were not affected by the new regulation, there are a few manufacturing firms which have been affected adversely by the change. For some time the affected firms had been receiving (predominantly) performance bond guarantees by qualifying as small under the deleted part of the three-part standard (§ 121.4(h)(3)). This had permitted manufacturers with up to 500 employees (and in some industries, up to 1,500 employees) to be classified as small concerns. The simplifying change to $3.5 million average annual receipts (which very roughly corresponds to 60–80 employees in most industries) unintentionally excluded some such manufacturers from receiving SBA guarantees for bonds.

As indicated above the change was not intended to change a size standard. The preamble to the proposed simplified standard (at page 32873) stated merely that, "The current more complex standard is unnecessary."

To correct this situation, an interim rule is necessary, inasmuch as SBA did not intend to change any size standards or to cause harm to former surety bond guarantee recipients who could no longer qualify as small. Therefore, SBA now reinstates in substance the previous regulatory provisions on this subject prevailing in the part 121 regulations from March 12, 1984 through December 31, 1989.

To accomplish this SBA cannot, however, merely restore the reference to § 121.4 (a) and (b), now renumbered as § 121.802(a)(1) and § 121.802(b), because § 121.802(a)(1) now includes a two-fold test: meeting the size standard for the primary industry of the applicant concern, including its affiliates, and the primary industry of the concern, not including its affiliates. Accordingly, reference is made only to the size standards table (§ 121.601), the definition of a primary industry (§ 121.802(b)), and to a single size standard for the primary industry of the applicant, including its affiliates. Without this modification to the regulatory language, surety bond applicants would be subject to a new requirement not previously imposed by § 121.802, or the former regulation's § 121.4(h), and the rule would not fully restore the previous treatment of surety bond applicants.

Compliance With Regulatory Flexibility Act, Executive Orders 12291 and 12612 and the Paperwork Reduction Act

SBA certifies that this interim final rule is being published pursuant to an emergency for the reason indicated

above and the SBA is, therefore, waiving the requirements of section 603 of the Regulatory Flexibility Act. The SBA will publish a final regulatory analysis when this rule is promulgated in final form.

SBA certifies that this rule poses no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

SBA also certifies that this rule would not have federalism implications warranting the preparation of a federalism assessment in accordance with Executive Order 12612.

SBA certifies that this rule is not a major rule for purposes of Executive Order 12291, because it is unlikely to have an annual economic impact of over $100 million. The overall impact will be small because only a few firms are affected and because the rule essentially restores the surety bond eligibility as of December 31, 1989, in comparison to the few months elapsing since that date. An estimate of this impact will be included in the final regulatory impact analysis.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

PART 121—[AMENDED]

1. The authority citation for part 121 of 13 CFR continues to read as follows:

Authority: Sections 3(a) and 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 632(a) and 634(b)(6), and Pub. L. 100–656, 102 Stat. 3853 (1988).

2. In § 121.802, *Establishment of the size standard,* paragraph (a)(3) is revised to read as follows:

§ 121.802 Establishment of the size standard.

* * * * *

(a)(3) For purposes of surety bond guarantee assistance,

(i) Any construction concern (general or special trade) is small if its annual receipts average for its preceding three fiscal years does not exceed $3.5 million.

(ii) Any concern performing a contract for services (including, but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual) is small if its annual receipts average for its preceding three fiscal years does not exceed $3.5 million.

(iii) For other surety bond guarantee assistance, an applicant must meet the size standard set forth in § 121.601 for the primary industry (as defined in § 121.802(b)) in which the applicant, including its affiliates, is engaged.

* * * * *

Dated: April 19, 1990.

Kay Bulow,

Deputy Administrator, U.S. Small Business Administration.

[FR Doc. 90–9697 Filed 4–23–90; 12:38 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–03–AD; Amdt. 39–6585]

Airworthiness Directives; Aerospatiale Caravelle Model SE 210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Caravelle Model SE 210 series airplanes, which requires repetitive visual; or repetitive visual, eddy current, and magnetic particle inspections to detect cracks and shearing of fasteners in the wing-to-fuselage junction components; and repetitive visual and dye-penetrant inspections of various components of the fuselage lower section, and repair, if necessary. This amendment is prompted by fatigue testing by the manufacturer and in-service experience which have identified fatigue cracks in certain wing-to-fuselage junction fittings in the fuselage lower section. This condition, if not corrected, could result in reduced structural integrity of the wing-to-fuselage junction structure.

EFFECTIVE DATE: June 1, 1990.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Huhn, Standardization Branch, ANM–113; telephone (206) 431–1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Aerospatiale Caravelle Model SE 210 series airplanes, which requires repetitive visual; or repetitive visual, eddy current, and magnetic particle inspections to detect cracks and shearing of fasteners in the wing-to-fuselage junction components; and repetitive visual and dye-penetrant inspections of various components of the fuselage lower section, and repair, if necessary, was published in the **Federal Register** on February 8, 1990 (55 FR 4436).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 96 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,200.

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

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Aerospatiale (Formerly SUD Aviation/SUD-Service): Applies to all Aerospatiale Caravelle Model SE 210 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect fatigue cracks in the wing-to-fuselage junction and fuselage lower section components, accomplish the following:

A. Prior to the accumulation of 29,000 landings, or within 2,000 landings after the effective date of this AD, whichever occurs later, perform one of the following inspections in accordance with Aerospatiale Service Bulletin 53–51, Revision 6, dated July 31, 1986:

1. Visual inspection of the wing-to-fuselage junction fittings at Frames 31 and 35, in accordance with the service bulletin. Repeat this inspection thereafter at intervals not to exceed 2,500 landings; or

2. Visual and eddy current inspection of the wing-to-fuselage junction fittings at Frames 31 and 35, and a magnetic particle inspection of all removed horizontal bolts, in accordance with the service bulletin. Repeat this inspection thereafter at intervals not to exceed 7,500 landings.

B. If cracks or sheared bolts or rivets are detected during the inspection required by paragraph A., above, replace with serviceable parts prior to further flight, in accordance with Aerospatiale Service Bulletin 53–51, Revision 6, dated July 31, 1986. Repeat inspections thereafter at intervals specified in paragraph A., above.

C. Prior to the accumulation of 29,000 landings, or within 2,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 landings, perform a visual and dye penetrant inspection of the fuselage lower section beam under Rib 52, the attachment fittings at the rear section of Rib 52, and the front pick-up fittings between the beam under Rib 52 and the canted frames at Frame 30, in accordance with Aerospatiale Service Bulletin 53–52, Revision 7, dated March 22, 1988.

D. If sheared-off attachment hardware is detected during the inspection required by paragraph C., above, prior to further flight replace with serviceable parts in accordance with the Structural Repair Manual, Chapter 57–1–33. Repeat the inspection identified in paragraph C., above, at intervals not to exceed 2,500 landings.

E. If cracks are detected during the inspection required by paragraph C., above, in Fittings 210.12.52.382/383 and 210.22.53.012 at the attachment level, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region. Repeat the inspection identified in paragraph C., above, at an interval to be approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

F. If cracks are detected during the inspection required by paragraph C., above, in Fittings 210.12.52.382/383 and 210.22.53.012 outside the attachment areas, prior to further flight, replace with new fittings, in accordance with Aerospatiale Service Bulletin 53–52, Revision 7, dated March 22, 1988. Repeat the inspection identified in paragraph C., above, at intervals not to exceed 2,500 landings.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 1, 1990.

Issued in Seattle, Washington, on April 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–9550 Filed 4–24–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AEA–14]

Alteration of VOR Federal Airway V–519; West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V–519 located in the vicinity of Bluefield and Beckley, WV. The increased use of the airspace between Bluefield and Beckley, WV, by the Indianapolis Air Route Traffic Control Center (ARTCC) has created the need for an airway between Bluefield and Beckley, WV. This action increases air safety, improves flight planning, and reduces controller workload.

EFFECTIVE DATE: 0901 u.t.c., June 28, 1990.

FOR FURTHER INFORMATION CONTACT:

Jesse B. Bogan, Jr., Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

History

On May 24, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the description of VOR Federal Airway V–519 in the vicinity of Bluefield and Beckley, WV (54 FR 22448). The revision of the airway enhances safety, improves flight planning, and reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated Janaury 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V–519 located in the vicinity of Bluefield and Beckley, WV. The increased use of the airspace between Bluefield and Beckley, WV, by the Indianapolis ARTCC has created the need for an airway between Bluefield and Beckley, WV. This action increases air safety, improves flight planning, and reduces controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–519 [Revised]

From Knoxville, TN; via INT Knoxville 050° and Glade Spring, VA, 246° radials; Glade Spring; Bluefield, WV; to Beckley, WV.

Issued in Washington, DC, on April 10, 1990.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90–9551 Filed 4–24–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ACE–37]

Alteration of Transition Area—Charles City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Charles City, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure at the Charles City, Iowa, Municipal Airport utilizing the Charles City nondirectional radio beacon (NDB) as a navigational aid.

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT:
Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE–530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 30, 1990, the FAA published a Notice of Proposed Rulemaking, which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to alter the transition area at Charles City, Iowa (55 FR 3070). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the transition area at Charles City, Iowa. To enhance airport usage, the Charles City, Iowa, Municipal Airport is being provided with additional controlled airspace for aircraft executing a new instrument approach procedure utilizing the Charles City NDB as a navigational aid. The establishment of this instrument approach procedure, based on this navigational aid, entails alteration of the transition area at Charles City, Iowa, at or above 700 feet above the ground in which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under instrument flight rules (IFR) from other aircraft operating under visual flight rules (VFR). Except for editorial changes, this amendment is the same as that proposed in the Notice.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Charles City Municipal Airport, IA [Revised]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Charles City Municipal Airport (lat. 43°04'21" N., long. 92°36'38" W.); and within 175 miles each side of the 305° bearing from the Charles City Municipal Airport extending from the 5-mile radius area to 6.5 miles northwest of the airport; and within 2.75 miles each side of the 104° bearing from the Charles City Municipal Airport extending from the 5-mile radius area to 8 miles southeast of the airport.

Issued in Kansas City, Missouri, on April 5, 1990.

Billy G. Peacock,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 90–9552 Filed 4–24–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ACE–36]

Designation of Transition Area—Albion, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Albion, Nebraska, to provide controlled airspace for aircraft executing a new approach procedure to the Albion Municipal Airport, Albion, Nebraska, utilizing a nondirectional radio beacon (NDB) as a navigational aid. This action also changes the airport status from VFR to IFR.

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT:

Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE–530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On January 30, 1990, the FAA published a Notice of Proposed Rulemaking, which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to designate a transition area at Albion, Nebraska (55 FR 3068). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates a transition area at Albion, Nebraska. To enhance airport usage, a new instrument approach procedure is being developed for the Albion Municipal Airport, Albion, Nebraska, utilizing an NDB as a navigational aid. This navigational aid will offer new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Albion, Nebraska, at and above 700 feet above ground level, within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules (IFR) from other aircraft operating under visual flight rules (VFR). This action also changes the airport status from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegateed to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Albion Municipal Airport, Nebraska [New]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Albion Municipal Airport (Lat. 41°43'51" N., Long. 98°03'23" W.); and within 3 miles each side of the 171° bearing, extending from the 5-mile radius 8 miles southeast of the airport.

Issued in Kansas City, Missouri, on April 5, 1990.

Billy G. Peacock,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 90–9553 Filed 4–24–90; 8:45 am]

BILLING CODE 4913–15–M

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14 CFR Part 75

[Airspace Docket No. 89–AEA–8]

Alteration of Jet Route J–8

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J–8 between Charleston, WV, and Casanova, VA. The realignment of J–8 utilizes the route more efficiently in conjunction with other jet routes in the vicinity. The realignment of J–8 allows for more separation between air traffic traversing those routes.

EFFECTIVE DATE: 0901 u.t.c., June 28, 1990.

FOR FURTHER INFORMATION CONTACT:

Jesse B. Bogan, Jr., Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

History

On August 3, 1989, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of J–8 between Charleston, WV, and Casanova, VA, (54 FR 31967). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters the description of J–8 between Charleston, WV, and Casanova, VA. This change allows for more separation between J–6 and J–8, thereby allowing for more separation between air traffic traversing those routes. This action increases safety in the designated area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J–8 [Amended]

By removing the words "INT Charleston 085° and Casanova, VA, 262° radials;" and substituting the words "INT Charleston 092° and Casanova, VA, 253° radials;"

Issued in Washington, DC, on April 10, 1990.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90–9554 Filed 4–24–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26201; Amdt. No. 1424]

Standard Instrument Approach Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on April 13, 1990.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

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

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 28, 1990*

Pago Pago, American Samoa—Pago Pago Intl, ILS/DME RWY 5, Amdt. 13
Chandler, AZ—Chandler Muni, VOR RWY 4, Amdt. 2
Paso Robles, CA—Paso Robles Muni, VOR-A, Amdt. 1
Paso Robles, CA—Paso Robles Muni, VOR/DME-B, Amdt. 2
Paso Robles, CA—Paso Robles Muni, VOR/DME RWY 19, Amdt. 1
Indianola, MS—Indianola Muni, VOR/DME-A, Amdt. 8
Indianola, MS—Indianola Muni, VOR/DME-B, Amdt. 3
Indianola, MS—Indianola Muni, NDB RWY 17, Amdt. 4
Indianola, MS—Indianola Muni, NDB RWY 35, Amdt. 4
Portland, OR—Portland-Hillsboro, VOR/DME-A, Orig.
Memphis, TN—Memphis Intl, ILS RWY 18R, Amdt. 9
Memphis, TN—Memphis Intl, ILS RWY 36L, Amdt. 11
Oneida, TN—Scott Muni, VOR/DME-A, Amdt. 4
Oneida, TN—Scott Muni, SDF RWY 23, Amdt. 3
Oneida, TN—Scott Muni, NDB RWY 23, Amdt. 3
Corsicana, TX—C. David Campbell Field-Corsicana Muni, VOR/DME-A, Amdt. 4
Corsicana, TX—C. David Campbell Field-Corsicana Muni, VOR/DME-B, Amdt. 1
Corsicana, TX—C. David Campbell Field-Corsicana Muni, NDB RWY 14, Amdt. 1
Brigham City, UT—Brigham City, NDB RWY 34, Amdt. 6
Seattle, WA—Seattle-Tacoma Intl, ILS RWY 16R, Amdt. 9

** * * Effective May 31, 1990*

Garden City, KS—Garden City Muni, VOR RWY 17, Amdt. 10
Garden City, KS—Garden City Muni, VOR RWY 35, Amdt. 7
Garden City, KS—Garden City Muni, VOR/DME 17, Amdt. 1
Garden City, KS—Garden City Muni, VOR/DME RWY 35, Amdt. 1
Garden City, KS—Garden City Muni, LOC RWY 35, Amdt. 2, CANCELLED
Garden City, KS—Garden City Muni, ILS RWY 35, Orig.
Garden City, KS—Garden City Muni, RNAV RWY 35, Amdt. 1, CANCELLED
Lexington, KY—Blue Grass, ILS RWY 22, Amdt. 11
Salisbury, MD—Salisbury-Wicomico County, LOC (BC) RWY 14, Amdt. 2, CANCELLED
Detroit, MI—Detroit Metro Wayne County, VOR RWY 03L, Orig.
Detroit, MI—Detroit Metro Wayne County, VOR RWY 21R, Orig.
Columbia, MO—EW Cotton Woods Memorial, VOR-B, Amdt. 2, CANCELLED
Farmington, MO—Farmington Regional, VOR-A, Amdt. 4
Farmington, MO—Farmington Regional, NDB RWY 2, Amdt. 2
Farmington, MO—Farmington Regional, NDB RWY 20, Amdt. 2
Toledo, OH—Metcalf Field, VOR RWY 4, Amdt. 9
Toledo, OH—Metcalf Field, VOR/DME RWY 4, Amdt. 2
Huntingdon, TN—Carroll County, NDB RWY 1, Orig.
Charlottesville, VA—Charlottesville-Albemarle, NDB RWY 3, Amdt. 15
Charlottesville, VA—Charlottesville-Albemarle, ILS RWY 3, Amdt. 12
Louisa, VA—Louisa County/Freeman Field, NDB RWY 27, Orig.
Newport News, VA—Patrick Henry Intl, NDB RWY 25, Amdt. 4
Newport News, VA—Patrick Henry Intl, ILS RWY 7, Amdt. 30

** * * Effective April 10, 1990*

Hawthorne, CA—Hawthorne Muni, VOR RWY 25, Amdt. 15
Hawthorne, CA—Hawthorne Muni, LOC RWY 25, Amdt. 8
Los Angeles, CA—Los Angeles Intl, VOR or TACAN RWY 7L/R, Amdt. 18
Los Angeles, CA—Los Angeles Intl, VOR or TACAN RWY 25L/R, Amdt. 14
Los Angeles, CA—Los Angeles Intl, ILS RWY 6L, Amdt. 6
Los Angeles, CA—Los Angeles Intl, ILS RWY 6R, Amdt. 13
Los Angeles, CA—Los Angeles Intl, ILS RWY 7R, Amdt. 1
Torrance, CA—Torrance Muni, VOR RWY 11L, Amdt. 14
Torrance, CA—Torrance Muni, ILS RWY 29R, Amdt. 1

** * * Effective April 9, 1990*

Columbus, OH—Rickenbacker ANGB, VOR RWY 23L, Amdt. 4
Robstown, TX—Nueces County, VOR/DME-A, Amdt. 1

** * * Effective April 2, 1990*

Tullahoma, TN—Tullahoma Regional Arpt/WM Northern Field, VOR-A, Amdt. 3
Tullahoma, TN—Tullahoma Regional Arpt/WM Northern Field, VOR/DME-B Amdt. 3
Tullahoma, TN—Tullahoma Regional Arpt/WM Northern Field, NDB RWY 18, Amdt. 1
Tullahoma, TN—Tullahoma Regional Arpt/WM Northern Field, SDF RWY 18, Amdt. 3
Tullahoma, TN—Tullahoma Regional Arpt/WM Northern Field, RNAV RWY 36, Amdt. 4
Houston, TX—Houston Intercontinental, VOR/DME RWY 14L, Amdt. 14

** * * Effective March 9, 1990*

Gunnison, CO—Gunnison County, LOC RWY 6, Amdt. 1
Gunnison, CO—Gunnison County, ILS RWY 6, Amdt. 2

** * * Effective March 3, 1990*

St. Louis, MO—Spirit of St. Louis, NDB RWY 8R, Amdt. 9

[FR Doc. 90-9555 Filed 4-24-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 270 and 272

[Docket No. RM 89-16-000; Order No. 523]

Order Implementing the Natural Gas Wellhead Decontrol Act of 1989

Issued April 18, 1990.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending § 272.103 of its regulations to conform to the provisions of the Natural Gas Wellhead Decontrol Act of 1989 (Decontrol Act) that decontrol gas prior to January 1, 1993. This final rule amends § 272.103 to add several additional categories of natural gas deregulated pursuant to the Decontrol Act, revises § 270.202(h)(2) to clarify the effect of the Decontrol Act on percentage-of-proceeds contracts, and deletes § 270.207 of the Commission's regulations in its entirety.

EFFECTIVE DATE: This final rule is effective April 18, 1990.

FOR FURTHER INFORMATION CONTACT: David J. Saggau, Office of General Counsel, Federal Energy Regulatory

Commission, 825 North Capitol Street, NE., Washington, DC, (202) 208–0141.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

FINAL RULE

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to conform them to the provisions of the Natural Gas Wellhead Decontrol Act of 1989 (Decontrol Act).[1] The Decontrol Act, signed by the President on July 26, 1989, takes the final step in the wellhead decontrol of natural gas by removing those price and nonprice controls that remain in place following the partial wellhead decontrol implemented under the Natural Gas Policy Act of 1978 (NGPA).[2]

II. Background

Congress enacted the NGPA in response to severe shortages of gas in the interstate market that occurred in the early to mid 1970's. The NGPA, which restructured the regulation of natural gas by merging the interstate and intrastate markets, provided for phased deregulation of most "new" (post-enactment) gas and for the continued regulation of "old" (pre-enactment) gas.

Title I of the NGPA defined various categories of natural gas production and prescribed the maximum lawful price (MLP) that could be charged for "first sales" of each category. Section 121 of the NGPA provided for the phased, partial decontrol of wellhead sales. Certain high-cost natural gas as defined in sections 107(c)(1)–(4) was deregulated on November 1, 1979. 15 U.S.C. 3331(b). New natural gas as defined in section 102(c), certain new onshore production wells as defined in section 103(c), and some intrastate gas was deregulated on January 1, 1985. 15 U.S.C. 3331(a). Gas from new onshore production wells completed at a depth of 5,000 feet or less was deregulated on July 1, 1987 if the gas was not committed or dedicated to interstate commerce on April 20, 1977. 15 U.S.C. 3331(c).

The NGPA provides that price and nonprice controls on wellhead sales of other categories of natural gas remain in place. In particular, gas dedicated to interstate or intrastate commerce (if the price did not exceed $1.00 per MMBtu on December 31, 1984) before the NGPA was passed (old gas); gas from new reservoirs on old Outer Continental Shelf (OCS) leases; and stripper well gas under section 108 remain regulated at the wellhead. Alaskan Prudhoe Bay gas also remains regulated. Additionally, section 107(c)(5) gas for which the Commission established incentive prices remains regulated. However, on February 12, 1990, after passage of the Decontrol Act, the Commission issued a final rule [3] terminating certain incentive prices under NPGA section 107(c)(5).[4] The rule is applicable to sales of tight formation gas from wells spudded or recompleted after May 12, 1990, and all production enhancement gas where that work is begun after that date.[5]

In enacting the Decontrol Act, Congress acted to repeal these remaining price and nonprice controls by January 1, 1993, because the controls were found to be "not in keeping with the evolution of natural gas markets and the regulatory environment." [6]

Section 2(a) of the Decontrol Act deregulates the following categories of first sales prior to January 1, 1993: (1) Gas as to which no first sales contract applies on the date of enactment is immediately decontrolled; (2) gas under existing contracts is decontrolled as the contracts expire or are terminated; (3) gas under existing contracts that the parties renegotiate, after March 23, 1989, to provide that the gas will not be subject to any maximum lawful price is deregulated on the date specified by the parties, but not before the date of enactment; and (4) gas from newly spudded (post-enactment) wells is deregulated on May 15, 1991, or the date on which an existing contract expires or is terminated, whichever is earlier. This, however, applies only to newly spudded wells on acreage subject to a contract on the date of enactment. Production from wells not under contract on that date is decontrolled immediately under category (1) above.

Section 2(b) of the Decontrol Act provides for the complete decontrol of wellhead prices of first sales of natural gas as of January 1, 1993, by repealing title I of the NGPA.

Section 3 of the Decontrol Act amends title VI of the NGPA, which deals with the coordination of the NGPA and the Natural Gas Act (NGA). In essence, these amendments remove NGA jurisdiction from any gas that is price decontrolled, make Alaska Prudhoe Bay gas subject to decontrol the same as any other gas, and continue the authority of individual states to prescribe a ceiling price for the first sale of natural gas produced and consumed within a state.

In the notice of proposed rulemaking (NOPR) issued on December 13, 1989,[7] the Commission proposed to implement the pre-1993 provisions of the Decontrol Act by amending § 272.103 of its regulations, which defines "deregulated natural gas" for the purpose of implementing section 121(f) of the NGPA. The Commission also requested comments on:

(1) Whether "to allow producers to file applications for well determinations after the subject gas has otherwise been decontrolled," and

(2) "Whether and if so how under the Decontrol Act pipeline production will be decontrolled prior to January 1, 1993."

Thirty-two comments were filed in response to the NOPR.[8] After consideration of the comments, the Commission is adopting the rule proposed in the NOPR with certain modifications discussed below.

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[1] Pub. L. No. 101–60; 103 Stat. 157 (1989).

[2] 15 U.S.C. 3301–3432 (1988).

[3] 55 FR 6367 (Feb. 23, 1990); III FERC Stats. & Regs. ¶ 30,879 (Feb. 12, 1990). Rehearing of Order No. 519 is pending.

[4] Under NGPA section 107(b), the Commission has the authority to determine what incentive price, if any, should be established for such gas.

[5] The Commission acted pursuant to the remand in *Williams Natural Gas Co.* v. *FERC*, 872 F.2d 438 (D.C. Cir. 1989).

[6] S. Rep. No. 39, 101st Cong., 1st Sess. at 2 (1989).

[7] 54 FR 51,902 (Dec. 19, 1989); IV FERC Stats. & Regs. ¶ 32,469 (Dec. 13, 1989).

[8] Appendix A.

III. Discussion

A. Applications for Well Determinations in Order To Receive Tax Credits

The Senate Committee on Energy and Natural Resources' Report on the Decontrol Act noted that section 29 of the Internal Revenue Code, 26 U.S.C. 29 (1982) (the Code), provides for tax credits for certain types of fuels which qualify under the NGPA section 503 procedures. The Committee report concluded that approval for the Decontrol Act, which repealed the NGPA sections referenced in section 29, was "not intended * * * to reflect an adverse judgment by the Committee as to the merits of tax credits for any categories of natural gas production that might be affected by such action." [9] To understand the impact of the Decontrol Act on qualifying for the tax credit, the interplay between Code section 29 and the NGPA is necessary.

Section 29 provides for a tax credit for "qualified fuels" produced from wells drilled between January 1, 1980 and December 31, 1990, and which is sold before January 1, 2001. Qualified fuels under Code section 29(c)(1)(B) include gas produced from geopressured brine, coal seams, Devonian shale, and tight formations. The first three are NGPA section 107(c)(2), (3) and (4) categories, and the last is NGPA section 107(c)(5). Section 29(c)(2)(A) provides that the determination whether gas is produced from the categories specified "shall be made in accordance with section 503 of the Natural Gas Policy Act of 1978."

Twenty-one parties submitted comments on whether the Commission should process well determinations for gas which has otherwise been decontrolled. All but one, Texas Gas Transmission Corporation (Texas Gas), argue that the Commission should continue to review and process such determinations because any tax credit under Code section 29 requires a well category determination under NGPA section 503.[10]

Texas Gas, which opposes continuation of the processing of well category determinations, states that it would be confusing and an administrative waste to allow producers to continue to file applications for well determinations after the gas has otherwise been decontrolled. Texas Gas makes no reference to section 29 of the Code in the comments. The Commission finds Texas Gas' comments unpersuasive.

In view of the legislative history noted above which indicates that Congress did not intend the Decontrol Act to limit the availability of tax credits for qualified fuels,[11] the Commission will continue to process well determinations, until January 1, 1993, in order to allow producers to obtain tax credits that are dependent upon such determinations even if the gas has been otherwise decontrolled.

B. Pipeline Production

The NOPR stated that the Decontrol Act did not specifically deal with pipeline production, and requested comments on whether, and if so how, under the Decontrol Act pipeline production will be decontrolled prior to January 1, 1993.

The Commission requested comments recognizing that, under *Public Service Commission of New York* v. *Mid-Louisiana Gas Co. (Mid-La)*,[12] an intracorporate transfer between a pipeline's production and transmission divisions could be treated as a first sale even though no sale or purchase contract existed. The Decontrol Act provides that gas "as to which no first sale contract applies on the date of enactment" is not subject to Title I on or after the first day after the date of enactment. The issue posed is whether pipeline production falls within the ambit of gas "as to which no first sale contract applies."

Sixteen parties submitted comments. All but one, the Public Utilities Commission of the State of California (California), argued that such pipeline production is eligible for pre-January 1, 1993 decontrol under the proposed rules, and in fact was decontrolled upon enactment of the Decontrol Act.

El Paso Natural Gas Company (El Paso) contends that there is no evidence in the Decontrol Act, or in the legislative history, that pipeline production was intended to be treated any differently from production owned by an independent producer or an affiliated producer. El Paso contends that the Decontrol Act did not deal specifically with pipeline production because Congress did not see a need to differentiate between types of production on the basis of ownership. The American Gas Association asserts that pipeline-produced gas should be decontrolled under the same guidelines as all other gas because the issue of how to treat pipeline gas is not raised at all by the Decontrol Act.

The other thirteen commenters contend that pipeline production was decontrolled upon enactment. They assert that the interim deregulation was effectuated by Congress' adding a new subpart (f) to NGPA section 121 which provides that, "[f]or purposes of this subsection, a first sale contract applies to natural gas when the seller has a contractual obligation to deliver such natural gas under such contract." They assert that there are no first sale contracts for the transfer of pipeline production and therefore that all pipeline production was automatically decontrolled as of the date of enactment. The Interstate Natural Gas Association of America (INGAA) states that in *Mid-La*, the Supreme Court interpreted the NGPA as allowing the same first sale treatment for pipeline production as for independent production and therefore that all pipeline production is automatically decontrolled as of the date of enactment. INGAA asserts that since there are no first sale contracts for pipeline production, such production is automatically deregulated upon enactment just as a producer's production to which no first sale contract applies on the date of enactment is deregulated.

California argues that the Decontrol Act does not allow pipeline production to be deregulated until January 1, 1993. According to California:

> Although the FERC determined in its order No. 391 that a first sale contract occurs for pipeline production as the gas is theoretically transferred from the pipeline's production division to its transmission division (FERC Statutes and Regulations ¶ 30,588), the fact remains that there is no existing contract concerning pipeline production that will expire or terminate before January 1, 1993. The expectation of pipelines, when they began their production of old gas, was that it would be for the life-of-the-lease or the life-of-the-field. Accordingly, pipeline production of old gas should be treated the same as production by independent producers with life-of-the-lease contracts. Since they do not have relevant expiration dates in their contracts, pipeline production of old gas, just like life-of-the-lease independent producer production of old gas, should not be deregulated until January 1, 1993.[13]

The Decontrol Act, in section 2(a), amends NGPA section 121 to define a first sale contract as existing "when the seller has a contractual obligation to deliver such natural gas under such contract." To the extent that pipeline production is not for system supply but is subject to an existing contract with another pipeline or particular customer,

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[9] S. Rep. No. 39 at 9.

[10] *See, e.g.*, Gas Producer Association, Columbia Natural Resources.

[11] In addition, this view is confirmed by letter from Chairman J. Bennett Johnston to Chairman Allday, dated February 8, 1990.

[12] 463 U.S. 319 (1983).

[13] California comments, at 2.

the gas is eligible for pre-1993 decontrol when the contract expires, terminates, or is renegotiated. However, when the production is for system supply, the Commission has not treated the intracompany transfer of pipeline production as being governed by a contract. In post-*Mid-La* regulations governing pipeline production, the Commission required an interstate pipeline to file an intracompany operating agreement that evidences the price, terms, and conditions for the transfer of the gas from the production division to the transmission division of the pipeline company.[14] This agreement was to be sufficiently definite to enable the Commission to determine that the intracompany transfer satisfies the affiliated entities test.[15] The Commission, however, made clear in those regulations that the document in question was *not* a contract:

> The Commission believes that the term "agreement" connotes a binding contract and that the term "statement" more closely defines the type of document it wishes the pipeline to supply. Therefore, it has adopted the term "intracompany operating statement".[16]

Similarly, in its final rule on abandonment of sales and purchases of natural gas,[17] the Commission held that the rule permitting abandonment upon termination of a contract applied to company-owned production. The Commission stated that it recognized that there was no contract governing these transactions but would consider the notice to the Commission as the necessary indication of mutual agreement.[18]

The Commission finds that since it has never treated pipeline production used for general system supply as being governed by a contract, the Decontrol Act deregulates such production on July 27, 1989.[19] California's argument to the contrary has no merit. California recognizes that there is no existing contract concerning pipeline production used for general system supply. Once that is conceded, it follows that such production is decontrolled. Our conclusion is consistent with the legislative history of the Decontrol Act, which indicates that Congress tied deregulation to contract expiration to protect parties, including pipelines, from the unintended consequences of decontrol.[20] Where pipeline production used for general system supply is involved, there is no need for delay in the decontrol. The fact that the price is decontrolled does not give the pipeline an unlimited discretion in the amount it will pay for the gas since it is still subject to the affiliated entities test in NGPA section 601. Accordingly, the Commission finds that pipeline production used for general system supply is a "first sale" subject to pre-January 1, 1993, decontrol and was decontrolled on July 27, 1989. As a result, the Commission finds that no abandonment authorization under section 7(b) is required when a pipeline transfers or assigns acreage which was not subject to a contract on July 26, 1989, since the gas has been decontrolled and is therefore not subject to the Natural Gas Act.

C. Temporarily Released Gas

The issue has arisen whether temporarily released gas is decontrolled under the Decontrol Act. The Commission originally ruled on this issue in an order issued on January 24, 1990,[21] in which the Commission held that temporarily released gas was not decontrolled. Marathon Oil Company, Undersigned Producers, Mobil Exploration and Producing U.S., Inc., and Amoco Production Company argued on rehearing that temporarily released gas is decontrolled and contend that the order deprived them of notice and opportunity for comment.[22] In a separate order being issued concurrently in Docket No. CI89–465–001, the Commission is vacating its prior ruling on this issue and reserving the issue for separate consideration and decision here. Upon further consideration, the Commission holds that temporarily released gas sold to third parties is decontrolled during the period of release.

The Commission's decision in *Union Pacific* was based upon the report of the Senate Committee on Energy and Natural Resources accompanying the Decontrol Act, which stated:

> Where the seller has been released temporarily from its delivery obligation to the original buyer, but there remains an underlying contractual obligation to deliver gas when the release period ends, neither the delivery of the released gas nor the delivery of the gas covered by the underlying contractual obligation is decontrolled.[23]

Producers argue that notwithstanding the Senate Report, the plain meaning of the language of the Decontrol Act provides for decontrol of gas temporarily released from a contract which was in effect on the date of enactment. Producers also argue that treating temporarily released gas as decontrolled would be consistent with the overall objectives of the Decontrol Act, and that failure to decontrol temporarily released gas would serve only to frustrate the statutory objectives. They argue that decontrol of temporarily released gas sold under a post-enactment contract will not abrogate any pre-enactment contract, since the buyer under the pre-enactment contract has released the gas and cannot be harmed by the seller's collecting current market prices. By holding that such temporarily released gas is regulated only while being sold under the pre-enactment contract, the commission could fully protect the interests of the buyer under such contract, while furthering the intent of the Decontrol Act by allowing the seller to contract freely with the highest bidder for the temporarily released gas. Producers reference subsections 1–3 of section 121(f) of the NGPA (15 U.S.C. 3331), as added by section 2 of the Decontrol Act. These subsections read as follows:

> (1) Expired, Terminated, or Post-Enactment Contracts.—In the case of natural gas to which no first sale contract applies on the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989, subtitle A shall not apply to any first sale of such natural gas delivered on or after the first day after such date of enactment.
>
> (2) Expiring or Terminating Contracts.—In the case of natural gas to which a first sale contract applies on the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989, but to which such contract ceases to apply after such date of enactment, subtitle A shall not apply to any first sale of such natural gas delivered after such contract ceases to apply.
>
> (3) Certain Renegotiated Contracts.—In the case of natural gas to which a first sale contract applies on the date of enactment of the Natural Gas Wellhead Decontrol Act of

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[14] Production Under section 2(21) of the Natural Gas Policy Act of 1978, 49 FR 33,849 (Aug. 27, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,588 (Aug. 22, 1984).

[15] The affiliated entities test in section 601(b)(1)(E) of the NGPA is as follows "* * * [I]n the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid in any first sale shall be deemed to be just and reasonable * * * if such amount does not exceed the amount paid in comparable first sales between persons not affiliated with such interstate pipeline."

[16] FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,588 at 31,201.

[17] See the discussion in the order on rehearing in Order No. 490–A, 53 FR 29,002 (Aug. 12, 1988); FERC Stats. & Regs. ¶ 30,825 (July 22, 1988).

[18] *Id.* at 31,201, n.49.

[19] The Decontrol Act was enacted July 26, 1989. Thus, July 27, 1989 is the deregulation date because it is the "first day after such date of enactment."

[20] 135 Cong. Rec. S6372 (daily ed. June 8, 1989) (statement of Sen. Johnston).

[21] *Union Pacific Fuels, Inc.*, Docket No. CI89–465–000, 50 FERC ¶ 61,062.

[22] Comments in support of the order were filed by Union Pacific, Pennzoil Exploration and Production Company, and Pennzoil Gas Marketing Company.

[23] S. Rep. No. 38 at 13.

1989, where the parties have expressly agreed in writing after March 23, 1989, that all or part of the gas sold under such contract shall not be subject to any maximum lawful price under subtitle A after a specified date, subtitle A shall not apply to any first sale of the natural gas subject to such express agreement delivered on or after the date so specified, except that subtitle A shall not cease to apply to any such natural gas pursuant to this paragraph before the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989.

Marathon Oil Company (Marathon) and Undersigned Producers argue that gas temporarily released under a contract which was in effect on the date of enactment of the Decontrol Act is decontrolled under subsection (1) since the underlying first sale contract in effect on the date of enactment does not "apply" to the gas which is temporarily released from that contract. This argument is untenable. Subsection (1) applies only to gas to which no first sale contract applied on the date of enactment; it does not apply to and thus cannot decontrol gas which was subject to a first sale contract on the date of enactment. The issue of whether a contract "applies" must be determined under subsection (1) as of the date of enactment, not the period during which the gas is released. Thus gas subject to a contract on the date of enactment is not decontrolled under subsection (1).

Marathon argues that subsection (3) allows a producer and purchaser of temporarily released gas to agree to decontrol the price of the released gas, and that where the parties so agree, temporarily released gas is decontrolled. This argument is not persuasive. Subsection (3) deals with renegotiations of contracts in existence on the date of enactment. It provides that natural gas to which a first sale contract applies on the date of enactment is decontrolled where the "parties" have expressly agreed after the date of enactment that all or a part of the gas sold under "such contract" shall not be subject to any maximum lawful price. The referenced contract is that which applied to the gas on the date of enactment, and the referenced parties are the producer and original purchaser. Consequently, a contract for the sale of temporarily released gas entered into between the producer and a new purchaser is not governed by subsection (3).

Marathon and Undersigned Producers also argue that temporarily released gas is decontrolled pursuant to subsection (2), which deals with "expiring" or "terminating" contracts. Subsection (2) provides that natural gas subject to a first sale contract on the date of enactment is decontrolled when such contract "ceases to apply."

The Commission agrees that subsection (2) can reasonably be interpreted to provide for decontrol of temporarily released gas on the ground that the underlying contract "ceases to apply" to the released gas. We also agree with the producers that treating temporarily released gas as decontrolled would be fully consistent with the purposes and objectives of the Decontrol Act. However, the question arises as to whether this interpretation can be harmonized with the language contained in the Senate report suggesting that temporarily released gas is not decontrolled. We find that it can.

Upon further consideration of this matter, the Commission holds that the temporary release of gas does not, in and of itself, result in decontrol of that gas. That gas will, however, be deemed decontrolled when and if it is sold to a *new* purchaser under a separate contract. We view the statement in the Senate report as providing that temporary release may not be used to achieve decontrol so as to deprive the releasing purchaser of its rights under the contract. We do not interpret the language as mandating continued regulation of the released gas in a separate sale to a new, willing purchaser. We hold, moreover, that the statutory language of subsection (2) itself states that gas is decontrolled when the underlying contract "ceases to apply." It seems clear that the underlying contract, while retaining residual validity, does not apply during the release period.

We believe this result is fully consistent with the overall purposes of the statute, providing for deregulation of the maximum amount of gas, while at the same time protecting the rights of parties under existing cotracts. In the case of released gas, the original purchaser will be entitled to all rights and privileges of the contract upon expiration of any temporary release. Any new purchaser purchasing the gas during the release period is in no way entitled to the benefits or subject to the obligations of the underlying contract, and thus there appears no reason to treat the interim sale as anything other than decontrolled in the same manner as any other post-enactment contract.

D. Reporting Requirements

The Commission wishes to clarify that once a sale has been decontrolled under the Decontrol Act, that sale is no longer subject to the Commission's jurisdiction. Parties are not required to notify the Commission when gas has been deregulated and decontrolled. In addition, any reports which are submitted do not need to include decontrolled and deregulated gas.

E. Miscellaneous Issues

Amoco Production Company (Amoco) requests that the decontrol language added to § 272.103(a)(6) of the regulations more closely follow the wording of the Decontrol Act. Similarly, Texas Gas questions whether the phrase "natural gas subject to a first sales contract" used in various subsections of the proposed regulations has the same meaning as the statutory phrase "natural gas to which a first sales contract applies." Texas Gas suggests that the proposed regulations be revised to conform with the statutory language. NGSA and Indicated Producers request that proposed § 272.103(a)(8) be modified slightly to emphasize that natural gas from a well spudded after July 26, 1989, is deregulated immediately unless such gas was subject to a first sales contract on the date of enactment. We find these requests to be reasonable and amend the regulations accordingly.

Northwest Pipeline Corporation (Northwest) argues that pipelines should be given the discretion to make first sales of pipeline production either at the wellhead or at a downstream point.[24] Northwest states that because of open access transportation, increased deregulation, and the frequent release of pipeline production into the spot market, it is appropriate to grant pipelines the discretion to make a first sale of released gas at a downstream location, an option which is available to nonpipeline producers. While this issue is worthy of consideration, it is unrelated to the Decontrol Act and is thus beyond the scope of this rule. Accordingly, the Commission declines to address the issue here.

Gas Processors Association (GPA), Natural Gas Supply Association (NGSA), and Indicated Producers request that § 270.202(h)(2) of the regulations be revised to clarify the effect of the Decontrol Act on percentage-of-proceeds contracts. In percentage-of-proceeds situations, individual producer-sellers normally sell their gas to a plant operator who in turn sells the gas to a pipeline. Both sales are first sales under the NGPA. When some NGPA section 105 and 106(b) gas was deregulated on January 1, 1985, the Commission adopted § 270.202(h) to address a similar situation. The Commission held that if the sale

[24] Section 270.203(b)(1) of the regulations provides that a transfer at the wellhead of gas produced by an interstate pipeline production unit to its transmission unit is that pipeline's first sale.

between the plant operator and the pipeline purchaser was deregulated, all percentage-of-proceeds sales behind the plant would be deemed deregulated. The commenters request that the regulation be revised because under the Decontrol Act contracts for sales to the plant operator may become deregulated, even though the plant operator's contract with the pipeline continues to be regulated. The Commission believes this suggestion has merit and will adopt the language proposed by NGSA and Indicated Producers for § 270.202(h)(2) to clarify the effect of the Decontrol Act on percentage-of-proceeds contracts.

NGSA and Indicated Producers request that § 270.207 of the regulations be eliminated. Section 270.207 provides that no portion of the price paid for deregulated natural gas may represent consideration for regulated natural gas. This section was intended to prevent sellers from agreeing to dedicate additional sales of regulated natural gas to purchasers on the condition that they receive a higher price for the deregulated gas than otherwise could have been obtained. Under the Decontrol Act, however, gas not committed on the date of enactment is deregulated. Consequently, it is no longer possible for a producer to obtain an unlawful premium for uncommitted gas since that gas is deregulated. Accordingly, the regulation no longer serves any useful purpose and will be eliminated.

NGSA and Indicated Producers request that § 272.105 of the regulations be eliminated. Section 272.105 requires separate billing for regulated and deregulated natural gas. NGSA and Indicated Producers argue that since all regulated gas is by definition subject to a contract, the buyers under those contracts can ascertain whether a proper price is being charged without separate billing. However, the commenters overlook the fact that many contracts continue to have both regulated and deregulated natural gas, or gas that qualifies for more than one ceiling price. We believe that separate billing is still necessary to ensure that regulated gas is properly priced. Accordingly, the separate billing requirement will be retained for all contracts covering regulated gas, until January 1, 1993.

NGSA and Indicated Producers request that §§ 271.503, 271.603, and 271.903 of the regulations, which prescribe recordkeeping requirements for sales under NGPA sections 105, 106(b), and 109, be consolidated and be extended to all regulated sales. They argue that consolidation of these sections will result in a single, reasonable recordkeeping requirement. The Commission finds that the existing regulations should be continued. Adoption of this request will increase recordkeeping burdens where they are not presently required. Therefore, the Commission declines to adopt the proposed revision of the regulations. The Commission wishes to clarify, however, that once a sale is decontrolled, the seller only has to maintain records which establish eligibility for decontrol. This requirement expires on January 1, 1993.

Producer-Marketer Transportation Group requests the Commission to address several hypothetical situations to clarify whether actions taken by the parties, and presumably others in the industry, were appropriate under the Decontrol Act and the Commission's regulations implementing the Decontrol Act. The Commission declines to address hypothetical questions.

NGSA and Indicated Producers assert that existing § 272.101 fails to explicitly implement NGPA section 601 and that § 272.102 does not fully convey the effect of deregulation since it fails to recognize that section 601 removes deregulated natural gas from the Commission's NGA jurisdiction. The Commission believes that the provisions of section 601 of the NGPA are clear and do not require regulations to implement its provisions.

Another issue which needs clarification involves the situation where there are several first sales—that is, a sale by a producer to another first seller (other producer, reseller or marketer) who resells the gas. Both sales are first sales as defined by the NGPA. In this situation, the Commission believes that each sale must be treated separately for purposes of the Decontrol Act. Therefore, none, one or both sales may be deregulated, depending on the applicability of the provisions of the Act to the individual sales.[25]

F. Conclusion

Based on the foregoing considerations, the Commission is amending its regulations to reflect the provisions of the Decontrol Act that decontrol gas prior to January 1, 1993. Section 272.103 of the Commission's regulations lists the categories of natural gas that have been decontrolled by the NGPA. To this list the Commission is adding the following: (1) Gas not subject to a first sales contract as of July 26, 1989; (2) gas subject to a first sales contract that expires or terminates after July 26, 1989; (3) gas that was subject to a first sales contract on July 26, 1989 which the parties renegotiate, in writing, after March 23, 1989, to provide that the gas will be deregulated but not prior to July 26, 1989; and (4) gas from wells spudded after July 26, 1989, with decontrol to be effective on May 15, 1991, or the date on which an existing contract expires or is terminated, whichever is earlier.

The Commission adopts the position proposed in the NOPR that applications for well determinations need not be filed for gas which was not subject to a first sales contract on July 26, 1989, in order for such gas to be deregulated and decontrolled. However, for gas which was subject to a first sale contract on July 26, 1989, producers must continue to file applications for determinations if they wish to collect a price under sections 102, 103, 107 or 108 until the gas is deregulated. Moreover, producers may voluntarily file applications for well determinations for any NGPA category, including high-cost gas, until January 1, 1993, when NGPA section 503 is repealed.[26]

In addition, the Commission is amending § 270.202(h)(2) to clarify the effect of the Decontrol Act on percentage-of-proceeds contracts as discussed above and removing § 270.207 in its entirety.

IV. Administrative Findings

A. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA) generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[27] The Commission is not required to make an RFA analysis if it certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities." Because the rule implements the Decontrol Act, which substantially reduces burdens on small entities, the Commission certifies pursuant to the RFA that this rule will not have a significant economic impact on a substantial number of small entities.

[25] The Commission has previously held that a particular supply of natural gas can be considered to be subject to more than one contract. *See, Exxon Corp.*, 24 FERC ¶ 61,066 (1983); and *Getty Oil Co.*, 23 FERC ¶ 61,114 (1983).

[26] In response to the inquiry of the United States Department of the Interior, Minerals Management Service (MMS), the Commission further clarifies that MMS will no longer be required to provide the Commission with the notification required by Order No. 336, issued September 27, 1983. 48 FR 44,508 (Sept. 29, 1983); FERC Stats. & Regs. ¶ 30,496 (Sept. 27, 1983).

[27] 5 U.S.C. 601–612 (1988).

B. Environmental Review

Because this rule merely makes changes in the Commission's regulations to conform to the Decontrol Act, the Commission is not preparing an environmental impact statement in this proceeding.[28]

C. Information Collection

This final rule implements the Decontrol Act and reduces reporting burdens on producers of natural gas. The Commission is notifying the Office of Management and Budget that the information collection burdens are being reduced by this rule.

D. Effective Date

The Administrative Procedure Act generally provides that an agency rule may not be effective less than 30 days after publication in the **Federal Register.**[29] However, an exception to this requirement is when the rule "grants or recognizes an exemption or relieves a restriction." [30] As this rule falls within this exception, the rule is effective April 18, 1990.

List of Subjects

18 CFR Part 270

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 272

Natural gas.

In consideration of the foregoing, the Commission amends parts 270 and 272, chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 270—RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

1. The authority citation for part 270 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717(w) (1988); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142, Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1988).

2. In § 270.202, paragraph (h)(2) is revised to read as follows:

§ 270.202 Resales.

* * * * *

(h) * * *

(2) Natural gas subject to a percentage-of-proceeds contract is deregulated on the earlier of:

(i) The date such percentage-of-proceeds contract is deregulated as a first sale, or

(ii) The date the price paid under the resale contract is deregulated.

3. Section 270.207 is removed in its entirety.

PART 272—DEREGULATED NATURAL GAS

4. The authority citation for part 272 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1988); Natural Gas Wellhead Decontrol Act of 1989, Pub. L. 101–60, July 26, 1989.

5. In § 272.103, paragraphs (a)(5) through (a)(8) are added to read as follows:

§ 272.103 Definitions.

(a) * * *

(5) Natural gas to which no first sale contract applies on July 26, 1989.

(6) Natural gas to which a first sale contract applies on July 26, 1989, but to which such contract expires or terminates after that date. Such gas is deregulated as of the date such contract expires or terminates.

(7) Natural gas to which a first sale contract applies on July 26, 1989, where the parties have expressly agreed in writing after March 23, 1989, that all or part of the gas sold under such contract shall not be subject to any maximum lawful price. Such gas is deregulated as of the date specified by the parties, but not before July 26, 1989.

(8) Natural gas to which a first sale contract applies on July 26, 1989, and which is produced from a well the surface drilling of which began after July 26, 1989. Such gas is deregulated on May 15, 1991, or the date on which that contract expires or is terminated, whichever is earlier.

* * * * *

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

Appendix A—Commenters on the NOPR

Affiliated Gas Producers
American Gas Association
American Petroleum Institute
Amoco Production Company
Arkla Exploration Company
Carnegie Natural Gas Company
Colorado Interstate Gas Company
Columbia Gas Transmission Corporation
Columbia Natural Resources, Inc.
Conoco Inc.
Consolidated Natural Gas Company
El Paso Natural Gas Company
Equitable Resources Energy Company
Gas Processors Association
Independent Oil & Gas Association of West Virginia
Indicated Producers
Interstate Natural Gas Association of America
Mid-Louisiana Gas Company
Natural Gas Pipeline Company of America
Natural Gas Supply Association
Northwest Pipeline Corporation
Pennsylvania Natural Gas Association
Phillips Petroleum Company
Phillips 66 Natural Gas Company
Producer-Marketer Transportation Group
Public Utilities Commission of the State of California
Sen. Jeff Bingaman
Sen. J. Bennett Johnston
Texas Gas Transmission Corporation
The Producer Associations
U.S. Dept. of the Interior—Bureau of Land Management
U.S. Dept. of the Interior—Minerals Management Service

[FR Doc. 90–9517 Filed 4–24–90; 8:45 am]

BILLING CODE 6717–01–M

[28] Section 380.4(a)(1) of the Commission's regulations [18 CFR 380.4 (a)(1) (1988)] exempts from environmental review Commission actions that are "procedural" or "ministerial" in nature.

[29] 5 U.S.C. 553(d) (1988).

[30] *Id.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 77P–0428 and 77P–0358]

Food Ingredient Labeling; Exemptions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that permits food ingredients present at levels of 2 percent or less by weight to be listed in other than descending order of predominance by weight. The listing of such ingredients will have to be preceded by a quantifying statement such as "Contains 2 percent or less of _____." This final rule eliminates unnecessary labeling costs that ultimately would be passed on to the consumer.

EFFECTIVE DATE: April 25, 1990.

FOR FURTHER INFORMATION CONTACT:

James R. Taylor, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0229.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 7, 1978 (43 FR 14677), FDA published a proposal to amend § 101.4 (21 CFR 101.4) to permit ingredients present in bakery products at levels of 2 percent or less by weight to be listed in other than descending

order of predominance when (1) the manufacturer is unable to adhere to a constant formula of such ingredients, and (2) the ingredients appear at the end of the ingredient statement following the quantifying statement "Contains 2 percent or less of each of the following _____." The proposal was based on petitions from the American Bakers Association [Docket No. 77P-0428] and the Independent Bakers Association [Docket No. 77P-0358]. The petitions demonstrated that bakers encounter order of predominance labeling problems because seasonal conditions sometimes necessitate adjustments in concentrations of minor bakery ingredients. The petitions advised that, without greater flexibility in ingredient labeling, bakers would be forced to avoid appropriate formula adjustments or to maintain costly inventories of labels with different ingredient lists.

Most of the comments submitted in response to the April 7, 1978, proposal supported the need for an exemption from order of predominance listing for minor ingredients on the labeling of bakery products. In addition, some comments asserted that manufacturers of a wide variety of other food commodities would also benefit from such an exemption. These comments demonstrated that manufacturers of many food commodities encounter formula adjustment problems similar to those of the baking industry. The comments requested that the proposed exemption be extended to include all food commodities. A complete discussion of these comments can be found in the Federal Register of January 16, 1986 (51 FR 2405). In that document, FDA responded to these comments by issuing a tentative final rule that proposed to extend the coverage of the exemption to all food commodities. The agency also proposed to permit more flexibility in the format and the content of the quantifying statement than it would have permitted under the April 7, 1978, proposal.

The agency received 14 letters, each containing 1 or more comments from industry and trade associations, in support of the January 16, 1986, tentative final rule. Several of these comments suggested a number of revisions. A summary of these comments and FDA's responses follow:

1. Several comments requested that FDA eliminate those provisions of the tentative final rule that limit the exemption to situations in which a manufacturer is unable to adhere to a constant formula. These comments contended that there is no reason to include this requirement in the exemption. Some of these comments pointed out that exemption from order of predominance labeling for food ingredients present at levels of 2 percent or less by weight is not contrary to any statutory provision of the Federal Food, Drug, and Cosmetic Act (the act) and therefore need not be based on an agency finding that compliance with the order of predominance requirements was impracticable. Some comments advised that the variable formula requirement is unnecessary because ingredients present at concentrations of 2 percent or less are almost always noncharacterizing and therefore pose no potential risk for consumer deception. One comment explained that the practical significance of these low-level ingredients is frequently the nature and intensity rather than the quantity of the ingredient. The comment referred to spices, flavoring concentrates, and preservatives as examples of ingredients whose order of predominance is not significant.

Comments also maintained that the variable formula requirement was not necessary in light of the fact that under the proposed exemption, the label must include a quantifying phrase, such as "Contains 2 percent or less of _____." The comments pointed out that the quantifying phrase would provide consumers with more information about ingredients than is currently available. The comments maintained that information from quantifying phrases would, for low-level ingredients, be of much more value to consumers than information from order of predominance listing. The comments also maintained that these quantifying phrases would virtually eliminate potential consumer confusion caused by misleading placement of economically valuable ingredients that might occasionally be present. The comments explained that because quantifying phrases concerning concentration levels of 2 percent or less are in the nature of disclaimers rather than claims of excellence, consumers are unlikely to attach economic value to ingredients listed after these phrases.

In addition, one comment pointed out that strict order of predominance information concerning low-level ingredients may even be burdensome for some products with constant formulations. The comment explained that when firms use formulated ingredient mixes (e.g., seasoning mixtures) purchased from other firms as ingredients in their products, the precise amount of each ingredient in the mix must be known to determine order of predominance of all ingredients in the finished product. However, firms producing mixes often consider such information proprietary and are hesitant or unwilling to provide the information. The comment further advised that even when firms have formulas for ingredient mixes that they have purchased, strict order of predominance information concerning low-level ingredients may still be burdensome to obtain because shifts in order of predominance can occur without formula changes. The comment explained that such shifts may occur when:

(1) Ingredients present at similar levels in the formula enter the container at different stages in a multi-stage filling operation, (2) holding time or other factors affect the amount of ingredients absorbed (e.g., during preliminary preparation such as frying or soaking), and (3) time/temperature variations affect the amount of a volatile ingredient that is converted or driven off. Although analytical tests may be able to detect these shifts, such tests often would be difficult to develop and costly to perform.

FDA is persuaded that the provision in the tentative final rule limiting the exemption to the situation where the manufacturer is unable to adhere to a constant formula is unnecessary and, in some situations, burdensome to the affected industry. Therefore, FDA is not including this provision in the final rule.

2. On its own, FDA has considered whether this action will limit in any way the information that has been provided to consumers by the food label. The agency has concluded that the rule will not deprive consumers of any significant information. The exemption from order of predominance listing for ingredients present at levels of 2 percent or less does not in any way diminish the obligation of the food manufacturer to disclose the product's ingredients. To the contrary, in order to take advantage of the exemption from order of predominance listing, the manufacturer must list those minor ingredients and disclose that they are present at an insignificant level. The food label will continue to bear the common or usual name of each ingredient in accordance with 21 U.S.C. 343(i).

3. One comment requested that use of the exemption remain optional.

The agency advises that use of the exemption is optional. Manufacturers may continue listing ingredients in descending order of predominance without specifying which ingredients are present at 2 percent or less.

4. Another comment stated opposition to any general extension of regulations to require declaration of individual ingredient percentages.

FDA advises that this final rule does not require declaration of any individual ingredient percentages. The rule simply gives manufacturers the option of eliminating order of predominance labeling for ingredients present at levels of 2 percent or less by weight. Only those manufacturers who choose this option will be required to provide a percentage declaration and only for those ingredients present at levels below 2 percent. In such cases, the rule requires that the appropriate percentage (i.e., 2 percent or, if desired, 1.5 percent, 1.0 percent, or 0.5 percent) be included in the quantifying phrases that must precede the optional format for listing exempted ingredients.

Effective Date

The agency announces that this final rule becomes effective on April 25, 1990. This final rule is immediately effective because it grants an exemption from a labeling requirement that has been burdensome to certain manufacturers, and no objections have been raised to the new rule. In addition, there are no costs associated with immediate implementation of the rule because the alternative labeling requirement set forth in the rule is an optional one which manufacturers may use at their discretion. These circumstances present good cause pursuant to 5 U.S.C. 553(d)(1) and (3) for the rule to take effect immediately.

Environmental Issues

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

Economic Issues

In accordance with the Executive Order 12291, FDA has analyzed the economic effects of this final rule, and the agency has determined that the rule is not a major rule as defined by the Order. This final rule provides an optional exemption for all foods containing ingredients at levels of 2 percent or less by weight from an existing requirement that each ingredient be listed in descending order of predominance. Manufacturers will therefore not be required to change existing labels and are provided with greater flexibility in listing mandatory information on new labels. No increase in manufacturers' labeling costs is therefore expected.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this final rule would have on small entities, including small businesses, and has determined that the effect of this final rule is to provide more flexibility in labeling procedures for both large and small businesses as stated above. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

Lists of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.4 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraph (a)(2) to read as follows:

§ 101.4 Food; designation of ingredients.

(a)(1) * * *

(2) The descending order of predominance requirements of paragraph (a)(1) of this section do not apply to ingredients present in amounts of 2 percent or less by weight when a listing of these ingredients is placed at the end of the ingredient statement following an appropriate quantifying statement, e.g., "Contains _____ percent or less of _____," or "Less than _____ percent of _____." The blank percentage within the quantifying statement shall be filled in with a threshold level of 2 percent, or, if desired, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying phrase applies may be present in an amount greater than the stated threshold.

* * * * *

Dated: March 21, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-9543 Filed 4-24-90; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-024; FRL-3758-1]

Approval and Promulgation of Implementation Plans, Alabama; SO_2 Limits for Lead Smelters

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan submitted by Alabama to provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2) in Jefferson County. The revisions establish sulfur dioxide emission limits for secondary lead smelters. Since all ambient standards for SO_2 will be protected, and no interstate impacts or attainment problems are expected, EPA is therefore approving this SIP revision.

DATES: This action will be effective June 25, 1990, unless notice is received by May 25, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed timely notice will be published in the **Federal Register.**

ADDRESSES: Comments on this notice should be addressed to Beverly Hudson at the Region IV address below. Copies of the State's submittal are available for review during normal business hours at the following locations:

Alabama Department of Environmental Management Air Division, 1751 Congressman William L. Dickinson Dr., Montgomery, Alabama 36130

Air Programs Branch, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson of the Region IV EPA Air Programs Branch, at the address given above, and telephone number (404) 347-2864 or (FTS) 257-2864.

SUPPLEMENTARY INFORMATION: The Clean Air Act (CAA) includes requirements that EPA establish national ambient air quality standards (NAAQS) for various pollutants which may reasonably be anticipated to endanger public health and welfare. Such standards have been established for sulfur dioxide (SO_2). Under section 110 of the Act, all states must submit a State Implementation Plan (SIP) which

will provide for the attainment and maintenance of the SO_2 NAAQS.

In January 1985, the Jefferson County Department of Health requested that the Interstate Lead Company, Inc. (ILCO) perform a stack test to determine the amount of SO_2 being emitted from its facility. ILCO is a secondary lead smelter in Leeds, Alabama. As a result of the stack tests, Jefferson County suspected that the amount of SO_2 emissions could lead to exceedances of the SO_2 NAAQS in the Leeds area. Furthermore, plans were made to install in April 1986, a special—study SO_2 monitor near the predicted geographic point of highest concentration.

Since the installation and startup of the SO_2 monitor in 1986, data from the Leeds area SO_2 monitoring program has demonstrated conclusively that the primary and secondary NAAQS were being exceeded. Also, since 1986 additional SO_2 stack testing has been performed at ILCO. Results from a test in June 1987, indicate that SO_2 emissions were higher from ILCO than in 1985.

Computer modeling was performed to determine the contributions from all stationary sources in the Leeds area to the monitored ambient SO_2 exceedances. The modeling was also performed to determine the strategy to be employed under the SIP to ensure that the SO_2 NAAQS would be attained and maintained. Based on the computer modeling, SO_2 emission regulations were developed for ILCO. The revised regulations were necessary because the present control strategy, which consists of SO_2 regulations specific to certain types of sources, did not address secondary lead smelters. These revisions established SO_2 emission limits for secondary lead smelters.

On June 30, 1989, the Alabama Department of Environmental Management submitted these revisions to Jefferson County's existing regulations to EPA. A public hearing was held on May 22, 1989, and the regulations were adopted by the Jefferson County Board of Health on June 14, 1989.

A discussion of these revisions now follows:

- Chapter 6, paragraph 6.11.2(o) specifies a test for lead content in the recycled water to be used for downwash.
- Chapter 7, section 7.5.3 was amended to provide limits on SO_2 emissions from secondary lead smelters and ensure that ILCO will not cause an exceedance of any SO_2 NAAQS.
- Chapter 7, section 7.5.7 deletes the statement which allows a source owner or operator to secure a revised emission limitation by showing that the revised emissions would not interfere with attainment and maintenance of the national standards for SO_2.

Emission Inventory. The Leeds area of Jefferson County contains several SO_2 facilities. The largest SO_2 emitter is ILCO. Other facilities are much smaller, and through computer modeling, have been shown to be insignificant with respect to the highest predicted ambient SO_2 concentration in the Leeds area. A complete list of the facilities with their respective SO_2 emissions is given in table 2 of the Technical Support Document (TSD).

The emissions points at ILCO which are of significant impact on the monitoring sites are the blast and reverberatory furnaces, which emit through a common exhaust stack (main stack). ILCO will not discharge or cause to be discharged into the atmosphere from the blast furnace or reverberatory furnace smelt exhaust stack, or any combination, any gases which contain SO_2 in excess of 132 pounds per hour. Each of the stack emissions calculations was based on the best data or procedures available. For example, if stack test data was available, it was used preferentially since the data was usually considered to be the best data available. The emissions estimates for non-ILCO stacks were derived through the use of emissions factors, since stack test data were not available. The emissions factors employed were the latest ones in the EPA publication, "Compilation of Air Pollutant Emission Factors," known as AP–42.

Emission Compliance Method. Initial compliance with the requirements of section 7.5.3 will be demonstrated by the procedures specified by Methods 1 through 4 and 6, or 6(c) of appendix A of 40 CFR part 60. Continuous compliance thereafter will be demonstrated through the use of Continuous Emission Rate Monitoring Systems (CERMS) for continuous monitoring of the emissions discharge point or exhaust at an acceptable data recovery rate. To ensure that the monitoring data will be accurate, Procedure 1 of appendix F to 40 CFR part 60 will be required.

Prevention of Significant Deterioration (PSD) Applicability. PSD increment consumption is not an issue in this revision, because the revision establishes emission limits for Interstate Lead Company which are more stringent than the previous emission levels. Therefore, there are no net increases in emissions.

Stack Height Rule Impacts. On July 8, 1985 (50 FR 27892), EPA promulgated stack height rules pursuant to section 123 of the Clean Air Act. These rules do not apply to stack heights "in existence" before December 31, 1970.

A stack is "in existence" if the owner or operator had, by December 31, 1970: (1) Begun a continuous program of physical on-site construction of the stack; or (2) entered into a binding agreement or contractual obligation, which could not be cancelled or modified without substantial loss, to undertake a program of stack construction to be completed within a reasonable time.

ILCO will raise their existing stack height from 75 to 213 feet. In addition, a sulfur dioxide scrubber system will be installed. There are no restrictions or prohibition against, or demonstration required for raising an existing (or replacing) stacks up to 65 meters as long as prohibited dispersion techniques are not employed. EPA concluded that the stacks at ILCO will not be subject to the stack height rules because they will not exceed the applicable Good Engineering Practice (GEP) formula height and will not be affected by prohibited dispersion techniques. Thus, the physical height of the stacks will be fully creditable.

Although EPA today approves the emission limits for this source on the ground that they satisfy the requirements of the Clean Air Act, EPA also provides notice that the emission limits are subject to review and possible revision as a result of *NRDC* v. *Thomas*, 838 F.2d 1224 (1988). In that case the U.S. Court of Appeals for the D.C. Circuit held that EPA had not adequately explained certain provisions of its July 8, 1985, stack height regulations and remanded these provisions to EPA for further proceedings consistent with its opinion. If EPA's response to the NRDC remand modifies the applicable July 8, 1985, provision(s), EPA will notify the State of Alabama whether the emission limit for ILCO in Jefferson County must be re-examined for consistency with the modified provision(s).

Final Action. EPA has evaluated the Jefferson County part of the Alabama SO_2 SIP and has determined that it demonstrates attainment of the SO_2 NAAQS. EPA is therefore approving the revision of Jefferson County Regulation 7.5.

The public is advised that this action will be effective 60 days from today. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin new rulemaking by announcing a proposed

action and establishing a comment period.

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 25, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Alabama was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 16, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

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

PART 52—[AMENDED]

Subpart B—Alabama

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.50 is amended by adding paragraph (c)(49) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(49) SO_2 revisions for Secondary Lead Smelters, submitted by the Alabama Department of Environmental Management on June 30, 1989.

(i) Incorporation by reference.

(A) The following revisions to Chapter 6 of Jefferson County Board of Health Air Pollution Control Rules and Regulations, which became effective June 14, 1989.

(*1*) 6.11.2(o)

(B) The following revisions to chapter 7 of Jefferson County Board of Health Air Pollution Control Rules and Regulations which became effective June 14, 1989 as follows:

(*1*) 7.5.3 (*3*) 7.5.5
(*2*) 7.5.4 (*4*) 7.5.6

(ii) *Additional material.* (A) Letter of June 30, 1989, submitted by the Alabama Department of Environmental Management.

(B) Modeling analysis for Interstate Lead Corporation which was submitted by Jefferson County, Alabama on April 5, 1989.

§ 52.54 [Amended]

3. The table in § 52.54 is amended by changing the notation in the "Primary" and "Secondary" "Sulfur Oxides" columns for Jefferson County to "k" and by adding a corresponding line to the legend of the table as follows: "k. July 31, 1990"."

[FR Doc. 90–9538 Filed 4–24–90; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3754–4]

Approval and Promulgation of State Implementation Plans; AJO Group II PM–10 Area, State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving the committal State Implementation Plan (SIP) for the Ajo, Arizona, Group II PM–10 area submitted by the State on December 28, 1988. The SIP commits the State to continue monitoring for PM–10 and to submit a full SIP if a violation of the PM–10 National Ambient Air Quality Standards (NAAQS) is detected. It also commits the State to make several revisions, related to PM–10, to the existing SIP. The intended effect of this action is to assure the maintenance of the NAAQS for PM–10.

DATES: This action will be effective on June 25, 1990, unless notice is received by May 25, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m., and 4 p.m, Monday through Friday at the following offices:

Environmental Protection Agency, Region IX, Air Programs Branch, 1235 Mission Street, San Francisco, CA 94103

Arizona Department of Environmental Quality, 2005 North Central Avenue, Phoenix, AZ 85004

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Steven K. Body, Air Programs Branch, Environmental Protection Agency, 1235 Mission Street, San Francisco, CA 94103, (FTS) 556–5153, (415) 556–5153.

SUPPLEMENTARY INFORMATION:

Background

The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM–10) on July 1, 1987 (52 FR 24634). As a result, states must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM–10 NAAQS. Group I areas have violated the PM–10 NAAQS or have air quality data showing high (greater than 95%) probabilities of violating the NAAQS. These areas must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have moderate (20%–95%) probability of violating the PM–10 NAAQS, and must commit to monitor for PM–10 and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20%) probability of violating the PM–10 NAAQS, and no new control strategy requirements apply.

Ajo, Arizona, has been classified as a Group II area. On December 28, 1988, the State submitted a Committal SIP for Ajo. The requirements for Group II committal SIPs, and the State's response to these requirements are described below.

EPA Requirements for Group II Committal SIPs

The following SIP requirements apply to all PM–10 areas, regardless of their grouping:

(1) All SIPs should provide for the attainment and maintenance of the PM–10 standards, and PM–10 should be regulated as a criteria pollutant.

(2) Since the SIP must protect both the PM–10 standard and the total suspended particulates (TSP) increment for prevention of significant deterioration (PSD), it must trigger preconstruction review for a new or modified source which would emit significant (as defined at 40 CFR 51.166(b)(23)) amounts of either TSP or PM–10.

(3) The significant harm level for particulate matter was revised in 40 CFR 51.151 to 600 ug/m_3 measured as PM–10, and the combined sulfur dioxide-particulate matter significant harm level was deleted. In addition, the example alert, warning, and emergency levels of particulate matter in Appendix L of part 51 were also revised to reflect PM–10 concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

(4) Revisions to 40 CFR part 58 set forth the requirements for design of national, State and local PM–10 air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping; Group I areas are required to monitor daily for at least one site in the area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data.

In addition, Committal SIPs for Group II areas must contain enforceable commitments to:

(5) Gather ambient PM–10 data, at least to an extent consistent with minimum EPA requirements and guidance.

(6) Analyze and verify the ambient PM–10 data and report 24-hour PM–10 NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(7) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM–10 NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(8) Within 30 days of the notification referred to in (7), above, or within 37 months of promulgation of the PM–10 NAAQS, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM–10 standards, and immediately notify the appropriate Regional Office.

(9) Within 6 months of the notification referred to in (8), above, adopt and submit to EPA a PM–10 control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the Committal SIP.

(10) Committal SIPs must include an enforceable schedule with appropriate milestones or checkpoints.

Arizona Submittal

The State submittal addresses EPA's requirements as follows:

(1) *PM–10 Ambient Air Quality Standard.* The State has not adopted a revised Particulate Matter Standard for PM–10. This element will be included in a comprehensive State-wide Group III SIP revision.

(2) *Preconstruction review of major stationary sources of PM–10.* The State administers an EPA approved New Source Review (NSR) and Prevention of Significant Deterioration (PSD) program for all areas in the State except Maricopa and Pima Counties. However, the State has not revised these programs for PM–10. EPA currently retains authority for issuing PSD Authority to Construct permits for new and modified sources in these areas. A revision to the NSR and PSD rules to account for PM–10 will be included in a comprehensive State-wide Group III SIP revision.

(3) *Revised emergency episode plans.* The State has not revised the emergency episode plan for Ajo. This element will be included in a comprehensive Statewide Group III SIP revision.

(4) *PM–10 monitoring networks.* There is one PM–10 monitoring site operating in Ajo. The sampler is operated on an every sixth day schedule. The monitoring network design and coverage have been reviewed, and are approved by EPA Region IX, Air and Toxics Division.

(5) *Collection of ambient PM–10 data.* The State began monitoring for PM–10 in January 1985, and has committed to continue monitoring in the Committal SIP.

(6) *Reporting exceedances to EPA within 45 days.* This commitment is contained in the Committal SIP.

(7) *Immediate notification of EPA if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

(8) *Determination of adequacy of the existing SIP.* This commitment is contained in the Committal SIP.

(9) *Submittal of a revised control strategy for PM–10 if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

(10) *Enforceable schedule and milestones.* This requirement is contained in the Committal SIP.

The State held a public hearing on the Committal SIP on October 19, 1988. Oral and written comments were received and the State responded to each comment.

A draft Committal SIP was submitted to EPA for review prior to this hearing. EPA reviewed the draft SIP and found it to meet the necessary requirements with some minor exceptions, which were corrected in the final submittal.

Final Action

EPA hereby approves the Committal SIP for the Ajo, Arizona SIP. The Committal SIP provides for adequate ambient air quality monitoring, and should provide the areas protection from violations of the PM–10 NAAQS.

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

EPA finds that good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation. EPA's approval poses no additional regulatory burden.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective June 25, 1990.

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On

January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 25, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Dated: March 26, 1990.

Daniel McGovern,

Regional Administrator.

Title 40 part 52 of the Code of Federal Regulations Subpart D is amended as follows:

PART 52—[AMENDED]

Subpart D—Arizona

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

Authority: 42 U.S.C. 7401–7642.

1. Section 52.146 is amended by adding paragraphs (c) and (d) to read as follows:

§ 52.146 Particulate matter (PM–10) Group II SIP commitments.

* * * * *

(c) On December 28, 1988, the Governor's designee for Arizona submitted a revision to the State Implementation Plan (SIP) for Ajo, that contains commitments from the Director of the Arizona Department of Environmental Quality, for implementing all of the required activities including monitoring, reporting, emission inventory, and other tasks that may be necessary to satisfy the requirements of the PM–10 Group II SIPs.

(d) The Arizona Department of Environmental Quality has committed to comply with the PM–10 Group II State Implementation Plan (SIP) requirements.

[FR Doc. 90–9539 Filed 4–24–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 9E3760/R1063; FRL-3712-4]

Pesticide Tolerance for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one (also referred to in this document as sethoxydim) and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the parent compound) in or on the raw agricultural commodity rhubarb. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: This regulation becomes effective on April 25, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP9E3760/R1063], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 7, 1990 (55 FR 4203), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 9E3760 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Michigan.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose to establish a tolerance for residues of the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2 cyclohexene-1-moiety (calculated as the herbicide) in or on the raw agricultural commodity rhubarb at 0.3 part per million (ppm). The petitioner proposed that this use of sethoxydim be limited to Michigan, Indiana, Illinois, Ohio, Wisconsin, and Minnesota, based on the geographic representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader areas of usage should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. The pesticide is useful for the purpose for which the tolerance is established. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: April 11, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

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

2. Section 180.412(b) is amended by adding and alphabetically inserting in the table therein the raw agricultural commodity rhubarb, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Rhubarb	0.3

[FR Doc. 90-9467 Filed 4-24-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-563; RM-6078]

Radio Broadcasting Services; Dyersburg, TN; Jonesboro, Hoxie and Newport, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 261C2 for Channel 261A at Dyersburg, Tennessee, and modifies the license of Station WASL(FM) to specify operation on that communities first wide coverage area station, at the request of Dr Pepper Pepsi-Cola Bottling Company of Dyersburg, Inc. *See* 52 FR 49181, December 30, 1987, and 54 FR 25481, June 15, 1989. This action also (1) substitutes Channel 287A for Channel 263A at Hoxie and modifies the license of Station KHOX(FM) (2) substitutes Channel 262A for Channel 261A at Jonesboro and modifies the license of Station KDEZ(FM) and substitutes Channel 264A for Channel 288A at Newport and modifies the license of Station KOKR(FM). A site restriction of 6 kilometers (3.7 miles) west of Dyersburg is required for Channel 261C2 at Dyersburg. The coordinates are 36-02-40 and 89-26-46. The coordinates for Channel 262A at Jonesboro are 35-51-17 and 90-43-40. The coordinates for Channel 287A at Hoxie are 36-02-24 and 90-59-11. The coordinates for Channel 264A at Newport are 35-36-38 and 91-15-02.

Further consideration of the proposals to upgrade Stations KOKR(FM) at Newport to specify Channel 244C2 and KAWW-FM at Heber Springs, Arkansas, to specify Channel 264C2 will be the subject of a *Second Report and Order.*

EFFECTIVE DATE: June 4, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, MM Docket No. 87-563, adopted March 22, 1990, and released April 19, 1990. 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.

List of Subjects in 47 CFR Part 73

PART 73—[AMENDED]

Radio broadcasting.

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Tennessee, by adding Channel 261C2 and removing Channel 261A at Dyersburg and under Arkansas, by adding Channel 287A and removing Channel 263A at Hoxie by adding Channel 262A and removing Channel 261A at Jonesboro and by adding Channel 264A and removing Channel 288A at Newport.

Karl A. Kensinger,

Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 90-9523 Filed 4-24-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 591

[Docket No. 89-5; Notice 7]

RIN 2127-AD00

Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; correction.

SUMMARY: On March 28, 1990, NHTSA published an amendment to the final rule on the importation of motor vehicles and equipment subject to the Federal motor vehicle safety standards, that added Federal bumper and theft prevention standards. NHTSA amended § 591.5(b) and § 591.5(h) in a manner inadvertently omitting language that had been added by a prior amendment on February 5, 1990. This notice restores the omissions.

DATES: The correction is effective April 25, 1990.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION: On February 5, 1990, NHTSA published a response to the petitions for reconsideration of 49 CFR part 591 *Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety Standards* (Notice 4, 55 FR 3742). That notice amended § 591.5(b) to add the phrase "by the manufacturer" between the words "or" and "to the equipment item". The notice also amended § 591.5(h) in a way that the referent to the importer, "(s)he)", appeared in the introductory text to the section, rather than in the subsections. However, a draft amendment to part 591, eventually published on March 28, 1990 as Notice 6 (55 FR 11375), had been prepared prior to the preparation of Notice 4. Section 591.5(b) and § 591.5(h) were not updated before the publication of Notice 6, with the result that a minor corrective amendment is required to reinsert the language added by Notice 4.

Because this amendment is corrective in nature, it is hereby found that notice and public comment thereon are unnecessary, and that it may become effective upon publication in the **Federal Register.** As it makes no substantive change, it does not affect any of the

impacts previously considered in relation to part 591.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, part 591 of 49 CFR is amended as follows:

PART 59[illegible]—[AMENDED]

1. The authority citation for part 591 continues to read as follows:

Authority: Public Law 100–562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 591.5 [Amended]

2. In § 591.5(b), the phrase "by the manufacturer" is inserted between the words "or" and "to the equipment item."

3. In § 591.5(h), the introductory text is amended by adding "(s)he" after the word "because" and before the colon.

Issued on: April 19, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90–9492 Filed 4–24–90; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AB33

Importation or Shipment of Injurious Wildlife; Brown Tree Snake

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) amends 50 CFR 16.15 by adding the brown tree snake (*Boiga irregularis*), a non-indigenous reptile of the Family Colubridae, to the list of injurious live reptiles. By this action the Service prohibits the importation into, the acquisition, or transportation of any live animal of brown tree snake (*Boiga irregularis*) between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States. The best available information indicates that this action is necessary to protect the interests of agriculture, human health and safety, and existing fish and wildlife resources from potential adverse effects that could result from purposeful or accidental introduction and subsequent establishment of naturally reproducing brown tree snake populations into ecosystems of the United States. Live brown tree snakes or viable eggs can only be imported by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits will also be required for the interstate transportation of live brown tree snakes or viable eggs currently held in the United States for scientific, medical, educational, or zoological purposes. However, this action prohibits interstate transportation of live brown tree snakes or viable eggs currently held in the United States for purposes not listed above.

EFFECTIVE DATE: May 25, 1990.

ADDRESSES: U.S. Fish and Wildlife Service, Division of Fish and Wildlife Management Assistance, 820 ARLSQ, 18th and C Streets NW., Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: John Bardwell, Acting Chief, Division of Fish and Wildlife Management Assistance, 820 ARLSQ, 18th and C Streets NW., Washington, DC 20240, telephone (703) 358–1718.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1990, (55 FR 1851), under Authority of the Lacey Act (18 U.S.C. 42), the Service proposes to amend 50 CFR 16.15 to add the brown tree snake (*Boiga irregularis*) to the list of injurious wildlife in order to prohibit importation of live brown tree snakes or any viable eggs thereof. The proposed rule invited comments for 30 days with the comment period ending on February 20, 1990. Copies of the proposed rule were sent to various organizations, associations, and government agencies considered to have knowledge of the brown tree snake or a vested interest in the outcome of the review process. A copy of the mailing list can be obtained by contacting the individual identified in the section above entitled **FOR FURTHER INFORMATION CONTACT.**

Summary of Analysis of Comments and Action Taken

Three written submissions were received by the Service in response to the proposed rule. The responses expressed support for the proposed rule in the belief that introduction of the brown tree snake could pose a threat to the survival of naturally-occurring wildlife resources. In consideration of the above mentioned responses and in light of the best available information concerning the brown tree snake, the Service has determined that this final rule is warranted. The basis for this decision is included in the following discussion.

Since introduced to Guam during World War II, brown tree snakes have become widely established. Studies by the Guam Division of Aquatic and Wildlife Resources and the Service have implicated the brown tree snake in the precipitous decline of birds on the island of Guam including the extirpation of 9 species within the past two decades. Snakes climbing power poles cause short circuits that frequently result in the loss of power to parts of the island of Guam, and have even caused islandwide blackouts.

The brown tree snake feeds on birds, rodents, and lizards. Nearly half of the people on Guam who raise chickens report predation on eggs and chicks by brown tree snakes. Experience on Guam clearly indicates that the introduction of brown tree snakes into new ecosystems, especially island environments with no naturally occurring snakes and no known natural predators, could pose a significant threat to the survival of wildlife resources, particularly birds. The loss of nectar and fruit eaters also threatens pollination and seed dispersal of native trees and other plants. Predation on native insectivorous birds and reptiles increases vulnerability of agriculture crops and native vegetation to insect pests and increases the risk of insect-borne diseases affecting humans and other animals.

The snake poses health, safety, and technological threats in Guam, where about 1 in every 1000 emergency room visits is for treatment of brown tree snake bites. While considered only mildly venomous, the venom of brown tree snakes can cause serious, even life threatening, reactions in infants. Brown tree snakes invade houses and other buildings on Guam and are known to bite infants in their cribs.

Description of the Final Rule

The regulations contained in 50 CFR part 16 implement the Lacey Act (18 U.S.C. 42) as amended. Under the terms of that law, the Secretary of the Interior is authorized to prescribe by regulation those non-indigenous wild animals or viable eggs thereof, that are deemed to be injurious or potentially injurious to the health and welfare of human beings, to the interests of agriculture, forestry, and horticulture, or the welfare of and survival of wildlife or wildlife resources of the United States. By adding the brown tree snake (*Boiga irregularis*) to the list of injurious live reptiles, their acquisition, importation into, or transportation between States, the District of Columbia, the

Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States by any means whatsoever is prohibited except by permit for zoological, educational, medical, or scientific purpose, or by Federal agencies without a permit solely for their own use upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. No live brown tree snakes, progeny thereof, or viable eggs, acquired under permit may be sold, donated, loaned, or transferred to any other person or institution unless such person or institution has a permit issued by the Director of the Service. The interstate transportation of any live brown tree snakes or viable eggs thereof currently held in the United States for any purpose not permitted is prohibited.

Distribution

The brown tree snake is native to coastal Australia, Papua New Guinea, and a large number of islands in northwestern Melanesia. The species occurs on both large and small islands, extending from Sulawesi in eastern Indonesia through Papua New Guinea and the Solomon Islands and into the wettest coastal areas of Northern Australia (Kinghorn 1964; McCoy 1980; In Den Bosch 1985). Individuals of this species have been discovered on several extralimital islands, including Hawaii, but the snakes of Guam represent the only known established population outside the native range (Fritts 1987a).

Biology

The brown tree snake is known to feed on a broad variety of prey species in its native range. Prey in Australia and the Solomon Islands consists of lizards, small mammals, birds, and bird eggs (Worrell 1963; Cogger 1975; McCoy 1980). The brown tree snake is commonly found in bird and poultry cages that it enters at night and, after swallowing birds or eggs, is unable to leave because of prominent lumps in the otherwise slender body (Worrell 1963; Cogger 1975). In Papua New Guinea the brown tree snake regularly takes eggs and chicks, but rats and mice are the preferred food (Parker 1983). Frogs (McCoy 1980; Parker 1983) and other snakes (Fritts and Scott 1985) are also occasionally eaten. Apparently, the small snakes depend primarily on lizards, small birds, and eggs of lizards and birds, whereas larger individuals feed to a greater extent on adult birds, mammals, and larger prey items (Savidge 1986; Greene, in litt.).

The reproductive characteristics of the brown tree snake are poorly known. The female of this species produces 4–12 oblong eggs (Zwinenberg 1978), perhaps in two or more clutches spaced at 3-week intervals. The eggs are 42–47 mm long and 18–22 mm wide (Parker 1983). They are covered with a leathery shell and often adhere together after the egg shell dries. Females abandon eggs in hollow logs, rock crevices, and sites where the eggs are protected from drying and high temperatures. Females may be capable of producing two clutches per year but the timing of reproduction may depend on seasonal variation in climate and prey abundance. Like females of other snake species, the female brown tree snake may be able to store sperm and produce eggs over several years after a single mating. The brown tree snake is not restricted to trees or forested habitat. In Papua New Guinea it occupies a wide variety of habitats at elevation up to 1200 meters (Parker 1983). The brown tree snake is most commonly found in trees, caves, and near limestone cliffs, but frequently comes down to the ground to forage at night (Cogger 1975; McCoy 1980; Parker 1983). Based on frequent mention of this snake in relation to buildings, domestic poultry, and caged birds, the snake is probably common in human-disturbed habitats and second-growth forests.

Control

The task of preventing snakes from being carried from Guam to other Pacific Islands is a complex one involving several elements and a diversity of governmental agencies and private companies. The success of any effort to minimize the chance of further colonizations will involve active programs on Guam as well as on the islands judged most likely to receive the snake.

The degree of threat to any island will depend on the type of cargo and traffic from Guam, the frequency of such shipments, and the specific conditions at the point of disembarkation. Of the islands and island groups considered to be most at risk of receiving the brown tree snake from Guam are the State of Hawaii, Federated States of Micronesia (Pohnpei, Kosrae, Yap, and Truk), the Republic of Palau, and the Commonwealth of Northern Mariana Islands (Saipan, Tinian, and Rota). Areas at reduced risk are the Marshall Islands, American Samoa, and other Micronesian Islands (especially Nauru) with less frequent air and ship traffic from Guam.

The starting point for any program aimed at reducing the movements of snakes in ship and air traffic will be informing appropriate governmental agencies and the deveopment of cooperation and communication between the diverse organizations involved in transportation, inspection, and distribution of cargo from off-island. Because most island residents will be unfamiliar with snakes, training of personnel in detecting snakes and responding to sightings will be needed. Educational materials will be needed to inform agency personnel and the general public. Increased awareness on Guam of the advantages to preventing the spread of the brown tree snake will contribute to the effort to detect, capture, and exclude snakes from export cargo and from the cargo dispatch areas.

Early detection of newly established populations is critical to any attempt to eradicate or control this snake. Recently arrived snakes will be in the immediate vicinity, whereas dispersal into more isolated habitats will occur as time passes. Active eradication efforts will be necessary to prevent colonization.

Literature Cited

Citations for all references listed in this rule appear in the Environmental Assessment, copies of which are available by contacting the individual identified in the section above entitled **FOR FURTHER INFORMATION CONTACT.**

Need for Final Rule—Environmental Consequences

The Service believe this final rule is necessary based on currently available data that suggests importation of live brown tree snakes or viable eggs thereof, their release, and subsequent establishment of naturally reproducing populations in ecosystems of the United States or any territories or possessions of the United States could pose a real, or potential threat of undetermined extent to the interest of wildlife resources, agriculture, and human health and safety as follows:

1. Wildlife and biological communities—by destruction of species of native birds, mammals, and lizards; by disrupting vertebrate communities that control insects, disperse seeds, pollinate flowers, and serve as part of natural biological communities.

2. Agriculture—by killing and devouring chickens, pigeons, caged song birds, and bird eggs. The predation on agricultural animals and pets increases vulnerability of agricultural crops and native vegetation to insect pests. The loss of insectivorous birds and changes in the abundance of insectivorous lizards are likely to lead to an increase in insect abundance and make the

invasion of insect pests from other islands much more likely and increase the risk of insect-borne diseases affecting humans and other animals.

3. Human health and safety—by entering houses and commercial buildings. Snakes have been found biting and coiled around infants and small children in their beds. This species is technically a mildly venomous snake. While the degree of its toxicity is poorly known for adults, the venom of the brown tree snake can cause serious, even life threatening, reactions in infants. By causing electrical outages and related damages to equipment, the snakes produce additional threats to human safety. The sudden (even temporary) loss of street lights, traffic controls, hospital equipment, refrigeration systems, and computer networks can produce accidents resulting in injuries, promote food spoilage, and hamper medical services. The trauma of discovering and being bitten by a snake inside residences and workplaces is significant for islanders not familiar with snakes, and also to many off-islanders. By startling drivers and pilots, and by physically interfering with the control of aircraft and automobiles, the snake causes additional infrequent threats to human safety.

Required Determinations

An assessment of the environmental impacts of this rule has been prepared and a determination has been made that the rule is not a major Federal action under the National Environmental Policy Act. The comments submitted to the Service in response to our January 19, 1990, proposed rule provided no new information on environmental impacts that might be expected or attributed to this action; it has been determined, therefore, that the December 5, 1989, "Finding of No Significant Impact" for the Environmental Assessment is still valid for this final rule. It has also been determined that this is not a major rule under Executive Order 12291. In addition, the best available information indicates that no live brown tree snakes or viable eggs thereof are known to be imported for the pet trade or for propagation or any other non-permittable activity and this rule is not expected to have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act. Although the prohibitions imposed by the rule will not significantly affect the human environment in the United States or in the territories and possessions of the United States, the importation and spread of the brown tree snake, without imposing these restrictions, could pose a potential adverse impact on agriculture, human health and safety, and wildlife resources.

The Environmental Assessment, the Determination of Effects of Rule, and all supporting documents are available for review during regular business hours of 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Service's Division of Fish and Wildlife Management Assistance, Room 840, 4401 N. Fairfax Drive, Arlington, Virginia.

Information Collection Requirements

This final rule contains no information collection requirements for which Office of Management and Budget approval is required under the Paperwork Reduction Act of 1989 (44 U.S.C. 3505 *et seq.*).

Author

The authors of this final rule are Leslie D. Sweeney, Biologist, Division of Fish and Wildlife Management Assistance and Clare Erekson, Special Assistant to the Assistant Director for Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 16

Animal disease, Fish, Freight, Imports, Transportation, and Wildlife.

Accordingly, 50 CFR part 16 is amended as described below:

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 18 U.S.C. 42; 74 Stat. 754.

2. Section 16.15 is revised to read as follows:

§ 16.15 Importation of live reptiles or their eggs.

(a) The importation, transportation, or acquisition is prohibited of any live specimen or egg of the brown tree snake (*Boiga irregularis*): Provided, that the Director shall issue permits authorizing the importation, transportation, and possession of such live snakes or viable eggs under the terms and conditions set forth in § 16.22.

(b) Upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61, all other species of live reptiles or their eggs may be imported, transported, and possessed in captivity, without a permit, for scientific, medical, educational, exhibitional or propagating purposes, but no such live reptiles or any progency or eggs thereof may be released into the wild except by the State wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission for release from such agency.

Dated: March 20, 1990.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90-9570 Filed 4-24-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 900387-0087]

Listing of Steller Sea Lions as Threatened Under Endangered Species Act With Protective Regulations; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; corrections.

SUMMARY: NMFS is correcting errors in the emergency interim rule listing the Steller sea lion as a threatened species which was published in the **Federal Register** on April 5, 1990 (55 FR 12645). This notice corrects the effective dates contained in the preamble and the table of listed Steller sea lion rookery sites in § 227.12(a)(3) of the rule.

DATES: This emergency rule is effective on April 5, 1990, and expires on December 3, 1990. Comments are requested by May 7, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Chief, Protected Species Management Division, Silver Spring, MD 301-427-2322, or Dr. Howard Braham, Director, National Marine Mammal Laboratory, Seattle, WA, 206-526-4045.

In FR Doc. 90-7924, in the issue of April 5, 1990, beginning on page 12645, make the following corrections:

1. On page 12645, in the second column, under the "DATES" heading, in line 3, "December 31, 1990" should read "December 3, 1990,".

PART 227—[CORRECTED]

§ 227.12(a)(3) [Corrected]

2. On page 12648, in table 1 at the bottom of the page, in the fourth column (in the second set of coordinates for Outer I) under the "Lat." heading, the first entry "51°21.0 N" should read "59°21.0 N".

3. On page 12649, the footnote at the bottom of Table 1 should read "Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low

water to the second set of coordinates; or, if only one set of coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water."

Dated: April 18, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 90-9509 Filed 4-24-90; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 91050-0019]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch of sablefish allocated to hook-and-line gear in the Southeast Outside/East Yakutat Districts (SEO/EY) of the Eastern Regulatory Area of the Gulf of Alaska will be taken before the end of the year. The Secretary of Commerce (Secretary) is prohibiting further directed fishing for sablefish by longline vessels fishing in this area from 12 noon, Alaska Daylight Time (ADT), on April 20 through December 31, 1990.

DATES: Effective from 12 noon, a.d.t., on April 20, 1990, until midnight, Alaska Standard Time, December 31, 1990. Public comments are invited until May 7, 1990.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Regional Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

The 1990 TAC specified for sablefish in the SEO/EY Districts is 5,980 mt (January 31, 1990, 55 FR 3223); the portion of the TAC allocated to hook-and-line gear is 5,680 mt. Under § 672.24(b)(3)(i), if the share of the sablefish TAC assigned to any type of gear for any area or district will be taken before the end of the year, further directed fishing for sablefish will be prohibited in order to provide adequate bycatch amounts to ensure continued fishing activity by that gear group.

During the remainder of the fishing year, hook-and-line fisheries in SEO/EY are expected to require 100 mt of sablefish for bycatch in other hook-and-line fisheries. Therefore, the Regional Director plans to close the directed fishery when 5,580 mt have been taken. The directed hook-and-line fishery for sablefish started April 1, 1990. The Regional Director reports that vessels using hook-and-line gear have landed 4,055 mt of sablefish through April 15 in the SEO/EY. The balance of the 5,580 mt will be harvested by 12 noon, a.d.t., April 20, 1990.

Therefore, pursuant to § 672.24(b)(3)(i), the Secretary is prohibiting further directed fishing for sablefish caught with hook-and-line gear in the SEO/EY Districts effective 12 noon, a.d.t., April 20, 1990. After the closure, and in accordance with § 672.20(g)(2), amounts of sablefish on board a hook-and-line vessel in the SEO/EY Districts at any time must be less than four percent of the total amount of fish and fish products retained on board a vessel, as calculated from round weight equivalents.

Allocation of the sablefish resource between hook-and-line and trawl gear in the SEO/EY area, and the continued health of all components of the sablefish fishery will be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on this action may be submitted to the Regional Director at the address above through May 5, 1990.

Classification

This action is taken under §§ 672.20 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

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

Dated: April 20, 1990.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-9602 Filed 4-20-90; 2:13 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 80
Wednesday, April 25, 1990

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

Commodity Credit Corporation

7 CFR Part 1494

Export Bonus Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) proposes to issue regulations governing the payment of bonuses in connection with the export of agricultural commodities under the Export Enhancement Program (EEP). The EEP is currently administered by the Foreign Agricultural Service (FAS), on behalf of CCC, through the issuance of commodity announcements and "Invitations for Offers" (Invitations). The proposed regulations are intended to simplify the administration of the EEP by consolidating the general information about the program contained in the various EEP announcements, while maintaining the system of issuing Invitations for specific EEP initiatives for targeted countries. Also, the Department of Agriculture seeks comment on the Preliminary Impact Analysis.

DATES: Comments must be submitted on or before June 25, 1990.

ADDRESSES: Comments must be submitted in writing to L.T. McElvain, Director, CCC Operations Division, USDA, FAS, Room 4503–S, 1400 Independence Avenue, SW., Washington, DC, 20250–1000, telephone (202) 447–6211. All comments received will be available for public inspection at the above address during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, address as above, telephone (202) 447–6211. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: FAS intends to replace its current administrative procedure of issuing Invitations pursuant to the EEP commodity announcements with a procedure in which Invitations will be issued pursuant to these regulations. The proposed regulations contain provisions which are the same as or similar to the provisions currently contained in the various commodity announcements issued under the EEP. FAS proposes to consolidate into these regulations the terms and conditions currently contained in the commodity announcements as well as additional information concerning the operation of the EEP. In the course of this consolidation, some of the information contained in the announcements has been re-stated in a manner which is intended to simplify the material, enhance clarity, eliminate duplication, and facilitate the use of the regulations. The Invitations which FAS will continue to issue for specific initiatives under the EEP will contain additional information concerning the eligible commodity, the targeted (eligible) country or group of countries, the unit of measure, the countries' buying preferences, performance security requirements for the eligible commodity, and other specific limitations to be imposed on offers submitted to CCC by participating exporters.

This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This proposed rule has been submitted to the Office of Management and Budget (OMB) for review. It is expected that OMB will assign it a control number for the purposes of the Paperwork Reduction Act.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This proposed rule includes a Preliminary Regulatory Impact Analysis, as required for a major rule under Executive Order No. 12291, and the U.S. Department of Agriculture seeks comment on this Preliminary Regulatory Impact Analysis, particularly in response to the issues listed below. The Department will also prepare a more detailed analysis in connection with the final rule, in accordance with Executive Order No. 12291, and will make it available for comment before issuing the final rule. As noted above the Preliminary Regulatory Impact Analysis is available from L.T. McElvain, telephone (202) 447–6211, address as given above.

The issues relating to the Preliminary Regulatory Impact Analysis on which the Department specifically seeks comment are the following:

1. Regarding the description of the potential benefits of the rule:

(a) The Department uses the full value of additional exports due to the EEP as the primary benefit. What is the best method to calculate the benefits of the EEP? Are there opportunity costs to produce these additional exports? Would net change in gross agricultural profits due to EEP be a better measure of the benefits?

(b) One of the chief objectives of the EEP is to counter unfair trade practices by competitors, particularly the European Economic Community (EC). Should the effects of the EEP on subsidized EC exports and on EC positions in agricultural trade negotiations be specifically examined as an intangible benefit? How has the EC responded when confronted by EEP exports? Have there been other unintended effects in the international agricultural markets, affecting, for instance, unsubsidized exporters?

(c) Multiplier effects from additional sales due to the EEP are considered an indirect benefit from the EEP. Are these multiplier effects valid gains to the

economy when the additional sales are driven by subsidies, which are transfers within the economy?

(d) The changes in exchange rates and internal agricultural prices have greatly affected international agricultural markets. How can the effects of the changes in these variables be adequately considered in the analysis?

2. Regarding the description of the potential costs of the rule:

(a) How can the opportunity costs of the commodity certificates used to finance the EEP be accurately measured?

(b) One issue in the description of costs is the effects of the program on Federal outlays. What is the most accurate economic method of measuring these outlay effects?

3. Regarding the description of alternative approaches: What alternatives should be considered? Are there other alternatives in addition to those already considered in the Preliminary Regulatory Impact Analysis (including perhaps a "do nothing" alternative of no subsidized exports) that could be usefully examined for comparison purposes?

List of Subjects in 7 CFR Part 1494

Agricultural commodities, Exports, Foreign trade, International trade.

Accordingly, it is proposed that 7 CFR part 1494 be added to read as follows:

PART 1494—EXPORT BONUS PROGRAMS

Subpart A—Export Enhancement Program

Sec.

1494.101 General statement.
1494.201 Definitions of terms.
1494.301 Qualification requirements for exporters.
1494.401 Performance security.
1494.501 Submission of offers to CCC.
1494.601 Acceptance of offers by CCC.
1494.701 Payment of bonus.
1494.801 Enforcement and termination of agreements with CCC.
1494.901 Dispute resolution and appeals.
1494.1001 Miscellaneous provisions.

Authority: 15 U.S.C. 714c; 7 U.S.C. 1736v; Sec. 13, Pub. L. 101–220.

Subpart A—Export Enhancement Program

§ 1494.101 General statement.

(a) *Nature and objectives of program.* This subpart contains the regulations governing the Export Enhancement Program (EEP) of the Commodity Credit Corporation (CCC). Under the EEP, bonuses are made available by CCC to enable exporters to meet prevailing world prices for targeted commodities and destinations. The objectives of the program are to increase U.S. agricultural commodity exports and to encourage other countries exporting agricultural commodities to undertake serious negotiations on agricultural trade problems.

(b) *Operation of program.* CCC will, from time to time, announce through public press release initiatives to facilitate the export of U.S. agricultural commodities to targeted markets. The public press release, which will contain the name of a person for interested parties to contact, will be followed by the issuance of an Invitation for Offers (Invitation). Invitations will be issued pursuant to this subpart by the General Sales Manager (GSM) and will specify the eligible country or countries (the targeted market), the unit of measure, the eligible commodity, the maximum quantity of the eligible commodity eligible for a CCC Bonus, the quality specifications of the eligible commodity (including possible restrictions on type, kind, grade and/or class or other quality specifications), eligible buyer(s), the method and rate for determining liquidated damages and performance security requirements, and any other terms and conditions peculiar to that Invitation. Invitations may be one of the following three types: (1) Those inviting exporters which have a sales contract with an eligible buyer to submit a competitive offer for a bonus from CCC; (2) those inviting exporters which have submitted a bid to an eligible buyer to submit a competitive offer for a bonus from CCC; and (3) those which invite exporters to apply for an Announced CCC Bonus. After an interested person has qualified to submit an offer for an eligible commodity, the eligible exporter may submit to CCC an offer, in response to an Invitation, containing the information required by this subpart and any additional information required by the applicable Invitation. The exporter's offer will include either the Announced CCC Bonus, if applicable, or an amount in dollars and cents for a bonus deemed necessary by the exporter to make a commercial sale of the eligible commodity for export to the eligible country competitive with export sales of the commodity to the eligible country by other exporting countries. If the exporter has furnished the required performance security and the offer is acceptable to CCC, then CCC will notify the exporter that its offer has been accepted. CCC and the exporter will enter into an Agreement in which CCC will agree to pay the bonus to the exporter in return for the exporter's export and entry of the eligible commodity into the eligible country, in accordance with the terms and conditions of the Agreement. If CCC accepts an offer which was based upon a bid to an eligible buyer, then CCC and the exporter will enter into an Interim Bid Agreement, which may be converted into an Agreement after the eligible buyer accepts the bid.

§ 1494.201 Definitions of terms.

Terms used in this subpart, Invitations issued pursuant to this subpart, and any documents pertaining to the EEP shall have the following meaning:

(a) *Agreement.* The agreement entered into between CCC and the exporter consisting of: (1) the terms and conditions of this subpart; (2) the terms and conditions of the applicable Invitation; (3) the exporter's offer; (4) CCC's acceptance of the exporter's offer; and (5) the Announced CCC Bonus in effect at the time of the offer, if applicable.

(b) *Announced CCC Bonus.* A CCC Bonus announced by CCC in connection with an Invitation for Offers which specifies that the CCC Bonus amount will be pre-determined and announced by CCC.

(c) *ASCS.* The Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(d) *Bonus Value.* The CCC Bonus multiplied by the quantity of the eligible commodity exported and entered into the eligible country or countries. The Bonus Value is paid to the exporter in the form of CCC Certificates or other form of payment.

(e) *Business Day.* Days during which employees of the U.S. Department of Agriculture in Washington, DC and in Kansas City, Missouri are on official duty during normal business hours.

(f) *CCC.* The Commodity Credit Corporation, U.S. Department of Agriculture.

(g) *CCC Bonus.* A dollar and cents amount, to be paid to the exporter for each unit of eligible commodity to be exported under an Agreement, established through CCC's acceptance of the exporter's offer for such bonus amount.

(h) *CCC Certificate.* The CCC Commodity Certificate or Certificates issued by CCC that may be transferred or exchanged for a CCC-owned commodity pursuant to CCC's regulations on Commodity Certificates, In Kind Payments, and Other Forms of Payment, currently codified at 7 CFR Part 1470.

(i) *CCC Operations Division.* The CCC Operations Division, FAS, U.S. Department of Agriculture.

(j) *Date of Export.* One of the following dates, depending upon the method of shipment:

(1) The on-board date shown on the export carrier's bill of lading, when the eligible commodity is shipped directly to the eligible country from the United States; or

(2) The on-board date at the Canadian port shown on the export carrier's bill of lading, when the eligible commodity is shipped directly to the eligible country from a Canadian transshipment port on the St. Lawrence River, provided its identity had been preserved until shipped from Canada; or

(3) The on-board date shown on the export carrier's through bill of lading, when the eligible commodity is loaded to a lash barge for shipment directly to the eligible country from the United States; or

(4) The date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the eligible country, when the eligible commodity is shipped by rail or truck from the United States.

(k) *Date of Sale.* The earliest date the exporter has knowledge that a sales contract exists with an eligible buyer under which a firm dollar-and-cent price has been established or a mechanism to establish the price has been agreed upon, even though the sales contract may be conditioned upon the acceptance by CCC of the exporter's offer for a CCC Bonus.

(l) *Director.* The Director, Kansas City Commodity Office, ASCS, U.S. Department of Agriculture, or his designee.

(m) *Eligible Buyer.* A buyer in the eligible country that has entered, or will enter, into a sales contract with an exporter. The applicable Invitation may limit sales to one or more particular buyers in an eligible country.

(n) *Eligible Country.* The country or countries named in an Invitation, which shall be the only country or countries to which an eligible commodity may be exported for the purposes of obtaining a CCC Bonus under that Invitation.

(o) *Eligible Commodity.* The commodity specified as eligible for export under the applicable Invitation, which is grown, or produced from commodities grown, in the United States and which is the kind, type, grade and/or class of commodity specified in the applicable Invitation. If the eligible commodity is grain, it must meet the definition applicable for that grain under the U.S. Grain Standards Act and the regulations issued thereunder.

(p) *Eligible Exporter.* A person that has been notified by CCC that the person has been determined to be qualified to submit offers for consideration by CCC in response to Invitations for a particular eligible commodity.

(q) *Export or Exported.* The shipment of the eligible commodity, originating in the United States, directly to the eligible country without transshipment through any other country, except as permitted herein. Transshipments are permitted if specifically allowed in the applicable Invitation or for a shipment of the eligible commodity through a Canadian transshipment port on the St. Lawrence River if the eligible commodity had been shipped from the United States via the Great Lakes coastal range and its identity had been preserved until shipped from Canada.

(r) *Exporter.* An eligible exporter that submits an offer or enters into an Agreement or Interim Bid Agreement under this subpart.

(s) *Export Carrier.* The carrier on which the eligible commodity is shipped under the Agreement to the eligible country. "Export carrier" may mean an ocean vessel and on Canadian transshipments will mean the ocean vessel loaded at the Canadian transshipment port; or, on overland shipments, a railcar or truck; or a container or lash barge loaded with the eligible commodity for which a through on-board bill of lading is issued for shipment to the eligible country, provided that the loaded container or lash barge is subsequently lifted aboard an ocean vessel.

(t) *FAS.* The Foreign Agricultural Service, U.S. Department of Agriculture.

(u) *GSM.* The General Sales Manager, FAS, U.S. Department of Agriculture, acting in his capacity as Vice President, CCC, or his designee.

(v) *Interim Bid Agreement.* An agreement entered into between CCC and the exporter, if specifically permitted in the applicable Invitation, as a result of CCC's acceptance of an offer by the exporter based upon the exporter's bid to an eligible buyer.

(w) *Invitation.* The Invitation for Offers issued by CCC pursuant to this subpart, specifying the eligible country or countries, the eligible commodity, the maximum quantity of the eligible commodity eligible for a CCC Bonus, the quality specifications of the eligible commodity, the eligible buyer(s), the method and rate for determining liquidated damages and performance security requirements, and any other terms and conditions peculiar to that Invitation.

(x) *Notice to Exporters—EEP Contacts.* A notice issued by FAS by public press release which contains specific addresses; telephone, facsimile and telex numbers; and contacts within FAS and ASCS to obtain further information concerning qualification as an eligible exporter, the submission of offers in response to Invitations, amendments to Agreements, requests for bonus payments, the submission of export and entry documentation, and other matters related to the EEP.

(y) *Official Inspection Certificate.* A valid official export inspection or other quality analysis certificate as specified in the applicable Invitation.

(z) *Official Weight Certificate.* A valid official export weight or other quantity certificate as specified in the applicable Invitation.

(aa) *Person.* An individual, partnership, corporation, association or other legal entity.

(bb) *Sales Contract.* The sales contract entered into between an eligible exporter and an eligible buyer which sets forth the terms and conditions of a sale of the eligible commodity between the two parties. Written evidence of sale may be in the form of a signed sales contract, an offer and acceptance between parties or other documentary evidence of sale. The written evidence of sale for the purposes of the EEP must, at a minimum, document the following information: the commodity, quantity, quality specifications, delivery terms (F.O.B., C&F, etc.), delivery period, unit price, payment terms, date of sale, and evidence of agreement by buyer and seller. A sales contract with an intervening purchaser or an affiliate or subsidiary of the eligible exporter is not an eligible sales contract for the purpose of this subpart.

(cc) *Time.* All references to time shall refer to local time in Washington, DC.

(dd) *Unit of Measure.* The unit of measure for the eligible commodity as specified in the applicable Invitation.

(ee) *United States.* All of the 50 States, the District of Columbia, and the territories and possessions of the United States.

§ 1494.301 Qualification requirements for exporters.

Before CCC will consider an offer for an EEP bonus, the interested person must qualify as an eligible exporter specifically for the eligible commodity for which the interested person wishes to submit an offer in response to an Invitation under the EEP. The interested person must qualify as an eligible exporter for an eligible commodity in accordance with the procedures set forth below.

(a) *Submission of documentation.* An interested person that wishes to qualify as an eligible exporter to submit offers with respect to a particular eligible

commodity must furnish the following information or documentation to CCC at the address referenced in the Notice to Exporters—EEP Contacts:

(1) Evidence to show that the interested person has had experience, within the preceding three calendar years, in buying and selling for export the kind of eligible commodity specified in the applicable Invitation;

(2) The address of the interested person's office and the name and address of an agent in the United States for the service of process;

(3) The legal structure of doing business of the interested person, e.g., sole proprietorship, partnership, corporation, etc.;

(4) The place of incorporation of the interested person, if the interested person is a corporation;

(5) The name and address of an office(s) of the interested person within the United States, if the interested person is a foreign corporation or other foreign entity;

(6) A certified statement describing the interested person's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(7) A certification stating "I certify that (name of exporting entity) has not been debarred or suspended from contracting with or participating in any programs administered by a U.S. Government agency; that (name of exporting entity) is not operated, controlled or owned, in whole or in part, by any individuals or entities debarred or suspended from contracting with or participating in programs administered by any U.S. Government agency; and that (name of exporting entity) does not employ any individuals debarred or suspended from contracting with or participating in programs administered by any agency of the U.S. Government. I further certify that should such debarment or suspensions occur in the future, I will immediately notify CCC."

(b) *Previous qualification.* If an interested person has already qualified as an eligible exporter to submit offers in response to Invitations issued for a specific eligible commodity and wishes to qualify as an eligible exporter for other eligible commodities, the interested person need only provide the following to CCC at the address referenced in the Notice to Exporters—EEP Contacts:

(1) The information or documentation required in paragraphs (a)(1), (a)(6) and (a)(7) of this section; and

(2) A certification that the information previously provided pursuant to paragraph (a) of this section has not changed. If the interested person is unable to provide such certification, the person must comply with the procedure in paragraph (a) of this section.

(c) *Necessity to qualify.* An interested person may not submit an offer in response to an Invitation for a particular eligible commodity, and CCC will not consider any such offer by an interested person, until CCC has notified the interested person that such person has qualified as an eligible exporter for that particular eligible commodity.

(d) *Additional submissions.* CCC will promptly notify interested persons who have submitted information required by this section whether they have qualified to have their offers considered. Any person failing to qualify will be notified of the basis of CCC's decision and will be given an opportunity to provide additional information for reconsideration by CCC.

(e) *Previous performance.* CCC may request additional information with respect to the person's performance under any previous programs, contracts or agreements with the U.S. Government during the past three years. Persons with a history of unsatisfactory performance of such programs, contracts or agreements will be ineligible to participate in the EEP, unless CCC determines that permitting the interested person to participate would be in the best interests of the program.

(f) *Removal from qualified status.* An eligible exporter's qualification to submit offers for a particular eligible commodity shall depend upon the continued accuracy of the information provided by the eligible exporter pursuant to this section. If this information changes, CCC may notify the eligible exporter that it is no longer qualified to submit offers for any or all eligible commodities.

§ 1494.401 Performance security.

(a) *Requirement to establish performance security.* Prior to the submission of an offer to CCC in response to an Invitation, an eligible exporter must establish performance security, in a form which will be acceptable to CCC, in order to guarantee the eligible exporter's faithful performance of the Agreement. An offer made by an eligible exporter will not be considered if performance security is not made available to CCC no later than 3 p.m. on the date the offer is submitted for consideration.

(b) *Form of performance security.* The performance security must be acceptable to CCC and may be an irrevocable commercial letter of credit, a bond, or a certified or cashier's check. If a letter of credit is furnished as performance security, the opening bank may be a U.S. bank or a foreign bank. If the letter of credit is opened by a foreign bank, it must be 100 percent confirmed by a U.S. bank. If a bond is furnished as performance security, the surety(ies) must be among those appearing on the list of approved sureties maintained by the U.S. Department of the Treasury. If a cashier's or certified check is furnished as performance security, the bank issuing the cashier's or certified check must be a U.S. bank.

(c) *Amount of performance security.* The amount of the performance security to be furnished to CCC in response to a particular Invitation will depend upon whether the exporter intends to select "Option A" or "Option B" for the timing of the bonus payment. If the exporter furnishes performance security under "Option A" of the applicable Invitation, the exporter may request payment of the bonus after export of the eligible commodity but before entry of the commodity into the eligible country or countries. If the exporter furnishes performance security under "Option B" of the applicable Invitation, the exporter may request payment of the bonus only after the export of the eligible commodity and its entry into the eligible country or countries. The applicable Invitation will specify the method and rate for determining liquidated damages and the exact amount of performance security for the eligible commodity required under either "Option A" or "Option B."

(d) *Additional security.* The exporter shall promptly furnish such additional security as CCC determines is necessary to protect CCC under an Agreement if the surety(ies) or obligating bank:

(1) becomes unacceptable to the U.S. Government or CCC; and/or

(2) fails to furnish reports on its financial condition as required by the U.S. Government or CCC.

(e) *Right to funds under the performance security.* If CCC enters into an Agreement or an Interim Bid Agreement with an exporter under the EEP, CCC will have the right to funds from the exporter's established performance security to recover:

(1) The amount of any bonus paid to the exporter if the exporter fails to perform in accordance with the Agreement; and/or

(2) Any funds owed by the exporter to CCC, including those for liquidated damages, discounts for late performance, overpayments made by CCC, storage charges, or other damages or charges as determined by CCC.

(f) *Reduction or cancellation of performance security.* (1) CCC will agree, upon request by the exporter, to a

cancellation of the performance security when CCC determines, on the basis of evidence provided by the exporter, that the exporter has:

(i) Fully performed under the Agreement or Interim Bid Agreement, or

(ii) Fully compensated CCC for all costs incurred or damages suffered by CCC as a result of the exporter's nonperformance of an agreement with CCC.

(2) To support a request for the cancellation of performance security furnished in connection with an Agreement, the exporter must provide to CCC evidence of export of the eligible commodity in compliance with the Agreement and entry of the eligible commodity into the eligible country or countries. To show entry of the eligible commodity into the eligible country or countries, the exporter must furnish to CCC an original certification signed by a duly authorized customs or port official of the eligible country or countries or by the eligible buyer showing:

(i) The eligible commodity entered the eligible country;

(ii) The identification of the export carrier;

(iii) The quantity of the eligible commodity unloaded; and

(iv) The date and place of unloading of the eligible commodity in the eligible country.

(3) If multiple shipments against a sales contract are made, CCC may agree to a proportional reduction in the amount of the required performance security when the exporter has furnished evidence that the exporter has performed under the Agreement with respect to a particular shipment.

§ 1494.501 Submission of offers to CCC.

(a) *Consideration of offers.* CCC will consider offers on a daily basis from the date of issuance of the Invitation until such time as CCC announces that offers will no longer be accepted under the Invitation, the total quantity of the eligible commodity announced in the Invitation has been awarded, or the Invitation has expired as indicated by the expiration date shown in the Invitation; however, the Invitation may specify a date other than the issuance date as the date on which CCC will begin to consider offers from eligible exporters.

(b) *Offers based on sales contracts or conditional bids.* (1) Prior to submission of an offer to CCC, the eligible exporter must have either:

(i) Entered into a sales contract, as defined in § 1494.201(bb), with an eligible buyer for the sale and the export of the eligible commodity to the eligible buyer in the eligible country or countries; or

(ii) If specifically permitted in the applicable Invitation, submitted to the eligible buyer a bid for the sale of the eligible commodity which may be accepted or rejected by the eligible buyer after the exporter has entered into an Interim Bid Agreement with CCC.

(2) The Date of Sale of the sales contract with an eligible buyer must be after the issuance date of the applicable Invitation. If the offer is submitted to CCC on the basis of a bid to the eligible buyer, pursuant to paragraph (b)(1)(ii) of this section, the eligible exporter must have submitted the bid to the eligible buyer after the issuance date of the applicable Invitation.

(3) The sales contract with an eligible buyer or the bid to an eligible buyer may be conditioned upon the eligible exporter's entering into an Agreement with CCC under the EEP for the payment of a bonus.

(4) An offer for a bonus which is based upon a bid to an eligible buyer, pursuant to paragraph (b)(1)(ii) of this section, may be conditioned upon the acceptance of the bid by the eligible buyer after such buyer receives confirmation that the exporter has entered into an Interim Bid Agreement with CCC.

(5) CCC shall not be responsible to any person for any loss caused by the failure of the exporter to obtain a CCC Bonus.

(6) The exporter must promptly notify CCC in writing of any amendment to the sales contract with, or bid to, an eligible buyer.

(c) *Submission of offers.* The exporter shall submit offers, or modifications or withdrawals thereof, to the address, telephone, telex or facsimile numbers specified in the Notice to Exporters—Contacts for EEP. Telephonic offers must be confirmed in writing immediately thereafter by telex or facsimile. If a telephonic offer is not confirmed in writing by 9 a.m. on the next business day, the offer will not be considered. The date and time affixed to submissions will be as determined by CCC.

(d) *Content of offers.* Unless otherwise specified in the applicable Invitation, offers to CCC for a CCC Bonus under the EEP shall include:

(1) The use of the numerical designation assigned to the applicable Invitation, which shall signify that the offer is submitted subject to all the terms and conditions of this subpart and the Invitation for which the offer is being submitted to and considered by CCC.

(2) The date and time for which the offer is submitted for consideration. The time shall be stated as "after 3:00 p.m." For example, the information required by subparagraphs (d)(1) and (d)(2) of this section could be stated as follows: "Invitation No. GSM–500–1, Revision No. X, For Consideration After 3:00 p.m. on January 31, 1990."

(3) The full business name and address of the exporter making the offer.

(4) The name and title of the individual signing the offer.

(5) The telephone number and telex or facsimile number of the exporter submitting the offer.

(6) The CCC Bonus in dollar and cents requested by the exporter for each unit of measure of the eligible commodity to be exported to the eligible country. The offer shall contain only one CCC Bonus. In offers submitted in response to an Invitation in which CCC has announced the bonus amount, the exporter shall state the dollar and cents amount of the Announced CCC Bonus.

(7) The quantity of the eligible commodity, exclusive of tolerances, expressed in the unit of measure, to be exported under the sales contract or bid for which the exporter wishes to receive a CCC Bonus.

(8) The U.S. coast of export, if required by the applicable Invitation. The Invitation may require the exporter to indicate: the coasts of export if more than one coast of export is allowed for an offer; the Canadian port if the eligible commodity is to be transshipped through a Canadian port on the St. Lawrence River; or the U.S. city and state from which the shipments will cross the border into the eligible country if the eligible commodity is to be shipped by rail or truck.

(9) The quality of the eligible commodity to be exported to the eligible buyer, if required by the applicable invitation, including any additional quality specifications not found in the invitation but included in the sales contract with, or bid to, the eligible buyer. The invitation may limit an offer to one or more quality designations for the eligible commodity.

(10) The names of the eligible buyer and the eligible country, unless otherwise provided for in the applicable invitation, an offer shall contain only one eligible buyer and one eligible country.

(11) The Date of Sale of the sales contract with the eligible buyer or the date the bid was to be opened by the eligible buyer.

(12) The sales contract number assigned by the exporter, if the offer is based upon a sales contract.

(13) The quantity of the eligible commodity specified in the sales contract or bid, expressed in the unit of measure specified in the applicable Invitation.

(14) The sales contract or bid loading tolerance, if any, expressed in a percentage.

(15) The sales contract or bid unit price and delivery terms (e.g., f.o.b., c&f, etc.).

(16) The delivery period specified in the sales contract or bid expressed on the basis of either shipment from the United States or arrival in the eligible country. If a multiple month delivery schedule is agreed upon in the sales contract or submitted in the bid to the eligible buyer, the offer must specify the quantity of eligible commodity to be delivered each month.

(17) Any options which may be exercised by the eligible buyer under the sales contract or bid.

(18) The name and address of the sales agent, if any, for the sales contract or bid.

(19) The designation of bonus payment under "Option A" or "Option B" as described in § 1494.401 (c).

(20) The words "ALL ITEM 20 CERTIFICATIONS ARE BEING MADE IN THIS OFFER" which, when included in the offer by the exporter, will indicate that the exporter is certifying that:

(i) The information furnished to CCC with respect to the sales contract or bid is correct;

(ii) The Date of Sale with, or the date the bid was offered to, an eligible buyer was after the issuance date of the applicable Invitation;

(iii) The sale, or bid, does not replace any sale, or bid, made to the eligible buyer by the exporter, or any affiliate or subsidiary of the exporter, prior to the issuance date of the applicable Invitation;

(iv) There are no other arrangements or understandings between the exporter and any other person that would alter the information provided under paragraph (d) of this section, including but not limited to arrangements or understandings concerning rebates, commissions or other considerations affecting the sales contract or bid price;

(v) If the eligible commodity is vegetable oil or a vegetable oil product, that none of the eligible commodity has been or will be used as the basis of a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(vi) The exporter is providing the assurances required by §§ 15.4 and 15b.5 of this title; and

(vii) The exporter is providing any other certification required by the applicable Invitation.

(e) *Conditional offers.* Any qualification or condition in, or added to, the offer and not expressly authorized by this subpart may make it ineligible for consideration by CCC.

(f) *CCC's right to additional information.* The exporter shall furnish a copy of the sales contract or bid to CCC upon request. CCC may require the individual who signed the offer to provide documentary evidence of such individual's authority to execute an agreement with CCC on behalf of the exporter making the offer.

(g) *Certification requirements.* By submitting an offer in response to an Invitation for a bonus on a competitive basis under the EEP, the exporter is certifying that:

(1) The CCC Bonus requested in the offer has been arrived at independently, without any consultation, communication, or agreement with any other exporter or competitor relating to:

(i) The amount of the CCC Bonus;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the CCC Bonus requested;

(2) The CCC Bonus requested in the offer has not been and will not knowingly be disclosed by the exporter, directly or indirectly, to any other exporter or competitor before the time the offer is to be considered by CCC, unless otherwise required by law;

(3) No attempt has been made, or will be made, by the exporter to induce any other concern to submit, or not to submit, an offer for the purpose of restricting competition; and

(4) The signatory of the offer:

(i) Is the person in the exporter's organization responsible for determining the CCC Bonus being requested and has not participated and will not participate in any action contrary to paragraphs (g)(1), (g)(2) and (g)(3) of this section; or

(ii) Has been authorized in writing to act as agent for the exporter for the purposes of paragraphs (c), (d) and (g) of this section and certifies that the exporter named in the offer and the signatory have not participated and will not participate in any action contrary to subparagraphs (g)(1), (g)(2) and (g)(3) of this section.

Any exporter which would be unable to make the certifications specified in this subparagraph (g) must provide a written statement to that effect to CCC, along with any additional information for the consideration of CCC. CCC shall reject an offer if the exporter states that it would be unable to provide the required certifications unless CCC determines that acceptance of the offer would be in the best interests of the EEP.

(h) *Considerations in making an offer.* In making an offer, the exporter should take into consideration that the exchange of CCC Certificates which may be issued as a bonus shall be governed by the terms and conditions stated on the certificates and any applicable regulations or procedures issued by or on behalf of CCC.

§ 1494.601 Acceptance of offers by CCC.

(a) *Establishment of acceptable sales prices and CCC bonuses.* CCC will establish prices for the sale of the eligible commodity and amounts for the CCC Bonus which would be acceptable to CCC in terms of furthering the objectives of the EEP.

(1) In establishing acceptable prices for the sale of the eligible commodity, CCC will consider available relevant market data.

(2) In determining acceptable amounts for the CCC Bonus in the case of Invitations where exporters are invited to submit offers on a competitive basis, CCC may take into consideration factors such as, but not limited to, the following: the prevailing domestic market price of the eligible commodity; the price of the same commodity exported by other exporting countries to the eligible country; ocean freight rates for the export of the eligible commodity from the United States and other exporting countries to the eligible country; the particular preferences or purchasing practices of buyers in the eligible country which would customarily affect the acceptability of the eligible commodity relative to that of competing exports of the same commodity to the eligible country from other exporting countries; and the cost effectiveness of the payment of a CCC Bonus amount in view of CCC's obligation to maximize the use of resources available for the operation of the EEP.

(3) The acceptable sales prices and bonus amounts will be modified by CCC as necessary to take advantage of updated information that becomes available to CCC.

(b) *Acceptance of offers for a competitive CCC bonus.* An offer from an exporter for a competitive CCC Bonus that meets all of the requirements of this subpart will first be reviewed to determine if the offer contains an acceptable sales price. If the sales price contained in the offer is found to be acceptable, then the CCC Bonus contained in the offer will be reviewed to determine if the CCC Bonus requested is found to be acceptable. Offers with acceptable sales prices and acceptable

CCC Bonuses will be accepted under each Invitation beginning with the offer having the lowest CCC Bonus amount, subject to the limitations in paragraph (g) of this section.

(c) *Interim bid agreements.* If CCC accepts an offer which was based on a bid to an eligible buyer for a sales contract, pursuant to § 1494.501(b)(1)(ii), then CCC and the exporter have entered into an Interim Bid Agreement.

(1) The Interim Bid Agreement resulting from CCC's acceptance of an offer based upon a bid to an eligible buyer, will create the following obligations for the exporter, unless otherwise specified in the Invitation:

(i) The exporter must notify CCC in writing of the acceptance or rejection of the bid by the eligible buyer at the address indicated in the Notice to Exporters—Contacts for EEP no later than 3 p.m. on the fourth business day after the date of the Interim Bid Agreement. If the bid was accepted by the eligible buyer, the exporter must provide the date of the eligible buyer's acceptance, the sales contract number assigned to the sale, and a certification that the sales contract terms are the same terms and conditions contained in the offer submitted to CCC or in any amendments submitted in accordance with § 1494.501(b)(6). The date and time affixed to the notification to indicate receipt by CCC will be as determined by a representative of CCC.

(ii) The exporter must not interfere with the bid review process of the eligible buyer. If an exporter's bid is rejected by the eligible buyer, the exporter must include the following certification in its notification to CCC: "Through no fault of the exporter, the exporter's bid to the eligible buyer was not accepted."

(2) If CCC determines that the exporter has interfered with the bid review process of the eligible buyer, then CCC may assess liquidated damages against the exporter, in accordance with § 1494.801(c), for its breach of the Interim Bid Agreement and recover such damages in accordance with § 1494.801(e).

(3) Upon notification by the exporter to CCC, in accordance with paragraph (c)(1)(i) of this section, of the eligible buyer's acceptance of the bid, and CCC's acknowledgment of such notification, the Interim Bid Agreement will become an Agreement as described in § 1494.201(a), conferring all of the rights and obligations of such Agreement upon CCC and the exporter. The Agreement will be confirmed in writing by CCC. The date of CCC's acknowledgment by telephone of the exporter's notification of acceptance will be the effective date of the exporter's Agreement with CCC. CCC will publicly announce the establishment of an Agreement between CCC and the exporter as provided in paragraph (f) of this section.

(d) *Acceptance of offers for an announced CCC bonus.* Offers from exporters for an Announced CCC Bonus that meet all of the requirements of this subpart and which contain an acceptable sales price will be accepted under each Invitation on a first-come, first-served basis according to the time assigned by CCC when received, subject to the limitations in paragraph (g) of this section. CCC reserves the right to reject all offers submitted for an Announced CCC Bonus on a particular day.

(e) *Notification of acceptance of offers.* CCC will notify an exporter by telephone of the acceptance or rejection of its offer as soon as possible after review of the exporter's offer by CCC but not later than 10 a.m. of the next business day after the date the offer was submitted for consideration. If the offer was rejected, CCC will notify the exporter of the basis for the rejection. Acceptance of offers will be confirmed in writing. The date of the telephonic notification of acceptance by CCC of the exporter's offer will be the effective date of the exporter's Agreement with CCC.

(f) *Announcement of acceptance of offers.* CCC will generally announce the acceptance of offers by public press release as soon as possible after the notification to the exporter. The announcement will generally include the eligible commodity, the eligible country, the exporter, the delivery period and the CCC Bonus.

(g) *Limitation on acceptance of offers.* The total quantity of the eligible commodity, exclusive of tolerances, to be exported under the offers that are accepted by CCC will not be greater than the quantity of the eligible commodity stated in the applicable Invitation. CCC may refuse to accept further offers under an applicable Invitation if the quantity of the eligible commodity, exclusive of tolerances, already accepted totals the quantity, exclusive of tolerances, that is being tendered for by the eligible buyer, even though such quantity may be less than the total quantity available under that Invitation.

(h) *Rejection of offers.* Any offer or part of an offer submitted for consideration on a particular day that is not accepted by CCC by 10 a.m. of the next business day after the date the offer was submitted for consideration will be deemed to have been rejected.

(i) *CCC's right of rejection.* Notwithstanding any other provisions of this subpart, CCC reserves the right to reject any or all offers, or even all offers submitted for consideration on a particular day, including those offers that have acceptable sales prices and CCC Bonus amounts.

§ 1494.701 Payment of bonus.

(a) *Form of bonus.* The bonus may be paid to the exporter in the form of CCC Certificates or in any other form which CCC determines to be appropriate.

(b) *Quantity on which bonus is earned.* The quantity of eligible commodity exported which is eligible for a CCC Bonus and which satisfies the exporter's export requirements under the Agreement is the net weight or count shown on the Official Inspection and/or Weight Certificate, less any dockage, if applicable, provided proof of entry into the eligible country is presented by the exporter in accordance with § 1494.401 (f)(2).

(c) *Request for bonus payment under "Option A."* If the exporter has furnished performance security under "Option A" of the applicable Invitation and wishes the bonus to be paid after export of the eligible commodity, the exporter must, within 30 calendar days after the date of export of the eligible commodity, furnish to the Director, at the address referenced in the Notice to Exporters—Contacts for EEP, a written request for payment of the bonus. All documents submitted to support such a request must be acceptable to the Director.

(1) To support each bonus payment request, the exporter must furnish to the Director the following:

(i) The original or an original copy of the on-board bill of lading issued for the export carrier and signed by an agent of the export carrier. The bill of lading must show:

(A) The identification of the export carrier;

(B) The date and place of issuance;

(C) The quantity of the eligible commodity;

(D) An on-board date; and

(E) That the eligible commodity is destined for the eligible country.

(ii) The original or an original copy of the Official Weight Certificate, as required in the applicable Invitation. The certificate must show:

(A) The identification of the export carrier, if known at the time of issuance;

(B) The date and place of issuance; and

(C) The weight or count of the eligible commodity.

(iii) The original or an original copy of the Official Inspection Certificate, as

required in the applicable Invitation. The certificate must show:

(A) The identification of the export carrier, if known at the time of issuance;

(B) The date and place of issuance;

(C) The quantity of the eligible commodity to which the certificate relates; and

(D) The quality description of the eligible commodity.

(2) If the export of the eligible commodity was by lash barge, the exporter must furnish, in addition to the documents required by paragraph (c)(1) of this section, a statement from the vessel's agent showing the lash barge was loaded to the lash vessel named in the on-board lash bill of lading and that the eligible commodity is destined for the eligible country.

(3) If the export of the eligible commodity shipped from the United States was from a Canadian transshipment port on the St. Lawrence River, the exporter must furnish to the Director the following in addition to the documents required by paragraph (c)(1) of this section:

(i) Documentary evidence covering the movement of the eligible commodity from the United States to the export carrier described in the on-board bill of lading issued at the Canadian transshipment port and showing the information provided in paragraphs (c)(1) and, if applicable, (c)(2) of this section; and

(ii) A certification that the eligible commodity exported is the identical eligible commodity that was shipped from the United States.

(4) If the export of the eligible commodity was by railcar or truck, the exporter must furnish to the Director the following in addition to the documents required by paragraphs (c)(1)(ii) and (c)(1)(iii) of this section:

(i) The authenticated lading certificate or similar document issued by the government of the eligible country; and

(ii) The original or an original copy of the bill of lading issued at the point of loading the railcar or truck. The bill of lading must show:

(A) The identification of the export carrier;

(B) The date and place of issuance;

(C) The quantity of the eligible commodity;

(D) The date the railcar or truck was loaded; and

(E) That the eligible commodity is destined for the eligible country.

(d) *Request for bonus payment under "Option B."* If the exporter has furnished performance security under "Option B" of the applicable Invitation and wishes the bonus to be paid after export and entry of the eligible commodity into the eligible country or countries, the exporter must, within 30 calendar days after the date of the entry of the eligible commodity into the eligible country or countries, furnish to the Director at the address referenced in the Notice to Exporters—Contacts for EEP, a written request for payment of the bonus. To support each request, the exporter must furnish to the Director, in a form acceptable to the Director, the documents specified in paragraph (c) of this section, as applicable, along with the certification of entry specified in § 1494.401(f)(2).

(e) *Time frame for payment of a bonus.* CCC will endeavor to pay the bonus to the exporter within 10 business days after CCC determines that the documents supporting the bonus request are acceptable.

(f) *Certificate amount.* If CCC decides to pay the bonus in the form of CCC Certificate(s), the dollar value of the certificate(s) issued to the exporter will be determined by multiplying the CCC Bonus specified in the Agreement by the net quantity of the eligible commodity exported under the Agreement as shown on the Official Inspection and/or Weight Certificate, less any dockage, if applicable.

(g) *Late requests for bonus payment.* If CCC decides to pay the bonus in the form of CCC Certificate(s) and the exporter fails to request issuance of the certificate(s) within 30 calendar days after the date of export of the eligible commodity, or within 30 days after the entry of the eligible commodity into the eligible country, whichever is applicable depending upon the performance security option chosen by the exporter, CCC may, upon issuing the certificate(s), discount the certificate(s) in an amount determined by CCC.

§ 1494.801 Enforcement and termination of agreements with CCC.

(a) *Performance in accordance with an agreement with CCC.* (1) An exporter which enters into an Agreement with CCC must ensure that the eligible commodity is exported from the United States and enters the eligible country in accordance with the terms and conditions of the Agreement. In order to retain a bonus or request payment of a bonus, depending upon the option chosen for furnishing performance security, and to request cancellation of the performance security, the exporter must provide evidence to CCC as specified in § 1494.401(f)(2) that the eligible commodity entered into the eligible country.

(2) The failure of an exporter to perform in full and to fulfill all of its obligations under the Agreement shall constitute a breach of the Agreement. An exporter which breaches the Agreement will forfeit its right to apply for or retain a bonus authorized or paid under the Agreement and may also be liable to CCC for damages. Examples of an exporter's failure to perform under the Agreement include, but are not limited to, the following:

(i) The exporter does not export all of the required amount of the eligible commodity within the delivery period stated in the Agreement;

(ii) The exporter exports an amount of the eligible commodity that is inconsistent with the quality specifications in the Agreement;

(iii) Any portion of the eligible commodity enters a country other than the eligible country or countries named in the Agreement;

(iv) The eligible commodity reenters the United States, whether or not the reentry was caused by the exporter;

(v) The eligible commodity is transshipped through any country other than Canada, unless specifically permitted in the applicable Invitation; or

(vi) The eligible commodity is transshipped through Canada without having its identity preserved.

(3) If the eligible commodity is to be delivered to the eligible buyer in multiple shipments, CCC may decide to consider the shipments separately in determining whether the exporter has failed to perform under the Agreement.

(b) *Return of bonus.* An exporter that fails to fulfill all of its obligations under the Agreement shall be in default. If the exporter has already been paid the Bonus Value, CCC shall have the right to recover the Bonus Value paid for the quantity of the eligible commodity with respect to which the exporter failed to perform under the Agreement.

(1) If CCC has paid this bonus in the form of a CCC Certificate, the exporter shall pay to CCC the higher of:

(i) The dollar value of the CCC Certificate;

(ii) The dollar amount received for the CCC Certificate if the CCC Certificate was transferred to another party; or

(iii) The dollar amount of the proceeds from the sale of the CCC-owned commodities exchanged for the CCC Certificate if the commodities were sold to another party.

(2) If CCC has paid this bonus in some other form, the exporter shall pay to CCC the dollar and cents amount or equivalent of the Bonus Value paid to the exporter.

(c) *Liability for liquidated damages.* The exporter's failure to perform under the Agreement or Interim Bid Agreement will cause serious and substantial losses

to CCC, such as damages to the EEP and CCC's domestic price support program, storage charges, and administrative and other costs incurred. If the exporter breaches the Agreement or the Interim Bid Agreement, the exporter will pay to CCC as liquidated damages an amount obtained by applying the method or rate for determining damages specified in the applicable Invitation to the quantity of the eligible commodity with respect to which the exporter failed to perform under such agreement. In submitting an offer in response to an Invitation issued under this subpart, the exporter agrees that such liquidated damages are reasonable estimates of the probable actual damages which may be incurred by CCC.

(d) *Relief from liability for liquidated damages.* (1) CCC may relieve an exporter of liability for liquidated damages if CCC determines that such action would be appropriate and not inconsistent with the purposes of the EEP. In responding to a request from an exporter for relief from liability, CCC may consider the following:

(i) That the exporter's failure to perform under the Agreement or Interim Bid Agreement was due to causes solely without the exporter's fault or negligence;

(ii) That the exporter had taken the necessary action to enable it to export the required quantity of the eligible commodity and have the eligible commodity enter the eligible country or countries; and

(iii) Any other facts or circumstances relevant to the matter.

(2) CCC may not relieve an exporter of liability for liquidated damages if the eligible commodity reenters the United States, unless the exporter establishes to the satisfaction of CCC that any reentered eligible commodity was lost, damaged, or destroyed, or its physical condition is such that the reentry will not impair CCC's price support programs, and that no person received, or will receive, any CCC Bonus with respect to any reexport of the reentered eligible commodity which may occur.

(e) *CCC's right to recover amounts due CCC by exporters.* If the exporter breaches its obligations under the Agreement or Interim Bid Agreement and becomes liable to CCC for repayment of the Bonus Value or for liquidated or other damages, CCC reserves the right to recover such amounts due CCC by making a claim against the performance security furnished to CCC, as described under § 1494.401, or by reducing the Bonus Value due the exporter from CCC under other EEP Agreements.

(f) *Shipping tolerances.* If the exporter exports, in accordance with the requirements of the Agreement, a quantity of the eligible commodity which is less than the quantity specified in § 1494.501 (d)(7) but not less than such quantity minus 5 percent, the exporter shall not be required to pay liquidated damages for failure to perform under the Agreement for the unexported quantity. If an exporter exports, in accordance with the requirements of the Agreement, a quantity of the eligible commodity which is greater than the quantity specified in § 1494.501 (d)(7), the exporter may request payment of a bonus based upon the actual quantity exported, but not greater than the quantity specified in § 1494.501 (d)(7), plus 5 percent.

(g) *Termination of agreements.* (1) CCC may, by written notice to the exporter, terminate an Agreement or Interim Bid Agreement, in whole or in part, for failure of the exporter to:

(i) Carry out any provisions of the Agreement;

(ii) Maintain a business office in the U.S.; or

(iii) Maintain an agent in the U.S. for service of process.

If an agreement is terminated by CCC pursuant to this subparagraph, CCC will not compensate the exporter for any costs incurred by the exporter. The exporter shall be liable to CCC for any funds owed to CCC for liquidated or other damages suffered by CCC.

(2) CCC may, by written notice, terminate an Agreement or Interim Bid Agreement, in whole or in part, if CCC determines it to be in the best interest of CCC. If an agreement is so terminated, the exporter shall be compensated for reasonable losses, as determined by CCC, resulting from such termination. These losses shall not include lost profits and shall not exceed the Bonus Value under the Agreement.

(h) *Amendment of agreements.* (1) CCC shall have the authority to amend an Agreement or Interim Bid Agreement, either before or after such agreement has been breached by the exporter, if the exporter requests that the agreement be amended and CCC determines that such amendment would serve the best interests of the EEP. Prior to amending an agreement with the exporter, CCC may reexamine the CCC Bonus amount to determine whether the amendment to the agreement should include a reduction in the CCC Bonus. All requests for amendments submitted by exporters, and all amendments made by CCC to an agreement, under this subpart shall be in writing.

(2) If the exporter does not deliver the quantity of the eligible commodity covered by the Agreement within the delivery period specified in its offer to CCC, the exporter shall promptly inform CCC and may request that CCC consider amending the delivery period in the Agreement to include the dates the exporter expects the actual delivery(ies) to be made. The exporter may be required to submit documentary evidence to CCC to demonstrate that it is making progress toward fulfilling the Agreement before CCC will consider amending the Agreement.

(i) *Amendments to sales contracts.* In the event of an amendment to the sales contract between the exporter and the eligible buyer or a change in the delivery schedule, CCC will determine whether the amendment or change so materially alters the obligations of the parties under the sales contract that the amendment or change would constitute a breach of the Agreement. If CCC determines that the amendment or change would constitute a breach of the Agreement, CCC may terminate the Agreement. In the alternative, if CCC determines that a continuation of the Agreement would serve the best interests of the EEP, and if the exporter requests an amendment, CCC may amend the Agreement to take into account the amendment to the sales contract or change in delivery schedule. An amendment to an Agreement will be in accordance with paragraph (h)(1) of this section. CCC will promptly advise the exporter of its determination in writing by letter, facsimile, or telex.

§ 1494.901 Dispute resolution and appeals.

(a) *Dispute resolution.* (1) The Director of the CCC Operations Division and the exporter shall attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the EEP, this subpart, the applicable Invitation, or the Agreement or Interim Bid Agreement.

(2) The exporter may seek reconsideration of a determination by the Director of the CCC Operations Division relating to the Agreement or the Interim Bid Agreement by submitting a letter requesting reconsideration to the Director of the CCC Operations Division within 30 days of the date of the determination. For the purposes of this section, the date of a determination shall be the date of the letter or other means of notification to the exporter of the determination. The exporter may include with the letter requesting reconsideration any additional information which it wishes the Director

of the CCC Operations Division to consider in reviewing its request. The Director of the CCC Operations Division shall respond to the request for reconsideration within 30 days of the date on which the request or the final documentary evidence submitted by the exporter is received by him, unless the GSM extends the time permitted for response. If the exporter fails to request reconsideration of a determination by the Director of the CCC Operations Division that the exporter owes any funds to CCC under the Agreement or Interim Bid Agreement, then such funds will be immediately due and payable to CCC at the expiration of the 30-day period for submitting such a request.

(3) If the exporter requested reconsideration of a determination by the Director of the CCC Operations Division, pursuant to paragraph (a)(2) of this section. and the Director of the CCC Operations Division upheld his original determination, then the exporter may appeal the determination to the GSM in accordance with the procedures set forth in paragraph (b) of this section. If the exporter fails to appeal the determination to the GSM, then any funds owed to CCC will be immediately due and payable to CCC at the expiration of the 30-day period for submitting an appeal to the GSM.

(b) *Appeal procedures.* (1) An exporter which has exhausted the procedures set forth in paragraph (a) of this section may appeal a determination of the Director of the CCC Operations Division relating to the Agreement or the Interim Bid Agreement to the GSM. An appeal to the GSM must be in writing and filed with the office of the GSM no later than 30 days following the date of the final determination by the Director of the CCC Operations Division. In this appeal to the GSM, the exporter shall be entitled to an administrative hearing before the GSM, if the exporter indicates in its appeal letter that it desires such a hearing.

(2) If the exporter does not desire an administrative hearing, the exporter may submit any additional written information or documentation which it desires the GSM to consider in acting upon its appeal. This information or documentation may be submitted to the GSM up until the time that he makes his decision. The GSM shall endeavor to respond to an appeal not involving a hearing within 30 days of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the exporter to the GSM.

(3) If the exporter has indicated that it desires an administrative hearing, the GSM shall set a date and time for the hearing which is mutually convenient for the GSM and the exporter. This date shall ordinarily be within 30 days of the date on which the GSM receives the request for a hearing. The hearing shall be an informal procedure. The exporter and/or its counsel may present any administrative or documentary evidence to the GSM which it desires to have the GSM consider in making his determination. A transcript of the hearing will not ordinarily be prepared unless the exporter bears the costs involved in preparing the transcript, although the GSM may arrange to have a transcript prepared at the expense of the Government when he determines it to be appropriate. The exporter may provide additional written information to the GSM up until the time that the GSM makes his determination. The GSM will base his determination upon the information contained in the administrative record and will endeavor to make his decision within 30 days of the date of the hearing, unless a transcript is to be prepared.

(4) The decision of the GSM shall be the final determination of CCC and the exporter shall be entitled to no further administrative appellate rights.

(5) If the GSM upholds a determination of the Director of the CCC Operations Division that the exporter owes any funds to CCC under the Agreement or Interim Bid Agreement, then such funds will be due immediately and payable to CCC.

(c) *Failure to comply with determination.* If the exporter has failed to pay funds to CCC which have been determined to be owed to CCC under the Agreement or Interim Bid Agreement, for any reason, and the exporter has exhausted its rights under this section or has failed to exercise such rights, then CCC shall have the right to withdraw funds from the performance security established by the exporter or to withhold or reduce the Bonus Value due to the exporter under the Agreement or other EEP Agreements between the exporter and CCC.

(d) *Exporter's obligation to perform.* The exporter shall continue to perform under the Agreement or Interim Bid Agreement pending the conclusion of all procedures under this section.

§ 1494.1001 Miscellaneous provisions.

(a) *Assignments.* The exporter may not assign the Agreement or Interim Bid Agreement or any rights thereunder, including the right to receive a bonus under the Agreement.

(b) *Audit of records and access to premises.* The exporter shall maintain accurate records showing sales and deliveries of the eligible commodity exported or to be exported in connection with the Agreement. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, shall have access to the premises of the parties involved during regular business hours to inspect, examine, audit and make copies of such books, records and accounts. This access shall be made available until the expiration of three years after issuance of the certificate to the exporter under the Agreement. Authorized representatives shall have access to books, records and accounts including, but not limited to, financial records and accounts pertaining to sales, inventory, inventory processing, administrative costs and incidental costs, both normal and unforeseen of the parties involving transactions relating to the Agreement which may bear on CCC's determination of nonperformance of an Agreement and/or compliance with the terms and conditions of this subpart and the applicable Invitation. The parties may be required to make available records that pertain to transactions conducted outside the program, if, in the opinion of Departmental officials, such records would bear on the determination by CCC.

(c) *Officials not to benefit.* No member of or Delegate to Congress, or Resident Commissioner, shall participate or share in any of the benefits of any agreement entered into pursuant to the EEP. This provision shall not be construed to extend to an agreement made by CCC with a corporation with respect to which an individual covered by this paragraph is simply a shareholder.

(d) *Paperwork Reduction Act.* The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0051–0028.

(e) *Waiver of irregularities.* CCC reserves the right to waive any informality or minor irregularity with respect to any aspect of the operation of the EEP or any agreement executed thereunder in order to best accomplish the purpose of the program.

(f) *Other provisions.* The following are hereby incorporated into this subpart:

(1) CCC's debt settlement regulations, currently codified at 7 CFR 1403; and

(2) CCC's suspension and debarment regulations, currently codified at 7 CFR part 1407.

Signed this 29th day of January, 1990, at Washington, DC.

F. Paul Dickerson,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 90-9609 Filed 4-24-90; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF ENERGY

Office of Procurement and Financial Assistance

10 CFR Part 708

Criteria and Procedures for DOE Contractor Employee Protection Program

AGENCY: Department of Energy.

ACTION: Cancellation of scheduled public hearing.

SUMMARY: The Department of Energy gives notice of cancellation of one of two public hearings on a Notice of Proposed Rulemaking, issued on March 13, 1990, at 55 FR 9326. The proposed rule would establish the criteria and procedures for resolving complaints of reprisal resulting from certain protected disclosures of information.

DATES: Notice of Public Hearings was issued on April 5, 1990 at 55 FR 12668, announcing a public hearing in Seattle, Washington (April 26, 1990) and in Washington, DC (May 4, 1990). The Seattle, Washington hearing is hereby cancelled; the Washington, DC hearing will be held as scheduled, beginning at 9:30 a.m. and ended at 4:30 p.m., unless concluded earlier, at the U.S. Department of Energy, Forrestal Building Auditorium, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Juanita E. Smith or Armin Behr at (202) 586-9023 (FTS 896-9023).

SUPPLEMENTARY INFORMATION: The Notice issued on April 5, 1990 required that requests to speak at a hearing be received by the Director, Office of Industrial Relations, Department of Energy, Washington, DC 20585, by 4:30 p.m. on April 9, 1990. No requests had been received by that time, and accordingly the hearing has been cancelled.

Any person who had planned to speak at the hearing in Seattle, WA may request the opportunity to speak instead at the hearing in Washington, DC. Requests should be made in writing or by telephone to the Director of Industrial Relations.

Silas B. Fisher,

Director, Office of Procurement and Assistance Management.

[FR Doc. 90-9698 Filed 4-23-90; 12:25 pm]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-46-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which currently requires ultrasonic inspections of upper body skin bonded tear straps for disbonding, and repair, if necessary. This action would also require repetitive inspections of repairs using blind fasteners, and replacement of blind fasteners with solid fasteners within a specified threshold. This proposal is prompted by the FAA's determination that repairs made using blind fasteners have a limited fatigue life. This condition, if not corrected, could result in fuselage skin cracks and subsequent cabin decompression.

DATES: Comments must be received no later than June 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-46-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-46-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On August 11, 1981, the FAA issued AD 81-17-07, Amendment 39-4191 (46 FR 42251; August 20, 1981), to require ultrasonic inspection of upper body skin tear straps for disbonding, and repair, if necessary. That action was prompted by reports of tear strap delamination. This condition, if not corrected, could result in the rapid growth of a fuselage crack and consequent cabin depressurization.

Since issuance of that AD, the FAA has re-evaluated the fatigue life of repairs made using blind fasteners, and has determined that the blind fasteners must be repetitively inspected and must be replaced prior to the accumulation of 10,000 landings. The reduced fatigue life of repairs using blind fasteners could lead to fuselage skin cracks and subsequent cabin depressurization.

The FAA has reviewed and approved Boeing Service Bulletin 727-53-0082, Revision 5, dated November 9, 1989, which describes procedures for ultrasonic inspection of upper body skin tear straps for disbonding, and repair, if necessary. Additionally, procedures for

the replacement of blind fasteners with solid rivets is described.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 81-17-07 with a new airworthiness directive that would require ultrasonic inspection of upper body skin tear straps for disbonding, and repair, if necessary, in accordance with the service bulletin previously described; and would limit the length of time a blind fastener may be installed before replacement with a solid fastener is required.

There are approximately 557 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 450 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $288,000.

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-4194 (46 FR 42252; August 20, 1981), AD 81-17-07, with the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-53-0082, Revision 5, dated November 9, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect delamination of the upper body skin bonded tear straps from Fuselage Station 277 to Station 1130, accomplish the following:

A. Within 14 months from August 20, 1981 (the effective date of Amendment 39-4194), inspect the upper body skin bonded tear straps for delamination from the upper body skin in accordance with the ultrasonic inspection procedures described in Boeing Service Bulletin 727-53-0082, Revision 3, dated June 19, 1981; Revision 4, dated April 16, 1982; or Revision 5, dated November 9, 1989.

B. If the ultrasonic inspection reveals areas of delamination, prior to further flight inspect the areas for corrosion in accordance with Boeing Service Bulletin 727-53-0082, Revision 5.

C. Perform either of the following repetitive inspections:

1. Within 24 months from the initial inspection, reinspect as required by paragraph A., above, and in accordance with the following schedule:

a. Repeat inspections for Group I airplanes starting with Zone I, alternating between Zones I, II, and III at intervals not to exceed 24 months, in accordance with Boeing Service Bulletin 727-53-0082, Revision 3, 4, or 5.

b. Repeat inspections for Group II airplanes alternating between Zones I and II at intervals not to exceed 24 months, in accordance with Boeing Service Bulletin 727-53-0082, Revision 3, 4, or 5.

c. Any strap found delaminated, while inspecting a zone, must be inspected along its entire length (e.g., stringer 14R to stringer 14L) prior to further flight.

2. Within 30 months from the initial inspection, reinspect Zones I, II, and, if applicable, Zone III, as required by paragraph A., above. Repeat the inspection at intervals not to exceed 30 months.

D. If tear strap corrosion is detected or bond delaminations exceed the limits specified in Boeing Service Bulletin 727-53-0082, Revision 5, prior to further flight, repair in accordance with the service bulletin.

E. If tear strap corrosion is not detected and bond delaminations are within the limits specified in Boeing Service Bulletin 727-53-0082, Revision 5, perform either of the following:

1. Repair in accordance with the service bulletin prior to further flight.

2. Reinspect for delamination growth and corrosion at intervals not to exceed 24 months in accordance with the service bulletin.

F. Repairs or modifications made in accordance with Boeing 727 Structural Repair Manual Subject 53-30-4, Paragraph 2.C. Method II or IV or Paragraph 2.D. Method III, terminate the inspection requirements of paragraph C., above, for the repaired area.

G. Blind fasteners installed in accordance with the service bulletin are approved as an interim repair only. Inspect blind fastener repair for loose or missing fasteners prior to accumulating 3,000 landings since installation or within the next 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 landings. Replace blind fasteners with solid fasteners prior to accumulating 10,000 landings or within the next 3,000 landings after the effective date of this AD, whichever occurs later. In skin gauges .063 inches or greater, use solid fastener BACR15CED6. In skin gauges less than .063 inches, use solid fastener MS20470D6. Replacement with solid fasteners terminates the inspection requirements of this AD for the repaired area.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-9556 Filed 4-24-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 88N-0244]

Dental Devices; Proposed Rule To Establish the Effective Date of Requirement for Premarket Approval of Endosseous Implant; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for a proposed rule requiring the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the endosseous implant, a medical device.

DATES: FDA is reopening the comment period until May 25, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

David A. Segerson, center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1180.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 7, 1989 (54 FR 50592), FDA proposed to require the filing of a PMA or a notice of completion of a PDP for the endosseous implant, a class III medical device (21 CFR 872.3640). The proposal gave interested persons an opportunity to submit written comments by February 5, 1990.

In a letter to FDA, dated January 31, 1990, the Swedish Trade Council requested a 30-day extension of the comment period to allow time for the submission of data to FDA on clinical experiences with the device. In addition, due to inadvertence FDA's assessment of the economic impact of the proposed rule was not available in the Dockets Management Branch at the time of publication of the proposal as stated in the preamble.

Thus, FDA is reopening the comment period to allow interested persons to submit additional data and comments, and to provide an opportunity for comment on FDA's economic impact assessment.

Interested persons may, on or before May 25, 1990, submit to the Dockets Management Branch (address above), written comments regarding the proposal. Two copies are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 18, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-9544 Filed 4-24-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-7-90]

RIN 1545-A027

Withholding of Tax Concerning the Payment of Specified Income Items to Nonresident Aliens and Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice solicits written comments from the public about issues to be addressed by proposed regulations under sections 1441 and 1442 of the Internal Revenue Code of 1986. The Internal Revenue Service intends to simplify, clarify and update the regulations under sections 1441 and 1442, which govern the withholding of tax on the payment of specified income items to nonresident aliens and foreign corporations, respectively.

All material submitted will be available for public inspection and copying.

DATES: Written comments concerning either regulation should be submitted by June 30, 1990.

ADDRESSES: Send Comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Att'n: CC:CORP:T:R (INTL 7-90), Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Eric P. Turner, 202-377-9493 (not a toll-free number).

Steven R. Lainoff,

Associate Chief Counsel (International).

[FR Doc. 90-9488 Filed 4-24-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously proposed amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In accordance with 30 CFR 732.17(h), OSM is reopening the comment period to allow the public sufficient time to consider and comment on modifications submitted by Maryland on March 9, to an amendment which was initially submitted by the State on October 31, 1989. The amendment is in response to OSM issue letters of July 8, 1986, and September 8, 1989. Changes initiated by the State of Maryland are also consolidated in this proposed amendment. It is intended to make Maryland's program no less effective than the Federal program. The amendment contains modifications relating to stream channel diversions, siltation structures, sedimentation ponds, other treatment facilities and impoundments.

This notice sets forth the times and locations that the Maryland program and the revised proposed amendments to that program are available for puiblic inspection and the reopened comment period during which interested persons may submit additional written comments on the revised proposed amendment.

DATES: Written comments must be received on or before 4 p.m. on May 25, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the

proposed amendments by contacting OSM's Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136.

FOR FURTHER INFORMATION CONTACT:

Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1982, the Secretary of Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland program are contained in 30 CFR 920.16.

II. Discussion of Proposed Amendments

By letter of July 8, 1986, the Office of Surface Mining Reclamation and Enforcement transmitted to Maryland a list of deficiencies which the OSM had determined to be less effective than the Federal requirements for surface mining and reclamation operations (Administrative Record No. MD 351). Maryland submitted their response in three phases, all of which have already been published as proposed rules; 54 FR 16133, 54 FR 39003, and 55 FR 2112 respectively. By letter of November 28, 1989, the Office of Surface Mining Reclamation and Enforcement transmitted to Maryland notification of further changes in Federal Regulations that make it necessary for Maryland to modify its regulatory program to remain consistent with all Federal requirements (Administrative Record No. MD 432).

On February 13, 1990, the Maryland Department of Natural Resources, Energy Administration, Bureau of Mines (MDBOM) requested that OSM withdraw proposed revisions to the Code of Maryland Administrative Regulations (COMAR) 08.13.09.24 which had been formally submitted as part of Phase III (55 FR 2112). On March 9, 1990, MDBOM resubmitted changes to COMAR 08.13.09.01B and COMAR 08.13.09.24 as additional proposed amendments to Maryland's approved program (Administrative Record No. MD 443). The proposed changes are presented as follows:

In COMAR 08.13.09.01B(42) the term "impounding structure" is added and defined.

In COMAR 08.13.09.01B(63) the term "permanent impoundment" is added and defined.

In COMAR 08.13.09.01B(79) an impoundment term is added to the definition of "sedimentation pond."

In COMAR 08.13.09.01B(94) the term "temporary impoundment" is added and defined.

In COMAR 08.13.09.24A(6) is added. It allows the Bureau to require that all water accumulated in any pit be removed and the pit maintained dewatered whenever water quality or spoil stability is affected and prior to cessation of mining activities.

COMAR 08.13.09.24 B(1) through B(4) are deleted.

COMAR 08.13.09.24C(a)(f) is added. It requires that diversions be designed to minimize adverse impacts to the hydrologic balance, prevent material damage and to assure the public safety.

COMAR 08.13.09.24D(1)(a) is changed to make the allowance of diversions for perennial and intermittent streams require a finding that the diversion will not adversely affect the water quality and related environmental resources of the stream.

To COMAR 08.13.09.24D(2)(C) is added the requirement that design and construction of stream channel diversions be certified by a qualified professional engineer.

COMAR 08.13.09.24E(3) is deleted.

The title of COMAR 08.13.09.24F is changed to "siltation structures."

COMAR 08.13.09.24F(1) through COMAR 08.13.09.24F(5) are deleted.

At COMAR 08.13.09.24F(1), the definitions for "siltation structure," "disturbed areas" and "other treatment facilities" are added.

At COMAR 08.13.09.24F(2) General Requirements (a) through (g) for siltation structures are added:

(a) Requires use of best technology available in order to prevent additional contributions of suspended solids sediment to runoff or streamflow outside the permit area.

(b) Requires all surface drainage from the disturbed area to be passed through a siltation structure before leaving the permit area.

(c) Requires that siltation structures be built before beginning surface mine activities and that the structures be certified by a qualified registered professional engineer.

(d) Requires that any siltation structure which impounds water to be designed, constructed and maintained in accordance with §§ .24G and .24H.

(e) Requires that any siltation structure be maintained until removal is authorized by the Bureau.

(f) Requires that after a siltation structure is built, the area be regraded and revegetated in accordance with the approved reclamation plan.

(g) Clarifies that design, construction and maintenance of any siltation structure does not relieve the person from compliance with applicable effluent limitations.

At COMAR 08.13.09.24F(3) sedimentation pond requirements (a) through (c) are added.

COMAR 08.13.09.24F(3)(a) requires that sedimentation ponds be designed, constructed and maintained in accordance with section §§ .24G and .24H of this regulation.

COMAR 08.13.09.24F(3)(b) requires tha sedimentation ponds be located as near as possible to the disturbed area and out of perennial streams unless approved by the Bureau.

COMAR 08.13.09.24F(3)(c) requires that sediment ponds be designed, constructed and maintained to:

(i) Provide minimum sediment storage volume of 67 cubic yards per acre of drainage area to the pond.

(ii) Provide adequate detention time.

(iii) Contain or treat the 10-year, 24-hour precipitation event so there is no outflow through the emergency spillway unless a lesser design event is approved by the Bureau.

(iv) Provide a nonclogging dewatering device adequate to maintain the detention time.

(v) Minimize short circuiting.

(vi) Provide for the removal of sediment when sediment volume reaches 60% of the sediment storage volume.

At COMAR 08.13.09.24F(4) it is required that other treatment facilities be designed in accordance with the applicable requirements of this section and to contain or treat the 10 year, 24 hour precipitation event unless a lesser design event is approved by the Bureau.

COMAR 08.13.09.24F(5) is added which provides that exemptions to the requirements of this section may be granted if the disturbed drainage area within the total disturbed area is small and the operator demonstrates that siltation structures and alternate sediment control measures are not necessary to meet effluent limitations in this regulation.

COMAR 08.13.09.24H Permanent and Temporary Impoundment is renamed Impoundments.

COMAR 08.13.09.24 H(1) through H(9) are deleted.

At COMAR 08.13.09.24H(1) General Requirements are both temporary and permanent impoundments subsections (a) through (l) are added.

COMAR 08.13.09.24H(1), requires that (a) impoundments shall be designed and constructed so that the minimum elevation at the top of the settled embankment will be one foot above the water surface in the pond with the emergency spillway flowing at design depth; (b) impoundments be designed and constructed so the constructed dam height is at least five percent over design height to allow for settlement, unless it is demonstrated that the material and design used will ensure against all settlement; (c) impoundments be designed and constructed to ensure that all perimeter slopes are stable, are not steeper than 2:1, and are protected against erosion; (d) impoundments be designed and constructed so the crest of the emergency spillway is a minimum of one foot above the crest of the principal spillway; (e) impoundments comply with COMAR 08.05.03.05 if the embankment is more than fifteen feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway; (f) impoundments be revegetated immediately upon completion of construction; (g) have embankment slope protection for protection against surface erosion and damage due to sudden drawdown; (h) have vegetated embankment faces except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices; (i) impoundments be designed by or under the supervision of a registered professional engineer (RPE) using current, prudent, engineering practices and design criteria, and certified by a RPE; (j) impoundments be inspected during construction under the supervision of and certified after construction by a registered professional engineer; (k) impoundments be routinely maintained during mining operations; and, (l) impoundments be designed and constructed in accordance with U.S. Soil Conservation Service Practice Standard 378 "Ponds", if impoundments the size or other criteria of 30 CFR 77.216(a) are located where failure would not be expected to cause loss of life or serious property damages.

In COMAR 08.13.09.24H((2) Stability, it is required that impoundments: (a) Meeting the size or other criteria of 30 CFR 77.216(a) or located where failure could cause loss of life or serious property damage or a coal mine waste impounding structure shall have a minimum static safety factor of 1.5 for a normal with steady static seepage saturation conditions and a seismic safety factor of at least 1.2; (b) not meeting the size or other criteria of 30 CFR 77.216(a) except for coal mine waste impounding structures, and located where failure would not be expected to cause loss of life or serious property damage shall be constructed to achieve a minimum static safety factor of 1.3 for a normal pool with steady static seepage saturation conditions; (c) shall be considered to have met a minimum static safety factor of 1.3 for a normal pool with steady state seepage conditions if: (i) The impoundment is designed and constructed so the top width of the embankment is less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment; (ii) the impoundment is designed and constructed so the combined upstream and downstream sideslopes of the settled embankment are not less than 5:1 with neither slope steeper than 2:1; (iii) the embankment foundation is cleared of all organic material, the surface of the foundation area is sloped to no steeper than 1:1 and the entire area is scarified; (iv) a cutoff trench is designed and constructed prior to initiating the placement of fill material for the embankment; (v) the fill material used in construction of the embankment is free of sod, large roots and other vegetative matter frozen soil and coal processing waste; and, (vi) the construction of the embankment begins by placing and spreading fill material at the lowest point of foundation, the fill is brought up in horizontal layers not to exceed eight inches as required to facilitate compaction, and is compacted as specified in the approved design.

In COMAR 08.13.09.24H(d) Foundation, it is required that foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

In COMAR 08.13.09.24H(4) Spillways, it is required: (a) That an impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (b), which ensures design and construction to safely pass the applicable design precipitation event specified in paragraph (c) which follows; (b) that the Bureau may approve a single open-channel spillway that is: (i) Of nonerodible construction and designed to carry sustained flows; or (ii) rock or grass-lined and designed to carry short term infrequent flows at nonerosive velocities where sustained flows are not expected; (c) that the required design precipitation event for impoundments meeting the spillway requirements of subsections .24H(5) or .24H(6) following are: (i) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), a 100 year, 6 hour event or larger event specified by the Bureau; or, (ii) for impoundments not meeting the size or other criteria of 30 CFR 77.216(a), a 25 year 24 hour event, or larger event specified by the Bureau.

In COMAR 08.13.09.24H(5) it is required that impoundments meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall comply with 30 CFR 77.216 and this section. The plan required to be submitted to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216 shall also be submitted to the Bureau as part of the permit application.

In COMAR 08.13.09.24H(6) Inspections, it is required that a qualified registered professional engineer or other qualified specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments. These inspections shall be made (a) at appropriate times during construction, including: (i) Site preparation; (ii) construction of the cut-off trench; (iii) placement of the principal spillway pipe, including anti-seep collars and riser base; and, (iv) placement and compaction of fill material around the principal spillway, and (b) upon completion of construction.

In COMAR 08.13.09.24H(7) Certification, it is required that upon completion of construction a certification statement and as-built drawing shall be submitted for each impoundment and impounding structure. The as-built drawing shall show the approved design and any modification or minor changes. The certification statement shall be signed and sealed by a registered professional engineer, registered in the State of Maryland and shall certify that: (a) The impoundment and impounding structure has been constructed in accordance with the plans and specifications in the approved

permit; (b) observations and measurements were made at appropriate times during and following construction by a registered professional engineer or a qualified person experienced in the design and construction of impoundments and impounding structures acting as a representative and reporting directly to the registered professional engineer; (c) the completed impoundment and impounding structure meets the safety requirements of safe engineering practices, the regulatory program and the design approved in the permit application; and (d) modifications made during construction meet the requirements of the regulatory program.

In COMAR 08.13.09.24H(8) the Bureau may require color photographs to be taken at the appropriate times specified in COMAR 08.09.13.24H(6) and submitted with the certification statement.

In COMAR 08.13.09.24H(9) Annual Inspection, it is required that: (a) An impoundment shall be inspected at least annually by a registered professional engineer or other qualified specialist under the direction of the registered professional engineer until removal of the impoundment or release of performance bond; and, (b) after each annual inspection the registered professional engineer shall submit to the Bureau a certified report that the impoundment has been maintained in accordance with the approved plan and this regulation. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A copy of the report shall be retained at or near the mine site.

In COMAR 08.13.09.24H(10) Examinations, it is required that impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216–3. Other impoundments shall be examined at least quarterly by a qualified person for appearance of structural weakness and other hazardous conditions.

In COMAR 08.13.09.24H(11) it is required that if any examination or inspection discloses that a potential hazard exists, the permittee shall immediately notify the Bureau of the hazard and of the emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented, the Bureau shall be notified immediately. The Bureau shall then immediately notify the appropriate agencies that other emergency procedures are required to protect the public.

In COMAR 08.13.09.24H(12) Permanent Impoundments, a permanent impoundment of water may be vacated, if authorized in the approved permit, based upon the following demonstration that: (a) The size and configuration of the impoundment will be adequate for its intended purposes; (b) the quality of the impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet all applicable water quality standards; (c) the water level will be sufficiently stable and capable of supporting the intended used; (d) final grading will provide for adequate safety and access for proposed water users; (e) the impoundment will not result in diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; (f) the impoundment will be suitable for the approved post-mining land use; and (g) the vertical portion of any remaining highwall shall be located far enough below the law water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

In COMAR 08.13.09.24H(13) Temporary Impoundments, the Bureau may authorize the construction of temporary impoundments as part of a surface coal mining operation.

In COMAR 08.13.09.24H(14), plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the Bureau and shall comply with the requirements of COMAR 08.13.09.24H. Except where a modification is required to eliminate an emergency condition constituting a hazard to public healthy, safety or the environment, the Bureau shall approve the plans before the modification begins.

In COMAR 08.13.09.24I, the paragraph is revised in the last sentence to read: "Before final bond release of the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments and treatment facilities to meet the criteria for permanent structures and impoundments.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 432.17(h), OSM is reopening the comment period on Maryland's revised program amendment to provide the public an opportunity to reconsider the adequacy of the revisions.

Specifically, OSM is seeking comments on MDBOM's revised surface mine reclamation regulations COMAR 08.13.09 that were submitted on March 12 and March 26, 1990, (Administrative Record Nos. MD 443 and MD 445). OSM is seeking comments on whether the revised proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If approved, the amendment will become part of the Maryland permanent regulatory program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 16, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–9507 Filed 4–25–90; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 920

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns proposed changes to the Code of Maryland Administrative Regulations in response to an OSM issue letter dated June 9, 1987. The amendment changes certain permit application requirements and review procedures relating to historic and archaeological resources; modifies certain definitions; and further defines areas where mining is prohibited, limited or unsuitable. It is intended to make the requirements of the Maryland program no less effective than the Federal program.

This notice sets forth the times and locations that the Maryland program and the revised proposed amendments to that program are available for public inspection and the reopened comment

period during which interested persons may submit additional written comments on the revised proposed amendment.

DATES: Written comments must be received on or before 4 p.m. on May 25, 1990. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on May 21, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on May 10, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1982, the Secretary of Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland program are contained in 30 CFR 920.16.

II. Discussion of Proposed Amendments

Pursuant to 30 CFR 732.17, OSM identified required revisions to the Maryland Regulatory Program by letter dated June 9, 1987. In response, Maryland by letter dated March 23, 1990 (Administrative Record No. MO–445) submitted the following proposed amendments to its program.

COMAR 08.13.09.02K(2)(b) is revised to require a description in the permit application of the nature of cultural and historic resources eligible for listing on the National Register of Historic Places (NRHP). Appended to the paragraph is the requirement that the Bureau may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the NRHP through: (i) Collection of additional information; (ii) conduct of filed investigations; and, (iii) other appropriate analyses.

COMAR 08.13.09.02(L)(1)(l) is revised to require that the boundaries of any public park, forest, or wildlife management area, and locations of any cultural or historic resources eligible for listing on the NRHP be identified on the map included in the permit application.

COMAR 08.13.09.020(23) is deleted and replaced with a description of the measures to be used to prevent or, if valid existing rights exist or approval of the jurisdictional authority has been obtained under COMAR 08.13.09.10A(2), minimize adverse impacts to any publicly owned parks or eligible for listing on the National Register of Historic Places. The description shall include a schedule for completion of these measures prior to initiating any mining operations affecting these properties.

COMAR 08.13.09.05A is revised to change "approval under Regulation .04M(1)" to "approval."

COMAR 08.13.09.05A(5) is deleted and replaced with the requirement that the State, in its review of permit applications, take into account the effect of the proposed mining operation on properties listed or eligible for listing on the NRHP and determine that all necessary protection measures have been included in the approved application of permit conditions.

COMAR 08.13.09.10B(2) is revised to prohibit surface coal mining, subject to certain conditions, on lands where mining will adversely affect any publicly owned park or any places listed on the NRHP unless jointly approved by certain agencies.

COMAR 08.13.09.10B(7) is revised to permit the relocation of cemeteries if authorized by applicable State law or regulation.

COMAR 08.13.09.10C(7) is revised to require that if the State determines that a surface mining operation will adversely affect any publicly owned park or any places listed on the NRHP, it shall request from the appropriate jurisdictional agency approval or disapproval of the operation.

In COMAR 08.13.09.11A(1), the definition of "fragile lands" is revised to mean areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged by surface coal mining operations. Added to the list of examples of fragile lands is paleontological sites. Deleted from the list is buffer zones.

COMAR 08.13.09.11A(2) is added to define "historic lands" as areas containing historic, cultural, or scientific resources. Examples of historic lands include archaeological sites, properties listed on or eligible for listing on a State or NRHP, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(b), OSM is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.17. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by May 10, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the location under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 16, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90-9508 Filed 4-24-90; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3579/P510; FRL-3737-9]

Pseudomonas Fluorescens EG-1053; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a permanent exemption from the requirement for a tolerance for residues of the biofungicide *Pseudomonas fluorescens* EG-1053 in or on cottonseed and cotton forage. This exemption was requested by Ecogen, Inc., Langhorne, PA 19047-1810.

DATES: Comments, identified by the document control number [PP 8F3579/P510], must be received on or before May 10, 1990.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Product Manager (PM) 21, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 16, 1987 (52 FR 47754), which announced that Ecogen, Inc., 2005 Cabot Blvd. West, Langhorn, PA 19047-1810, had submitted pesticide petition (PP) 8F3579 to EPA proposing to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance the residues of the biofungicide *Pseudomonas fluorescens* EG-1053 in or on the raw agricultural commodity cotton. In the **Federal Register** of February 24, 1988 (53 FR 5458), it was announced that Ecogen, Inc., had amended PP 8F3579 to replace cotton specifically with cottonseed and cotton forage for exemption from the requirement of a tolerance. Ecogen's strain of the bacterium *Pseudomonas fluorescens* was isolated from soil in Mississippi and has not been genetically altered. This microorganism is a natural soil isolate and has not been altered or improved. Microorganisms known as *Pseudomonas fluorescens* constitute a rather diverse complement of bacteria that occur in both soil and aquatic habitats. They can be isolated from these sources using enrichment with appropriate media. The use of the biofungicide is for control of the *Pythium/Rhizoctonia* seedling disease complex of cotton.

A rule was published in the **Federal Register** of March 10, 1988 (53 FR 7739), that established an exemption from the requirement for a tolerance for a period of 2 years after the date of signature.

The Agency required the following studies to be submitted prior to determining whether the issuance of a permanent exemption is appropriate:

1. Freshwater fish testing (154-19).
2. Freshwater aquatic invertebrate testing (154-20).
3. Target area phytotoxicity tests (two) (121-1). The previously submitted tests may be upgraded to core if the percent of active ingredient is reported and the test microorganism is confirmed as the same one being proposed for registration.
4. Seedling germination/vegetative vigor (Tier I) (122-1).
5. Seedling germination/vegetative vigor (Tier II).

No comments were received in response to the rule.

The data submitted in the petition and other relevant material have been evaluated. Ecogen, Inc., subsequently submitted the required studies which are acceptable and demonstrate that *P. fluorescens* EG-1053 will not cause adverse effects to nontarget organisms.

The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study in the rat, an acute dermal toxicity study in the rabbit, an acute pulmonary toxicity/pathogenicity study in the rat, acute intravenous toxicity/pathogenicity study in the mouse, primary eye irritation study in the rabbit, and hypersensitivity study in the guinea pig. These studies were performed on the active ingredient and the end-use product Dagger™. A review of these studies indicates that the biofungicide was not toxic to test animals when administered via the oral, dermal, or pulmonary routes. The active ingredient, *P. fluorescens* EG-1053, was not infective or pathogenic for test animals when administered via the oral, pulmonary, or intravenous route. The end-use product Dagger™ G biofungicide did not elicit a delayed type of hypersensitivity reaction in guinea pigs. The end-use product was mildly irritating to the eye. EG-1053 is placed in biovar V of *P. fluorescens*. Growth curves showed rapid growth at 30° C, slow growth at 37° C, and no growth at 42° C. It is reported by Ecogen, Inc., that *Pseudomonas fluorescens* is a ubiquitous soil bacterium, and it is reasonable to assume that most people are exposed daily to this organism. All the toxicity studies submitted are considered acceptable. The toxicity data provided are sufficient to show that there are no foreseeable human or domestic health hazards likely to arise from use of the biofungicide on cotton.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this

exemption request. This was the first exemption from the requirement of a tolerance for this biofungicide.

Pseudomonas fluorescens EG-1053 is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. There are no regulatory actions pending against the registration of *P. fluorescens*. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, it is proposed that the exemption from the requirement of a tolerance be established as set forth below.

As provided in the Administrative Procedures Act (5 U.S.C. 553(d)(3)), the time-for-comment period is shortened to fewer than 30 days because of the necessity to expeditiously provide a means to control of the Pythium-Rhizoctonia seedling disease complex of cotton.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 8F3579/P510]. All written comments filed in response to this petiton will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: April 10, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

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

§ 180.1088 [Amended]

2. In § 180.1088 Pseudomonas fluorescens EG-1053; exemption from the requirement of a tolerance, by removing the last sentence, which reads as follows: "This rule will expire on March 2, 1990."

[FR Doc. 90-9468 Filed 4-24-90; 8:45 am]
BILLING CODE 6560-50-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Inspector General

42 CFR Parts 1000, 1001, 1002, 1003, 1004, 1005, 1006 and 1007

Health Care Programs: Fraud and Abuse; Amendments to OIG Exclusion and CMP Authorities Resulting From Public Law 100-93

AGENCY: Office of the Secretary, HHS, Office of Inspector General (OIG).

ACTION: Correction notice.

SUMMARY: This document corrects technical errors that appeared in the proposed rule, published on April 2, 1990, that is designed to implement section 2 in Public Law 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987, along with other conforming amendments.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, (202) 472-5270.

SUPPLEMENTARY INFORMATION: On April 2, 1990, a proposed rule—Amendments to OIG Exclusion and CMP Authorities Resulting from Public Law 100-93—was published in the **Federal Register** (55 FR 12205) to solicit public comments on regulations designed to protect program beneficiaries from unfit health care practitioners, and to otherwise improve the anti-fraud provisions of the Department's health care programs under titles V, XVIII, XIX and XX of the Act. In publishing this proposed rule, several lines of regulations text were inadvertently omitted. To correct omissions in parts 1001 and 1003, we are making the following corrections:

§ 1001.1901 [Corrected]

A. Page 12222: In column 1, § 1001.1901(a), the first sentence is corrected to read as "Except as otherwise provided, individuals and entities will be excluded from Medicare and all of the State health care programs, and may be excluded from participation in other Federal non-procurement health programs."

§ 1001.2001 [Corrected]

A. Page 12222: In column 3, § 1001.2001(a), the first sentence is corrected to read as "Except as provided in paragraph (b) of this section and in § 1001.2003, if the OIG proposes to exclude an individual or entity in accordance with subpart C of this part, it will send written notice of its intent, the basis for the proposed exclusion, and the potential effect of an exclusion."

B. Page 12222: In column 3, § 1001.2001(b), the first sentence is corrected to read as "If the OIG proposes to exclude an individual or entity in accordance with §§ 1001.701 or 1001.801, it will send written notice of its intent, the basis for proposed exclusion, and the potential effect of an exclusion."

§ 1001.2003 [Corrected]

a. Page 12223: In column 1, § 1001.2003(a), the first sentence is corrected to read as "Except as provided in paragraph (c) of this section, if the OIG intends to exclude an individual in accordance with §§ 1001.901 and 1001.951, it will send written notice of its intent, the basis for the exclusion, the potential effect of the exclusion, and its length."

§§ 1003.134 and 1003.135 [Corrected]

a. Page 12229: In column 1, § 1003.134, Reinstatement, the section heading is corrected to read as "§ 1003.135."

b. Page 12229: In column 1, § 1003.135, Effect of exclusion, the section heading is corrected to read as "§ 1003.134"; and in the second line, § 1001.2005" is corrected to read as "§ 1001.1901."

Dated: April 17, 1990.

James E. Larson,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 90-9501 Filed 4-24-90; 8:45 am]
BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0, 1, 2, 95

[Docket No. 89-599; RM 6681]

Personal Radio Services; Amendment of Personal Radio Services To Establish a Personal Emergency Locator Transmitter Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule: Order extending time.

SUMMARY: The Order extends the reply comment period in PR Docket No. 89–599 from April 19, 1990, to May 4, 1990 in response to a request from the Personal Radio Steering Group, Inc. This extension will allow the Personal Radio Steering Group, Inc. to prepare more meaningful reply comments.

DATES: Reply comments due May 4, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Shaffer, Federal Communications Commission, Washington, DC 20554 (202) 632–7197.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was published in the **Federal Register** January 4, 1990 (55 FR 315).

Order

Adopted: April 17, 1990.
Released: April 18, 1990.

By the Deputy Chief, Private Radio Bureau

1. The Personal Radio Steering Group, Inc. has requested that the Private Radio Bureau extend the time for filing reply comments fifteen days.

2. The Personal Radio Steering Group, Inc. indicates that the purpose of the extension is to consider the numerous comments filed in this proceeding which differed significantly from or went significantly beyond the issues contained in the Notice of Proposed Rule Making. The additional time will allow the petitioner to prepare more meaningful reply comments.

3. We find that the public interest will be served by granting the brief extension of time requested in order to permit full and thorough preparation of comments of interested parties. In view of the above and pursuant to the authority contained in § 0.331 of the Commission's Rules, the Personal Radio Steering Group, Inc.'s request for extension of time *is granted*. The date for filing reply comments in this proceeding is extended to May 4, 1990.

Federal Communications Commission.

Beverly G. Baker,

Deputy Chief, Private Radio Bureau.

[FR Doc. 90–9518 Filed 4–24–90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90–197, RM–7132]

Radio Broadcasting Services; Arcola, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Walnut Point Broadcasters ("petitioner"), seeking the allotment of Channel 300A to Arcola, Illinois, as that community's first local FM service. The coordinates for the proposal are North Latitude 39–41–00 and West Longitude 88–18–30.

DATES: Comments must be filed on or before June 11, 1990, and reply comments on or before June 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street, NW., suite 1100, Washington, DC 20005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–197, adopted March 21, 1990, and released April 19, 1990. 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 Flexibility Act 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.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–9525 Filed 4–24–90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90–198, RM–7135]

Radio Broadcasting Services; LeRoy, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by McLean County Broadcasters, Inc. proposing the substitution of Channel 281B for Channel 281B1 at LeRoy, Illinois, and modification of its license to specify the higher class channel. Channel 281B can be allotted to LeRoy in compliance with the Commission's minimum distance separation requirements with a site restriction 29 kilometers (18 miles) northeast. The coordinates for this proposed allotment are North Latitude 40–30–10 and West Longitude 88–28–59. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before June 11, 1990, and reply comments on or before June 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: M. Scott Johnson, Catherine M. Grofer, Gardener, Carton & Douglas, 1001 Pennsylvania Avenue, NW., Suite 750 Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–198, adopted March 21, 1990, and released April 19, 1990. 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 Flexibility Act 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.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–9524 Filed 4–24–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–200, RM–7143]

Radio Broadcasting Services; Newberry, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Newberry Broadcasting Corporation, seeking to substitute Channel 263C3 for Channel 263A at Newberry, Florida, and modify the construction permit (BPH–861217MF) to specify operation on the higher class channel. Channel 263C3 can be alloted to Newberry in compliance with the Commission's minimum distance separation requirements with a site restriction 13.4 kilometers (8.4 miles) west, in order to avoid a short-spacing to Station WYGC, Channel 265A, Gainesville, Florida. The coordinates for this allotment are North Latitude 29–39–21 and West Longitude 82–44–49. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 263C3 at Newberry will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before June 11, 1990, and reply comments on or before June 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Dennis J. Kelly, Cordon and Kelly, 1920 N Street, NW., 2nd Floor, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–200, adopted March 20, 1990, and released April 19, 1990. 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 Flexibility Act 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.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–9519 Filed 4–24–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–199, RM–7098]

Radio Broadcasting Services; Beattyville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Hour of Harvest, Inc., seeking the substitution of Channel 271A for Channel 272A at Beattyville, Kentucky. Channel 271A can be allotted to Beattyville in compliance with the Commission's minimum distance separation requirement with a site restriction 3.9 kilometers (2.4 miles) northeast. The coordinates for this allotment are North Latitude 37–36–23 and West Longitude 83–41–16.

DATES: Comments must be filed on or before June 11, 1990, and reply comments on or before June 26, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Harry C. Martin, Reddy, Begley & Martin, 2033 M Street, NW., suite 500, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–199, adopted March 21, 1990, and released April 19, 1990. 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 Flexibility Act 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.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-9520 Filed 4-24-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 90-34; RM 6666]

Short-Spacing of Specialized Mobile Radio Systems Upon Concurrence From Co-Channel Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule: Order extending comment period.

SUMMARY: In response to a Motion for Extension of Time filed by the American SMR Network Association, the Commission adopted an Order extending the time period in which to file comments and reply comments in this proceeding. The intended effect of this action is to give all interested parties an additional ten days in which to file comments and reply comments.

DATES: Comments to the Notice of Proposed Rule Making and reply comments are due by May 3, 1990 and May 18, 1990 respectively.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: A summary of the Notice of Proposed Rule Making was published on March 9, 1990 at 55 FR 8966.

Order Extending Comment Period

Adopted: April 12, 1990.
Released: April 18, 1990.

By the Chief, Land Mobile and Microwave Division, Private Radio Bureau:

1. On February 28, 1990, the Commission adopted a *Notice of Proposed Rule Making* (Notice) in the above captioned matter. The specified deadlines for comments and reply comments were April 23, 1990 and May 8, 1990, respectively.

2. On April 6, 1990, the American SMR Network Association (ASNA) filed a motion asking us to permit it to file comments ten days later than the established deadline. ASNA, the original proponent of this rule making, states that its members are the parties primarily affected by the Commission's proposal and that its Board of Directors needs to formulate ASNA's position on several issues raised in the Notice. ASNA's Board is not scheduled to meet until April 23, 1990, the date that comments would otherwise be due.

3. We recognize the importance of ASNA's participation to the development of a complete record in this proceeding and, in light of the circumstances presented, find that good cause exists for the extension of time requested. To afford interested parties a full opportunity to participate in this proceeding we will extend the due dates of all comments and reply comments by ten days.

4. Accordingly, *it is ordered*, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that all interested parties will have until May 3, 1990 to file comments and until May 18, 1990 to file reply comments.

Federal Communications Commission.

Richard J. Shiben,

Chief, Land Mobile and Microwave Division, Private Radio Bureau.

[FR Doc. 90-9521 Filed 4-24-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 252

Federal Acquisition Regulation Supplement; Small Business and Small Disadvantaged Business Subcontracting Plan

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering revising DFARS 252.219-7000 to permit work performed on Indian lands or in joint venture with an Indian tribe or tribally-owned corporation to be credited toward Department of Defense (DoD) prime contractors' small business subcontracting goals.

DATES: Comments on the proposed rule should be submitted in writing at the address shown below on or before May 25, 1990, to be considered in the formulation of the final rule. Please cite DAR Case 89-312 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mrs. Alyce Sullivan, DAR Council, OASD(P&L)DASD(P)/DARS, c/o room 3D139, The Pengaton, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 832 of Public Law 101-189 requires that DoD contractors be given credit toward their small business subcontracting goals for work performed on Indian land or in joint venture with an Indian tribe or tribally-owned corporation. The DAR Council is proposing changes to the clause at 252.219-7000 to implement this requirement.

B. Regulatory Flexibility Act

The proposed revision to DFARS 252.219-7000 is not expected to have a significant economic effect on a substantial number of small entities because prime contractors are not expected to change their subcontracting plans but to take credit for additional efforts. An Initial Regulatory Flexibility Analysis therefore has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the act. Such comments must be submitted separately and cite DAR Case 90-610 in all correspondence.

C. Paperwork Reduction Act

The proposed rule does not contain information collection requirements which require the approval of OMB under title 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Alyce L. Sullivan,

Acting Deputy Director, Defense Acquisition Regulatory System.

Therefore, it is proposed that 48 CFR part 252 be amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority for 48 CFR part 252 continues to read as follows:

Authority. 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 252.219-7000 is amended by changing the date of the clause to read "(1990)" in lieu of "(JUN 1988)" and by adding paragraph (c) to the clause to read as follows:

§ 252.219-7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

* * * * *

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the clause of this contract entitled "Small Business and Small Disadvantaged Business Subcontracting Plan" when:

(1) It is performed on Indian lands or in joint venture with a tribally-owned corporation, and

(2) It meets the requirements of section 832 of the FY 90 DoD Authorization Act, Pub. L. 101-189.

(End of clause)

[FR Doc. 90-9598 Filed 4-24-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

RIN 2105-AA03

[Docket No. 64i; Notice No. 90-14]

Participation by Disadvantaged Business Enterprises in Airport Concessions; Correction

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Proposed rule; correction.

SUMMARY: DOT is correcting errors in the preamble and proposed rule for participation by disadvantaged business enterprises in airport concessions which appeared in the **Federal Register** on March 30, 1990 (55 FR 11964).

FOR FURTHER INFORMATION CONTACT: Ms. Irene H. Mields at (202) 267-3473.

Corrections:

1. On page 11965, second column, line 52, change "23.86" to "23.89" and "23.92" to "23.95".

2. On page 11965, second column, line 62, change "512(a)(17)" to "511(a)(17)".

3. On page 11965, third column, line 60, change "23.86" to "23.89".

4. On page 11966, first column, line 4, change "23.86" to "23.89".

5. On page 11966, third column, line 33, change "23.89" to "23.92", and on line 35, change "23.90" to "23.93".

6. On page 11967, first column, line 44, change "23.92" to "23.95".

7. On page 11967, second column, line 23, change "23.92(c)(1)" to "23.95(c)(1)".

8. On page 11967, third column, line 55, change "23.94" to "23.97".

9. On page 11968, first column, line 27, change "23.95" to "23.98".

10. On page 11968, second column, line 12, change "23.96" to "23.99".

PART 23 [CORRECTED]

§ 23.89 [Corrected]

11. On page 11970, first column, line 52, insert "is" before "approved".

§ 23.89 [Corrected]

12. On page 11970, first column, line 66, insert "is" before "used".

§ 23.91 [Corrected]

13. On page 11970, third column, line 39, change "23.89" to "23.92".

§ 23.91 [Corrected]

14. On page 11970, third column, line 49, change "23.89" to "23.92".

§ 23.92 [Corrected]

16. On page 11971, first column, line 21, change "23.90" to "23.93".

§ 23.93 [Corrected]

17. On page 11971, second column, line 49, change "23.89" to "23.92".

§§ 23.97 and 23.98 [Corrected]

18. On page 11972, second column, lines 25, 42, and 61, change "23.89" to "23.92".

§ 23.98 [Corrected]

19. On page 11972, third column, line 6, change "23.93" to "23.96".

§ 23.99 [Corrected]

20. On page 11972, third column, line 22, change "23.86" to "23.89".

Appendix A to Part 23 [Corrected]

21. On page 11973, first column, footnote 1 to appendix A to subpart F—Size Standards for Airport Concessionaires (line 39) delete "number of" and insert "total".

Issued in Washington, DC., on April 19, 1990.

Phillip D. Brady,

Counsel.

[FR Doc. 90-9493 Filed 4-24-90; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Prairie Mole Cricket

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine threatened status for the prairie mole cricket (*Gryllotalpa major*) and thereby provide the species protection under the Endangered Species Act of 1973, as amended (Act). Historically this species occurred extensively in that portion of the tallgrass prairie that included eastern Kansas and eastern Oklahoma, the southwest one-fourth of Missouri, and northwest Arkansas. Records of disjunct populations are also known from central Kansas, southeast Missouri, southern Illinois and central Mississippi. As a result of the conversion of native prairie to cropland and other uses, the range and number of prairie mole crickets have been reduced to the point where they now exist only in eastern Kansas and central and northeastern Oklahoma, southwest Missouri, and northwest and central Arkansas. Critical habitat is not being proposed. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 25, 1990. Public hearing requests must be received by June 11, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Ft. Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator at the above address (612/725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

The earliest records of *Gryllotalpa major* are dated from the 1870's from eastern Kansas and southwest Missouri. Saussure described the first specimen from Illinois in 1874. Historical records indicate specimens were collected from Arkansas, Illinois, Oklahoma, and Mississippi, in addition to Kansas and Missouri. Collecting continued until the 1930's, when it seemed to decline significantly (Figg and Calvert 1987). At the time of the Service's 1984 Invertebrate Species Notice of Review (49 FR 21664) the prairie mole cricket was thought to be extinct. The closest relative to the prairie mole cricket is an African species *Gryllotalpa gryllotalpa* (Dennis Figg, Missouri Department of Conservation, *in litt.* 1989).

Adult prairie mole crickets are among the largest insects in North America and may measure up to 6 cm (2.5 inches) from end to end, including the antennae

(Figg and Calvert 1987). The prairie mole cricket can sometimes be distinguished from the normally smaller northern mole cricket (*Gryllotalpa hexadactyla*) by its size. The northern mole cricket measures 20–35 mm (.75–1.4 inches). Walker (pers. comm. in Figg and Calvert 1987) reports the prairie mole cricket may weigh up to 2.6 grams. Figg (*in litt.* 1989) suggests that simple field method to distinguish these species is to observe the process on the trochanter of the foreleg, which is knife shaped on the prairie mole cricket and more circular on the common northern mole cricket. The northern mole cricket is found in marshes, wetlands, and along rivers and lakes.

Adult mole crickets become active at the soil surface twice during the year, most notably during the spring for courtship and reproduction (Figg and Calvert 1987). Males and females are identical externally, except for modified forewings that the males use to attract sexually responsive females (Alexander 1975). Male mole crickets construct specially designed burrow systems several inches below the soil surface that contain a bulb-like resonant chamber to increase acoustical output when the male calls to attract females during courtship. Males commence calling in late April and continue through May (Figg and Calvert 1987). Calling begins 5 to 10 minutes after sunset and ends at dark. Conditions need to be conducive for the females to fly; warm, dry, and still. Calls at one Missouri prairie in 1987 could be heard over a quarter of a mile away (Figg and Calvert 1987). After courtship, the females disperse into the surrounding habitat, dig a tunnel and lay their eggs (Figg and Calvert 1987). The eggs then hatch in the prairie soil and the young are miniature versions of the adults except they lack wings. It will require two to three years before they grow into adults and are ready for spring courtship.

The habitat preference of the prairie mole cricket is the tallgrass prairie. However, communities where the species is found vary within the prairie ecosystem (Figg and Calvert 1987). Observations by Figg and Calvert indicate that most mole cricket populations occur on silt to sandy loam prairies that are well drained. However, it is not unusual to find sites on ridges with shallow soils. The species has not been found on wet prairies, marshes, dolomite glades, and dry loess prairies. Figg and Calvert observed that males are not evenly distributed in the prairie habitat, but seem to be aggregated. In one instance, 66 percent of the calling male prairie mole crickets occupied only 4 percent of the available habitat. It is not clear why this type of aggregation occurs. One thought is that the soils most optimal for burrow construction attract the greatest number of crickets. Another conclusion, by Walker (1983), that nightly choruses of an aggregations of males, (a spree) give the females an opportunity to compare males.

Eight specimens were collected near Nevada, Missouri in 1959 and 1960. These records were the stimulus for the most recent prairie mole cricket surveys in 1986 and 1987, when 160 locations in eight states (AR, IA, IL, KS, MO, MS, OK, TX) were surveyed; 63 extant occurrences were discovered (Figg and Calvert 1987). Subsequent fieldwork in 1988 and 1989 places the current population at about 95 occurrences; 49 in Missouri, 18 in Arkansas, 16 in Oklahoma, and 12 in Kansas (Figg, *in litt.* 1989, William Shepherd, Arkansas Natural Heritage Commission, *in litt.* 1989, William Busby, Kansas Natural Heritage Program, *in litt.* 1989, Patricia Melhop-Cifelli, Oklahoma Natural Heritage Inventory, pers. comm. 1989). These populations occur almost exclusively in tallgrass prairie remnants. It is sometimes difficult to accurately count individual burrows due to vegetative cover and the intensity of calling crickets. Figg and Calvert (1987) believe most estimates are high and complete counts over the entire range are needed. Busby (*in litt.* 1989) reports the largest Kansas mole cricket population supports 24 to 30 males. At several locations in Arkansas, Shepherd (pers. comm. 1989) estimated approximately 150 mole crickets. However, at over one-fourth of the sites very few crickets were noted, and many of these had only one cricket present. Surveys were also conducted in Iowa, Illinois, Mississippi, and Texas, but no extant populations were discovered. Surveys in 22 Mississippi localities in the spring of 1989 failed to locate any prairie mole crickets (T.G. Forrest, U. of Mississippi, *in litt.* 1989). Surveys later in the season at two additional Mississippi sites did not reveal crickets (Forrest, pers. comm. 1989). The Arkansas Natural Heritage Commission intends to search for prairie mole crickets in the state's West Gulf Coastal Plain next spring (Shepherd, *in litt.* 1989).

The presettlement tallgrass prairie extended from Canada to Oklahoma and from Nebraska to Indiana. Based on historic records, the prairie mole cricket was presumed to be distributed evenly throughout the southwest portion of the tallgrass prairie, encompassing an area about the size of the States of Indiana and Oklahoma. Because of habitat destruction, the present distribution of the species has been reduced to small remaining prairie segments in the southwest one-fourth of Missouri, 7 eastern Kansas counties, 5 counties in northwest and central Arkansas, and 7 counties in northeast and central Oklahoma. Most of these extant populations are found on small fragmented remnant prairie areas. Wilcover (1987) estimates that less than 0.5 percent of Missouri's presettlement prairie remains. Most prairie mole cricket populations are now found on prairies of 40 acres or more; the larger prairies are more likely to support the species (Figg, *in litt.* 1989). In Oklahoma, Melhop-Cefelli (pers. comm. 1989) reports that almost all present occurrences of the species are on "quite small" prairie remnants.

Prairie mole crickets co-occur on eight Missouri prairies and six sites in Kansas where the federally threatened plant *Asclepisa meadii* (Mead's milkweed) is found. In Oklahoma, the prairie mole cricket is known from two prairies where the federally threatened plant *Platanthera praeclara* (Western prairie fringed orchid) is known to occur.

Gryllotalpa major was recognized as a category 2 species in the Service's May 22, 1984 (49 FR 21664) Invertebrate Species Notice of Review. Category 2 species are those for which existing information indicates the possible appropriateness or preparing a proposed rule, but for which conclusive data on biological vulnerability and threats are not currently available to support such an action. The species had not been observed since 1963, and was thought to be extinct at the time the May 22, 1984 Notice of Review was published. In 1986, the Service, in cooperation with the Missouri Department of Conservation initiated a rangewide survey for the prairie mole cricket. Biologists from Arkansas, Illinois, Kansas, Missouri, Mississippi, and Oklahoma participated in field surveys in 1986 and 1987. The compilation of this survey by Dennis E. Figg and Paul D. Calvert in 1987, which was updated in 1988 and 1989, substantiates the species' rarity and the continued threats to its habitat.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the

Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the prairie mole cricket (*Gryllotalpa major*) Saussure are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically the prairie mole cricket was known to occupy prairie habitat spread over a continuous area of 270,000 square km (104,250 sq. mi). Habitat modification and distruction of the tallgrass prairie are the primary factors threatening the continued existence of the prairie mole cricket. The species is usually found in ungrazed native tallgrass prairie areas where the soils are silt to sandy loam. Areas with silt to sandy loam soils are easily converted for other agricultural puposes (Figg and Calvert 1987). In Kansas, eight populations are found on private land, and at least two of these are currently threatened by development or conversion to cropland (Busby, *in litt.* 1989). Fourteen of the sixteen Oklahoma sites face threats of destruction from housing developments and grazing (Mehlhop-Cifelli, *in litt.* 1989). Because of agricultural conversion, the prairie habitat necessary for this species has been reduced to small remnants often isolated by miles of non-prairie habitat (Figg and Calvert 1987). Prairie mole crickets occurring on these small isolated areas subject to several factors which may make them vulnerable to extinction in the same manner as other small populations of plants and animals: vulnerability to natural catastrophe, demorgraphic stochasticity, genetic deterioration and social dysfunction (Wilcove 1986). Figg and Calvert (1987) note that the larger prairie mole crickets populations appear to be associated wtih an aggregation of prairie remnants. These closely associated areas may reinforce the population by enabling the crickets to disburse throughout the immediate range of available habitat and associated management influence.

Prairie mole crickets are usually found on ungrazed or mowed native tallgrass prairies. However, the Oklahoma, prairie mole crickets have been found in lightly grazed areas (Melhop-Cifelli, pers. comm. 1989). Historical records indicate the prairie mole cricket was distributed throughout the Flint Hills of Kansas, now one of the largest remaining tallgrass prairie areas in the United States. It remains a mystery why so few extant populations of prairie mole crickets have been found in the Kansas Flint Hills, possible because most cricket populations are found on mowed or ungrazed prairies. There are very few ungrazed prairie areas remaining in the Flint Hills. In Arkansas, the historical range of the prairie mole cricket coincided with three prairie regions of the State: Springfield Plateau and Cherokee Prairie in the northeast, and the Grand Prairie in the east central part of the state (Shepherd, *in litt.* 1989). These once vast prairie areas have been reduced for industrial, agricultural and residential uses to the point where only very small isolated prairie areas remain that are suitable for the prairie mole cricket.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Records do not indicate if collection was a factor in the decline of this species. It is ironic that the records from an amateur collection of eight specimens in 1959 and 1960 provided the stimulus to investigate the status of the prairie mole cricket. Now, because of the species' rarity, and the fact that the public will know that a species recently believed extinct exists, there is the possibility that amateur scientific collections will resume.

C. *Disease or predation.* No diseases or predation are known to be adversely affecting the prairie mole cricket.

D. *The inadequacy of existing regulatory mechanisms.* The prairie mole cricket is not presently offered any form of protection by any of the States where the species occurs. The Act offers possibilities for protection through section 6 by cooperation between States and the Service, and cooperation through section 7 (interagency cooperation) requirements.

E. *Other natural or manmade factors affecting its continued existence.* Little is known about the biology of the prairie mole cricket. Figg and Calvert (1987) report that the small number of reproductive males in many of the populations may not attract a sufficient number of females to sustain a population. Figg and Calvert also noted that extant populations of prairie mole crickets appear to contain relatively small numbers of reproductive males. The low number of individuals in many of these scattered prairie remnants presents a dilemma. If this situation continues, populations will remain low and may eventually be lost because the number of males may not be sufficient to attract females in order to maintain a sustaining population. As Wilcove (1987) points out, species in fragmented areas may not recognize their habitat limits and may disperse to outlying prairie remnants that are unsuitable for survival. Figg (*in litt.* 1989) reaffirms this, and also states that reports of single mole crickets found in non-prairie areas have all been females that have apparently dispersed after courtship and mating. Stinner et al (1983) mentions that local flights seem to have no effect on population density, but migration flights have the potential of depleting a local population.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the prairie mole cricket as a threatened species. Due to the vulnerability of the prairie mile cricket from habitat loss and the continued threats to existing populations, the species will continue to decline unless immediate actions are undertaken to bring attention to its plight. For reasons detailed below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species at this time. This determination is based on the premise that such a designation would not be beneficial to the species (50 CFR 424.12). As discussed under "Factor B" above, now that the prairie mole cricket is once again known to exist, it may become vulnerable to collectors who would be drawn to the known populations by the publication of critical habitat maps and other specific location information. Since it is thought that prairie mole crickets remain in the same prairie area year around, critical habitat designation would not provide additional protection over that afforded through the normal section 7 consultation procedures.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the

States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has not identified any ongoing or proposed projects with Federal involvement that could affect this species.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.32 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibitions, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The Food Security Act of 1985 (Pub. L. 99–198) also provides at sections 1314 and 1318 opportunity for the Service and State conservation agencies to acquire restrictive easements beneficial to endangered and threatened species on lands acquired by the Farmers Home Administration in the course of farm foreclosures. Upon notification by the Farmers Home Administration of pending foreclosures, the Service is continually reviewing possible areas where restrictive easements would benefit endangered and threatened species.

Public Comments Solicited

The Service intends that any final action adopted will be accurate and as effective as possible in the conservation of endangered and threatened species. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the prairie mole cricket;

(2) The location of any additional populations of the prairie mole cricket and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the species;

(4) Current or planned activities in the subject area and their possible impact on the prairie mole cricket.

Final promulgation of the regulation on the prairie mole cricket will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see **ADDRESSES** section above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Alexander, R.D. 1975. Natural Selection and Specialized Chorusing Behavior in Acoustical Insects. IN D. Pimental, ed., *Insects, Science and Society.* Academic Press, New York.

Figg, D.E. and P.D. Calvert. 1987. Status, Distribution, and Life History of the Prairie Mole Cricket, (*Gryllotalpa major*) Sassurre. Unpublished report. 39 pp.

Wilcove, D.S. 1987. From Fregmentation to Extinction. Natural Areas Journal 7(1):23–29.

Stinner, R.E., C.S. Barfield, J.L. Stinner, and L. Dohse. 1983. Dispersal and Movement of Insect pests. Ann. Rev. Entomol. 28:319–335.

Walker, T.J. 1983. Diel patterns of calling in nocturnal orthoptera. Pages 45–72, IN D.T. Gwynne and G.K. Morris, eds. *Orthopteran mating systems: sexual competition in a diverse group of insects.* Westview Press, Boulder, CO.

Author

The primary author of this rule is William F. Harrison (see **ADDRESSES** section). Mr. Dennis E. Figg and Mr. Paul D. Calvert, Missouri Department of Conservation, Jefferson City, Missouri 65102–0180, (314)751–4115, provided substantial information.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Comment name	Scientific name						
Insects							
Cricket, prairies	*Gryllotalpa major*	U.S.A. (AR, IL, KS, KY, MO, MS, OK, TN)	NA	T		NA	NA

Dated: March 30, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service

[FR Doc. 90–9457 Filed 4–24–90; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Six Foreign Reptiles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for six foreign reptiles: the Maria Island snake, Maria Island ground lizard, Inagua Island turtle, Cat Island turtle, Brazilian sideneck turtle, and South American red-line turtle. All occupy very restricted ranges and are jeopardized by human habitat disruption and/or direct killing. This proposal, if made final, would implement the protection of the Act for these six reptiles. The Service seeks relevant data and comments from the public.

DATES: Comments must be received by July 25, 1990. Public hearing requests must be received by June 11, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Office of Scientific Authority, Mail Stop: Arlington Square, Room 725, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald M. Nowak, Office of Scientific Authority, at the above address (703–358–1708 or FTS 358–1708).

SUPPLEMENTARY INFORMATION:

Background

In the October 5, 1984, Federal Register (50 FR 39353–39354), the Service published a notice of review of the status of eight species of freshwater turtles to determine whether they should be proposed for listing as endangered or threatened under provisions of the Endangered Species Act of 1973, as amended. Three of these species, the Celebes tortoise (*Indotestudo forsteni*), the Kavalai forest or cane turtle (*Geomyda silvatica*), and the painted batagur (*Callagur borneoensis*) are not proposed for listing at this time, pending the availability of current population information. Field surveys to determine population estimates were in progress in the summer months of 1988. After a review of the available literature and recent field surveys, a fourth species, the Chaco sideneck turtle (*Platemys pallidipectoris*), was found to be more common to both wet and dry Chaco habitat than early research indicated. At this time, no significant threats to this turtle or its habitat are known and it is not proposed for listing. The Service does propose to determine endangered status for four of the remaining species—the Cat Island turtle (*Trachemys terrapen felis*), the Inagua Island turtle (*Trachemys stejnegeri malonei*), the South American red-lined turtle (*Trachemys scripta callirostris*), and Brazilian sideneck turtle (*Phrynops hogei*). Determination of endangered status also is proposed for two reptiles found in St. Lucia: the Maria Island snake (*Liophus ornatus*) and the Maria Island ground lizard (*Cnemidophorus vanzoi*).

The Maria Island snake originally was found on the island of St. Lucia in the Caribbean. It has been extirpated from the island for most of the 20th century and was thought to be extinct until rediscovered in 1973 on Maria Major, an islet off the southeastern coast of St. Lucia. Adults attain lengths of 3 feet (one meter) and are colored black to olive-brown, with a distinct, but somewhat variable white/yellow zig-zag pattern of dots and broken lines continuing to the tail (Dixon 1981). Original type specimens were apparently collected by field workers in the 19th century, and few, if any, notes exist describing the habitat or other ecological requirements of the snake prior to its extirpation from St. Lucia. Its current habitat on Maria Major is primarily xeric rocklands with scattered trees and vines, and small grass and cactus meadows (Corke 1983).

The Maria Island ground lizard is now restricted to Maria Major and Maria Minor, off of St. Lucia, where it was discovered in 1958 (Baskin and Williams 1966). It probably was exterminated on the mainland of St. Lucia, through predation by rats and mongooses, before the collection of documentable specimens. Mature lizards measure 10 to 15 inches (25 to 38 centimeters) long, and are an olive green color, with light striping down the back and lines of blue-gray spots along the sides. Males display a brilliant blue coloration on the undersides of the hind legs, vent area, and entire tail. The bellies of males are characteristically a vivid yellow. Most of the early habitat descriptions indicate a preference for dry coastal areas with grass and prickly pear cactus (Long 1974).

The Inagua Island turtle formerly was considered to be a full species, *Pseudemys malonei* (Barbour and Carr 1938). It currently is known as *Trachemys stejnegeri malonei*, a subspecies of the central Antillean slider inhabiting only Great Inagua Island (Seidel *In Press*). This subspecies has a variable green-brown, oval, high-domed carapace, up to 9½ inches (24 centimeters) long; gray to olive skin; a blunt to rounded snout; and either a

solid yellow or dark-seamed plastron. The carapace plates of juveniles are often purple, streaked with bright yellow, which fades to cream with maturity. Males exhibit melanism with increased age. *T.s. malonei* is difficult to differentiate from other subspecies of *T. stejnegeri*. The subspecies inhabits freshwater ponds, rivers, streams, or swamps, with soft bottoms and abundant aquatic vegetation (Ernst and Barbour 1989). It feeds on vegetation, preferably fruit, supplemented with insects and, occasionally, fish (Barbour and Carr 1938).

The Cat Island turtle, formerly *Pseudemys felis* (Barbour 1935), is presently recognized as the subspecies *Trachemys terrapen felis*. It occurs only on Cat Island in the Bahamas (Seidel and Adkins 1987). It generally lives in or around ephemeral freshwater ponds, as available, and persists through dry periods by burrowing into the remaining muck and leaf litter of former ponds. It is very fond of basking when freshwater is not limited, a behavioral trait that aids in its capture. Adults are inconspicuous, with the carapace varying in color from grayish brown to yellowish olive and being approximately 10 to 13 inches (25-32 centimeters) long. There are usually no markings on the carapace, nor on the plastron, which is cream to yellow colored. The carapace is only slightly domed, but has a strong medial keel. Rows of shallow rugosities give the vertebral and pleural scutes a wrinkled appearance. The neck, limbs, and tail are also a drab gray to olive; light striping may appear on the forelimbs and neck of younger individuals. Most adults have a white "mustache" stripe below the nostrils (Ernst and Barbour 1989). Juveniles make more attractive pets because their stripes and plastral markings are most distinct. The diet is apparently omnivorous, but there is a strong preference for custard apples, a local wild fruit.

First described in 1967, the Brazilian sideneck turtle (*Phrynops hogei*) is a rare native of the Rio Paraiba and Rio Itapemirim drainages in southeastern Brazil (Mittermeier *et al.* 1980). It apparently occupies a restricted range below 1,650 feet (500 meters) in the states of Rio de Janeiro, Minas Gerais, and southern Espirito Santo (Rhodin *et al.* 1982). The domed, elongated carapace generally measures 9-13 inches (23-24 centimeters). The carapace lacks any keel or medial groove, and may vary in color from light to dark brown. The plastron is uniformly yellow with indistinct grayish blotches. A distinct line of color demarcation runs along the sides of the peculiarly narrow head and neck. Soft underparts are often a pinkish cream, and a distinct, but variable, red pattern may be evident on the head and neck of females (Ernst and Barbour 1989). Subadult females may exhibit a high degree of red pigmentation. *P. hogei* resembles *P. gibbus*, an endemic of Amazonian and Guianan regions, but is distinguished primarily by its higher domed carapce and lack of a distinct keel. *Phrynops* species are primarily carnivorous, subsisting on insects, larval forms, and small fish, supplemented by available fruit (Rhodin *et al.* 1982). Very little ecological or population dynamics research has been done on the relatively newly described *P. hogei*.

The colorful Colombian slider, or South American red-lined turtle (*Trachemys scripta callirostris*), was once common to Caribbean drainages in northern Colombia and northwestern Venezuela. Named for the bright red postorbital stripe on its head, it is a very attractive reptile and has regularly appeared in the European pet trade for many years (Pritchard 1979). The carapace is weekly keeled oval with a slightly serrated posterior rim and is 8-24 inches (20-60 centimeters) long. The ground color on adults is olive to brown, but the shell is also highly patterned with yellow bars and ocelli, as well as green and black concentric circles. The plastral configuration is equally decorative. Yellow ocelli also mark the underside of the head and neck. Hatchlings are brighter, the ground color being emerald green upon emergence but darkening with maturity. The color and patterning of these juveniles inspires local people to gather large numbers of them for eventual sale as dried trinkets (Groombridge 1982). *Trachemys scripta callirostris* prefers quiet, soft-bottomed waters with plenty of aquatic plants and basking sites. Reports regarding diet vary, but indicate that individuals or geographic populations may display vegetarian, omnivorous, or even predatory and carnivorous feeding behavior.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the six reptiles named above are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In 1975, Medem observed that the range of *Trachemys scripta callirostris* in Colombia consisted of only the Magdalena and Sinu' river drainages. Recent communications indicate that the easternmost populations have been extirpated (Russell Mittermeier, State University of New York, pers. comm.). The same is suspected of populations on the western edge of the subspecies' range. Venezuelan populations may also have been extirpated, as virtually all of the historical habitat of *T. s. callirostris* in Venezuela is currently occupied by petroleum facilities and storage tanks (Russell Mittermeier, State University of New York, pers. comm.). Remaining wetland habitat is being destroyed by burning and development (Groombridge 1982). The North and South American herpetological communities view the future of *T. s. collirostris* in Colombia and Venezuela with grave concern.

On Cat Island, only one population site of *Trachemys terrapen felis* remains undisturbed by man (Bostock 1987). The seven other areas have been degraded by agricultural burning or excessive human use. The total number of individuals of the subspecies appears to have declined since Ross surveyed several sites in 1983 (Bostock 1987). Extensive surveys of the island were conducted by Dr. Bostock in 1987, capturing fewer than 350 individuals. Remaining habitat is small and subject to development and disturbance by road construction (Groombridge 1982).

Many of the areas of Great Inagua Island, on which *Trachemys stejnegeri malonei* occurs, are within the boundaries of a preserve leased by the Bahamian National Trust and managed for flamingos. Solar salt processing operations may be permitted to expand, inundating some areas of the preserve, as flooding would not adversely affect the flamingos or their habitat. Although *Trachemys stejnegeri* is tolerant of brackish water, the high salinity of seawater is lethal. Inagua Island turtles have been frequently observed residing in the freshwater lenses of small inland saltwater ponds. These freshwater lenses are also considered an inexpensive source of drinking water by the growing human population on Great Inagua (approximately 1,000+). When imported freshwater supplies are not readily available, the freshwater lenses of pools are pumped for drinking water, decreasing available *T. s. malonie* habitat (Karen Bjorndahl, University of Florida, pers. comm.).

The riverine habitat of the Brazilian sideneck turtle, *Phrynops hogei*, has undergone extensive deforestation in the past 20 years. The banks and marshes of the Rio Itapemerim and Rio Paraiba drainages are no longer suitable for freshwater turtle habitation or reproduction. Periodic field collections of specimens needed to establish the taxonomic status of *P. hogei* failed to obtain any juvenile samples (Russell Mittermeier, State University of New York, pers. comm.).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Ross confirmed the use of the Cat Island turtle for culinary purposes in 1983. The practice continues on the northern areas of the island, though specific numbers are not available. Hatchling turtles from all areas of the island also supply a localized pet trade (Bostock 1987).

Local cultural tradition exerts additional pressure on the South American red-lined turtle, *Trachemys scripta callirostris*. Large, egg-laden females are captured weeks in advance of holy week, when mammalian flesh is proscribed by the Roman Catholic Church, and lucratively sold in local markets. The former abundance of these sliders seems to have modified the traditional time of fasting and self-denial to an eagerly anticipated time of feast (Peter Pritchard, Florida Audubon Society, pers. comm.). Eggs also are heavily exploited for food (Groombridge 1982).

C. *Disease or predation.* The feral hog, an introduced predator to Great Inagua Island, exerts further pressure on already dwindling populations of the Inagua Island turtle (Karen Bjorndahl, University of Florida, pers. comm.). Groombridge (1982) estimated the entire subspecies of *T. s. malonei* to number 200–500 individuals. According to Corke (1983, 1987), the Maria Island snake and ground lizard probably were totally exterminated from the mainland of St. Lucia by predation of introduced rats and mongooses. They survive only in extremely restricted habitats, amounting to not more than 30 acres on the two islets, Maria Major and Minor. There are fewer than 1,000 of the lizards, and only 50–100 snakes. They remain vulnerable to potential introduction of predators and other environmental disruptions (see below).

D. *The inadequacy of existing regulatory mechanisms.* The Maria Island snake and ground lizard inhabit the islets Maria Major and Maria Minor off the southeastern coast of St. Lucia. In 1973, both of these tiny volcanic islands became a nature preserve under the control of the St. Lucian National Trust specifically for the protection of these species (Earl Long, Center for Disease Control, pers. comm.). In 1986, the islands were resurveyed, but not snakes were found, and only three individuals have been sighted since 1983. The interpretive trails and facilities at the preserve were found to be somewhat degraded, perhaps an indication of the level of maintenance and priority given to the protection of these species (Corke 1983).

On Great Inagua Island, most of the *T. s. malonei* population exists within the confines of a preserve created for the protection of flamingos. There are apparently no regulations mandating the preserve remain in its present state, which is that of a freshwater habitat. The other three reptiles included in this proposed rule are not protected by any known existing regulations or private habitat preserves.

E. *Other natural or manmade factors affecting its continued existence.* All six reptiles covered by this proposal occur in such small numbers that inbreeding and loss of genetic viability could be a problem. On Cat Island, land often is cleared for agricultural purposes by burning all of the existing vegetation in an area. Turtles, or other animals, are not removed prior to burning and a few, charred turtle carcasses are usually found as brush and debris are removed (Bostock 1987). Water pollution continues to be a problem for the Brazilian sideneck turtle and the South American red-lined turtle. The river drainages within the ranges of both species have been virtually denuded of vegetative cover, thus promoting siltation problems. Some of these areas have been heavily industrialized in the past few decades (Russell Mittermeier, State University of New York, pers. comm.).

The decision to propose endangered status for the Maria Island snake, Maria Island lizard, Cat Island turtle, Inagua Island turtle, Brazilian sideneck turtle, and South American red-lined turtle was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. All six of these reptiles have demonstrated significant declines in population numbers in recent years and are vulnerable to human exploitation and disturbance. If conservation measures are not implemented, further declines in population numbers are likely to occur. Critical habitat is not being proposed, as its designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. No such actions are currently known with respect to the species covered by this proposal.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Section 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It also is illegal to possess, sell, deliver, transport, or ship

any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under centain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with other such lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

International trade in these six species is expected to be minimal. The Service will review all of these species to determine whether any of them should be placed on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether they should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Comments particularly are sought concerning the following:

(1) Biological, commercial or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of the subject species;

(3) Additional information concerning the distribution of these species; and

(4) Current or planned activities in the involved areas, and their possible effect on the subject species.

Final promulgation of the regulation on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal, should be in writing, and should be directed to the party named in the above "**ADDRESSES**" section.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Ms. Linda Coley, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under REPTILES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	Critical habitat	Special rules
Common name	Scientific name					
Reptiles						
*	*	*	*	*	*	
Lizard, Maria Island ground	*Cnemidophorus vanzoi*	West Indies: St. Lucia (Maria Islands).	Entire	E	NA	NA
*	*	*	*	*	*	
Snake, Maria Island	*Liophus ornatus*	West Indies: St. Lucia (Maria Islands).	Entire	E	NA	NA
*	*	*	*	*	*	
Turtle, Brazilian sideneck (=Hoge's).	*Phrynops hogei*	Brazil	Entire	E	NA	NA
*	*	*	*	*	*	
Turtle, Cat Island	*Trachemys terrapen felis*	West Indies: Bahamas (Cat Island).	Entire	E	NA	NA
*	*	*	*	*	*	
Turtle, Inagua Island	*Trachemys stejnegeri malonei.*	West Indies: Bahamas (Great Inagua Island).	Entire	E	NA	NA
*	*	*	*	*	*	
Turtle, South American red-lined (=Colombian slider).	*Pseudemys scripta callirostris*	Colombia, Venezuela	Entire	E	NA	NA
*	*	*	*	*	*	

Dated: April 2, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-9456 Filed 4-24-90; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition to List the Paddlefish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service announces a 90-day petition finding for a petition to amend the list of Endangered and Threatened Wildlife and Plants. The petitioner presented substantial information which indicates that the petition to list the paddlefish (*Polyodon spathula*) may be warranted for at least some populations. A status review was initiated on December 30, 1982, and the Service seeks information until June 1, 1990.

DATES: The finding announced in this notice was approved on April 2, 1990. Comments and information may be submitted until June 1, 1990.

ADDRESSES: Questions or comments concerning this finding should be submitted to the Missouri River Coordinator, Fish and Wildlife Enhancement, P.O. Box 986, Federal Building, Pierre, South Dakota 57501. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at either of the following Fish and Wildlife Enhancement Offices: Suite 405, 134 Union Boulevard, Lakewood, Colorado (mailing address: P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225), or room 308A. Federal Building, 225 South Pierre Street, Pierre, South Dakota.

FOR FURTHER INFORMATION CONTACT: Dr. Kent D. Keenlyne at the Pierre address above (605/224-8693).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. In the case of the paddlefish, a status review was initiated by a Notice of Review published December 30, 1982 (47 FR 58454).

The Service has received and made a 90-day finding on the following petition:

A petition dated June 29, 1989, was received from Mr. Steven G. Moore on July 6, 1989. The petition requested the Service to list the paddlefish (*Polyodon spathula*) as a threatened species.

The petition stated that the paddlefish is presently known from 22 States in the interior continental United States (States are listed in later discussions). The petition and referenced documentation indicated that the survival of the species is threatened by a declining population, having already been extirpated in Canada, New York, Maryland, North Carolina, and Pennsylvania, with declining populations in seven other States (Alabama, Illinois, Kansas, Ohio, South Dakota, Texas, and West Virginia). Threats described include historical, ongoing, and continuing loss of habitat; past overharvest by commercial means and continuing inadequate control of commercial harvest; a weakening of the gene pool by present artificial propagation programs with a possible threat to longer range survival; and inadequate regulations to protect the species.

The paddlefish is the only species of the family Polyodontidae found in North America. It is found mostly in the large river systems of the Mississippi River Basin and in some Gulf of Mexico drainages. A recent study in Missouri determined that there are genetically identifiable differences in Gulf drainage stocks, Montana/North Dakota stocks, and the remaining interior stocks. Thus, distinct identifiable populations exist for the species.

In the last 50 years, most of the river systems constituting the paddlefish's habitat have been channelized or

dammed, which has increased water currents and altered natural flows, temperature regimes, and spawning areas. Individuals do well in suitable impoundments but must have access to large, free-flowing rivers to spawn. Spawning needs are very specific and include water temperatures near 50°F, clean gravel substrate for egg attachment, and increased water flow to trigger spawning. These conditions may no longer exist throughout most of the Missouri River from Garrison Dam in North Dakota to the mouth at St. Louis, Missouri, and in the Mississippi River from Minneapolis, Minnesota, to St. Louis, Missouri, at suitable frequency to maintain the species or populations of the species. This is a reach of approximately 1,400 miles of historical habitat on the Missouri River and about 650 miles on the Mississippi River. Only five natural spawning areas, two of which are in the above mentioned reaches of the Missouri and Mississippi Rivers, are known throughout the range of the species (the Upper Mississippi River near Iowa and Illinois; the White River in South Dakota; the Cumberland River in Tennessee; the Neosho River in Kansas; and the Missouri River in Montana). Since small fish have been observed in other areas, they presumably also are spawning in other, as yet, unidentified locations. With such exact spawning requirements, any habitat alteration, either new or ongoing, which adversely affects these relatively limited remaining natural spawning areas can severely affect the welfare of the fish.

A closely related issue involves the species' relatively low reproductive potential. Paddlefish may live as long as 30 years, with males attaining sexual maturity in 7 to 9 years and females maturing in 10 to 12 years. Once sexual maturity is obtained, females normally require intervals of 2 or more years to reach spawning condition, indicating that under optimum conditions a female paddlefish would spawn fewer than 10 times during her lifetime. This low reproductive potential, in combination with the narrow range of conditions necessary to ensure a successfuil spawn, plus extremely low numbers of naturally reproducing populations and relatively small numbers of individuals comprising these populations, suggests that the species' ability to maintain its existence (without supplemental stocking) is reduced considerably. Only a few years of poor production or a combination of overharvest (legal or illegal) and poor production would likely bring the species to the brink of extinction throughout a considerable portion of its present range.

Populations have declined notably in certain areas in recent years. The paddlefish population in Lake Francis Case, a Missouri River Reservoir in South Dakota, has declined since the closure of Oahe Dam in 1958 and Big Bend Dam in 1963 (both are upstream of Lake Francis Case). Shortly after closure, a significant fishery developed in the tailwaters of these dams. Based on sport catches, harvests decreased from 4,400 in 1962 to 700 by 1963 in the Oahe tailwaters and 2,831 in 1971 to 132 by 1979 in the Big Bend tailwaters. No sport fishery exists at either site at present. In the Lake of the Ozarks, an Osage River Reservoir in Missouri, a similar situation may be developing. This lake was created in 1931, and the paddlefish population increased in the more productive reservoir. Spawning was successful because the fish could move into suitable upstream areas. The construction of the Harry S. Truman Dam upstream from the Lake of the Ozarks, however, has eliminated fish movements upstream, and sport fishing is presently limited to the Truman Dam tailwaters. In the Mississippi River above St. Louis, commercial harvest of paddlefish has declined 62 percent from around 1900 to 1980, largely due to construction of dams and channelization of the river for commercial navigation.

As of 1989, of the 22 States still having paddlefish populations, 8 (Arkansas, Iowa, Kentucky, Mississippi, Missouri, Montana, Oklahoma, and Tennessee) allowed commercial and sport fishing harvest of paddlefish: 8 (Indiana, Kansas, Nebraska, North Dakota, Ohio, South Dakota, Virginia, and West Virginia) allowed sport fish harvest only; 1 (Illinois) allowed commercial harvest only; and 5 (Minnesota, Wisconsin, Alabama, Louisiana, and Texas) did not allow either sport or commercial harvest. Diligence on the part of the States to improve water quality and to better manage the paddlefish resource has allowed it to possibly expand its range in the southeast and in the Upper Mississippi River. And, though there is not sufficient evidence to demonstrate overexploitation by legal fishing means, illegal harvest has become a major concern. In April 1989, undercover agents in Missouri arrested 2 men for nearly 200 Federal and State violations. The agents worked on the case for over a year and documented a wide network of those who buy and sell illegal eggs. One netter claimed having taken 5,000 pounds of paddlefish eggs from Table Rock Lake, Missouri. At 8 to 10 pounds of eggs per female fish, they poached about 500 to 600 female fish, and probably as many males, from this lake alone. Between April and June 1989, almost a dozen other individuals pleaded guilty or faced charges in State courts for illegal harvest of paddlefish for commercial purposes in Missouri.

Paddlefish roe (eggs) is valuable as caviar, and premium quality paddlefish caviar can net the seller between $300 and $500 retail per pound. This represents a significant increase from the $50 to $70 per pound price of a few years ago. Increased prices have led to additional pressure for legal commercial harvest, as well as increased poaching throughout the species' range. The leading supplier of paddlefish caviar has indicated that demand has increased from about 12,000 pounds to 22,000 pounds of paddlefish caviar per year. The species is well noted as being especially vulnerable to illegal harvest methods, and enforcement of poaching laws is made more difficult in States where the commercial sale of paddlefish, or parts thereof, is legal.

As the petitioner noted, artificial propagation may affect the gene pool and the long range survival of a species. A loss of genetic material could occur if brood stocks are made up of only a few individuals (inbreeding), and a disruption of genetic material could be caused by the mixing of nonadapted genes with those adapted to environments where introductions occur. Although an item of concern, this cannot be considered a threat until more is known about the distribution of genetic material within and between paddlefish populations, the movements and migrations of paddlefish, and the relationships of movements and migrations to reproduction.

Habitat loss, particularly crucial spawning and nursery habitat, is the most serious threat to paddlefish existence as a self-sustaining biological entity. Past habitat losses greatly affect the paddlefish's present geographic distribution. Although paddlefish populations in 15 of the 22 States comprising the present distribution of the species are presently considered stable or increasing, a number of these populations are dependent upon supplemental stocking of hatchery produced fish to maintain sufficient numbers for commercial or sport harvest. If supplemental stocking was discontinued, paddlefish populations and distribution would be limited primarily to a few States that maintain spawning populations or have populations supported by recruitment from existing stocks. Present spawning

populations may be sufficiently isolated geographically so that little or no gene flow occurs among the various stocks. If evaluated solely on sustained "natural" distribution, there may be several other areas within its range where the species may not be able to continue to exist. The effects of supplemental stocking, both on distribution and abundance, and the mixing of gene pools will need to be cautiously evaluated when determining the status of the paddlefish and to assess the magnitude of other identified threats.

Several introduced fish species have become established in the Mississippi River system that could be in direct competition with the paddlefish for food or as a new threat preying upon eggs in the limited areas of natural reproduction. Of particular concern is the big-headed carp (introduced from Asia), which is reproducing as far north as Missouri and which apparently feeds at the same trophic levels as the paddlefish.

After a review of the petition, accompanying documentation, and references cited therein, the Service has found that the petition presented substantial information that the requested action may be warranted for at least some populations. Within 1 year from the date the petition was received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act.

Author

This notice was prepared by Dr. Kent D. Keenlyne, Pierre, South Dakota (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: April 17, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–9458 Filed 4–24–90; 8:45 am]

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Annual Description of Progress on Listing Actions and Findings on Recycled Petitions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Annual notice of listing progress and petition findings.

SUMMARY: The Service describes its progress in revising the lists of Endangered and Threatened Wildlife and Plants during the period from October 1, 1988, to September 30, 1989. The Service also announces its findings on recycled petitions.

DATES: The description of the Service's progress in revising the listed is current as of October 1, 1989.

ADDRESSES: Information, comments, or questions may be submitted to the Chief, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/358–2171 of FTS 921–2171).

FOR FURTHER INFORMATION CONTACT: Dr. Janet Hohn, Chief, Branch of Listing and Recovery (703/358–2171 or FTS 921–2171).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3) of the Endangered Species Act (Act), as amended in 1982 (16 U.S.C. 1531 *et seq.*), sets out required procedures for respnding to petitions under the Act (*i.e.*, petitions to revise the lists of Endangered and Threatened Wildlife and Plants or to revise critical habitat for listed species). The Service was required to treat any petitions that were pending on the date of enactment of the Amendments as if they were filed again on that date (October 13, 1982). Those petitions, and all subsequent petitions determined to present substantial scientific or commercial information supporting the requested actions, require findings on their merits within 12 months after receipt.

The 1982 Amendments further stipulated that petitioned actions may be determined to be warranted but precluded by other actions to revise the lists if it is also determined that the Service is making simultaneous expenditious progress in revising the lists. Petitions for which a 12-month finding of "waranted but precluded" is made are treated as if they were resubmitted on the date of such an administrative finding (with substantial information that the petitioned action may be warranted). They therefore require a new finding within a year the most recent "warranted but precluded" finding.

This notice describes the Service's annual progress in revising the lists during fiscal year 1989. It also reports administrative findings on recycled petitions that became due during that period.

The Service's 12-month findings for recycled petitions for fiscal year 1988 were reported December 29, 1988 (53 FR 52746). Animal findings are summarized in Table 1 of that report. A current revision of the comprehensive plant Notice of Review was published in the **Federal Register** on February 21, 1990 (55 FR 6184).

Progress in Revision of the Lists

The Service's progress in revising the lists during fiscal year 1989 is described below. The described activities precluded immediate action on other petitioned actions determined during fiscal year 1989 to be "warranted but precluded," including the majority of plant species identified in the Smithsonian plant listing petitions of 1975 and 1978.

The Service's progress in listing and delisting qualified species during fiscal year 1989 is represented by the publication in the **Federal Register** of final listing actions on 39 species and proposed listing actions on 40 species. The number of species affected by each type of listing action published during this period is presented in Table 1.

TABLE 1.—SUMMARY OF LISTING ACTIONS FROM OCTOBER 1, 1988 TO SEPTEMBER 30, 1989

Type of action	No. of species affected
Emergency endangered status	1
Final endangered status	27
Final threatened status	9
Final critical habitat designation	1
Final delisting	1
Proposed endangered status	21
Proposed threatened status	13
Proposed reclassification from threatened to endangered	2
Proposed reclassification from endangered to threatened	1
Proposed delisting	2
Proposed experimental population	1

The Service undertook the above listing actions in accordance with its listing priority system published in the **Federal Register** on September 21, 1983 (48 FR 43098). The Service intends to increase listing efficiency in the future by emphasizing ecosystem and multi-species listing approaches wherever possible.

Petition Findings

Section 4(b)(3)(B) of the Act requires that the Service make one of the following 12-month findings on each petition presenting substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action

is warranted and will be proposed promptly; or (iii) the petitioned action is warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in other listing actions. Petitioned actions found to be warranted are the subjects of proposed rules that are published promptly in the **Federal Register**.

In 1973, the Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species, which was later published as House Document No. 94–51. The Service's first Notice of Review for plants, published on July 1, 1975 (40 FR 27823), indicated acceptance of the original Smithsonian recommendations as a listing petition under the terms of the Act. A revision of the Smithsonian's report was published in 1978 as a book: E. S. Ayensu and R. A. DeFilipps, *Endangered and Threatened Plants of the United States,* Smithsonian Institution and World Wildlife Fund, Washington, DC. Because this revision indicated some additional taxa as vulnerable, and recommended that the Service officially recognize their status as endangered or threatened, it was also accepted as a listing petition. Because of the large number of plants included in the two Smithsonian plant petitions (in excess of 3,000 species), findings on the plants are made by status categories as published in the most recent plant Notice of Review on February 21, 1990 (55 FR 6184).

The plant petition findings for fiscal year 1989 generally repeated the findings made in October 1988 and announced in the **Federal Register** on December 29, 1988 (53 FR 52746). Those plant species proposed for listing as threatened or endangered during fiscal year 1989 were determined to be "warranted" for listing as reported in the proposed rules. The Service has determined that listing is "not warranted" for the petitioned species designated in Category 3 of the plant Notice of Review published February 21, 1990 (55 FR 6184). Determinations of "warranted but precluded" by other actions to revise the lists were made for petitioned species in Categories 1 and 2 of that notice.

As noted in the Service's recently revised plant notice of review, 55 FR 6184 (Feb. 21, 1990), changes in plant taxonomy described in the *Manual of the Flowering Plants of Hawaii* (University of Hawaii Press, Honolulu, 1990, 1853 pp.) have been adopted by the Service and incorporated into the list of candidate plant species. By incorporating these taxonomic changes, which were based upon the best scientific information available, the number of Category 1 plant species within Hawaii is now 186.

The Service will be placing special emphasis on the development and publication of proposed rules to list these 186 Category 1 plant candidates in the State of Hawaii over the next 3 years. To accomplish this goal, the use of multi-species proposals—based upon common habitat types and common geographic location—will be stressed to increase the efficient application of the Service's limited staff and budgetary resources.

Because it was not included in either of the two Smithsonian plant petitions, a petition received October 15, 1985, from Mr. Paul R. Neal to list the Pinos Altos fame flower (*Talinum humile*) was also determined to be "warranted but precluded." This plant has been added to Category 2 of the new plant Notice of Review.

Recycled animal findings for fiscal year 1989 addressed the petitions indicated to be "warranted but precluded" in Table 1 of the FY 1988 Expeditious Progress Report, published December 29, 1988 (53 FR 52746). The 1989 findings were unchanged except as noted below:

The Desert tortoise has been divided into separate populations. The Mojave Desert population has been proposed for listing. The Sonoran Desert population will be addressed in a separate administrative finding.

A finding of "warranted" was determined for the white-necked crow. The finding was published in a proposed rule in the **Federal Register** on December 27, 1989 (54 FR 53132).

The following additional findings for fiscal year 1989 were "warranted but precluded":

(1) 10 New Mexico mollusk species—petitioned by Mr. Harold F. Olson on November 22, 1985.

(2) Mariana fruit bat—petitioned by Dr. Thomas O. Lemke on March 4, 1986.

The following "not warranted" 1989 findings were made:

(1) Puerto Rican sharp-shinned hawk—petitioned by International Council for Bird Preservation on November 24, 1980. Study of the status of this species convinced the Service to change its status category to 3C in the animal Notice of Review published January 6, 1989 (54 FR 554), indicating that its listing is not warranted.

(2) Orangefin madtom—petitioned by Mr. Noel M. Burkhead on October 6, 1983. Subsequent survey has shown distribution extensive enough to indicate that listing this species is not warranted.

(3) Oklahoma salamander—petitioned by Mr. Tom R. Johnson on March 19, 1986. The information now available from recent status surveys indicates a wider distribution than previously believed. Listing the species is not warranted, and its category will be changed to 3C in the next animal Notice of Review.

The general plant and animal notices of review are important tools for gathering data on species that are candidates for listing and for informing interested parties of the Service's general views on the status of present and past candidate species. A current revision of the comprehensive plant notice was published February 21, 1990 (55 FR 6184). The most recent previous general Notice of Review for plants was published on September 27, 1985 (50 FR 39526). The most recent comprehensive Notice of Review for animals was published on January 6, 1989 (54 FR 554), and will be revised and published on a biennial schedule.

Author

This notice was prepared by Dr. George Drewry of the Division of Endangered Species and Habitat Conservation.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: April 18, 1990

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–9601 Filed 4–24–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 80
Wednesday, April 25, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Oglethorpe Power Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact relating to the construction of a training center in Monroe County, Georgia.

SUMMARY: Notice is hereby given that the Rural Electrification Administration, pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) the Council on Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact with respect to the construction of a training center in Monroe County, Georgia. Oglethorpe Power Corporation has requested the Rural Electrification Administration's approval to construct the project.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8436.

SUPPLEMENTARY INFORMATION: The Rural Electrification Administration, in accordance with its environmental policies and procedures, required that Oglethorpe Power Corporation develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed training center. The Rural Electrification Administration has reviewed the BER and believes it represents a fair and accurate representation of the project and its potential impacts.

Oglethorpe Power Corporation published a legal notice and advertisement in the Monroe Reporter which has a general circulation in Monroe County, Georgia. The notice and advertisement appeared in the March 7, 1990 issue. The notice described the project, announced the availability of the BER, gave information on how the BER could be obtained for review and gave addresses where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by Oglethorpe Power Corporation or the Rural Electrification Administration.

As a result of its independent evaluation of the environmental issues and concurrence with the BER's scope and content, the Rural Electrification Administration adopted the BER as its Environmental Assessment of the project.

The training center will consist of a 744 square meter (8,000 square foot) classroom building, a 6,900 square meter (74,000 square foot) fenced substation training area, a substation control room, a mock dispatch training room, a 20,000 square meter (215,000 square foot) distribution system training area, two offices, storage area for light equipment, cafeteria area, and parking for 100 vehicles. There will be no petroleum storage tanks on site. The entire training center will require an 8 hectare (20 acre) site.

Alternatives examined for the proposed project were no action and construction of the training center at two alternative sites. Rural Electrification Administration determined that there is a demonstrated need for the project and constructing it at the preferred site will have no significant impact to the environment.

The Rural Electrification Administration (REA) has concluded from its assessment that the project will have no significant impact on the health and welfare of people living or working in the project area, water quality or air quality. The project is not likely to adversely affect federally listed threatened and endangered species. There are no wetlands, 100-year floodplains, prime farmland, prime rangelands, prime forestlands, properties listed or eligible for listing on the National Register of Historic Places, National Forests, National Wilderness Areas, National Landmarks, or streams and rivers on, or under review for, the Wild and Scenic River System in the project area.

No other potential significant impacts resulting from the construction and use of the proposed training center have been identified. Therefore, the Rural Electrification Administration has determined that its action related to this project will have no significant impact on the quality of the human environment and has subsequently reached a Finding of No Significant Impact.

The Rural Electrification Administration has determined that the Finding of No Significant Impact fulfills its obligations under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and the Rural Electrification Administratioin Policies and Procedures (7 CFR part 1794) for its action related to the proposed training center.

Copies of the Environmental Assessment and Finding of No Significant Impact can be obtained from REA at the address provided herein or at the office of Oglethorpe Power Corporation, P.O. Box 1349, Tucker, Georgia 30085–1349.

Dated: April 19, 1990.

John H. Arnesen,

Assistant Administrator—Electric Rural Electrification Administration, United States of America.

[FR Doc. 90–9531 Filed 4–24–90; 8:45 am]

BILLING CODE 3410–15–M

COMMISSION ON CIVIL RIGHTS

Louisiana Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of a subcommittee of the Louisiana Advisory Committee to the Commission will convene at 3 p.m. and adjourn at 5:30 p.m., on June 1, 1990, at the Federal Building, 501 Magazine Street, Room 1044, New Orleans, Louisiana 70130. The purpose of the meeting is to plan for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert Kutcher, or Melvin L. Jenkins, Director of the

Central Regional Division, (816) 426–5253 (TDD 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 19, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–9591 Filed 4–20–90; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

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: Bureau of the Census.

Title: Census of Construction Industries—1989 Pretest.

Form Number(s): CC–1(X), CC–2(X), CC–3(X), CC–4(X), CC–5(X).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 10,000.

Number of Respondents: 5,000.

Avg Hours Per Response: 2 hours.

Needs and Uses: This survey will test five versions of the form which Census will use in the 1992 Census of Construction Industries. Census will evaluate the test results to determine the effect of the alternative designs on the level of mail returns and quality of reports provided by repondents.

Affected Public: Businesses or other for-profit organizations and small businesses or organizations.

Frequency: One time.

Responsent's Obligation: Mandatory.

OMB Desk Officer: Din Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 19, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–9503 Filed 4–24–90; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Order No. 470]

Approval for Expansion of Foreign-Trade Zone 49 Newark, New Jersey, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 3, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Port Authority of New York and New Jersey, Grantee of Foreign-Trade Zone 49, has applied to the Board for authority to expand its general-purpose zone, located in Newark/Elizabeth, New Jersey, to include its Auto Marine Terminal and the adjacent Greenville Industrial Park in Bayonne and Jersey City, New Jersey, within the New York Customs port of entry;

Whereas, the application was accepted for filing on September 18, 1989, and notice inviting public comment was given in the **Federal Register** on September 25, 1989 (FTZ Docket 16–89, 54 FR 39218);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Newark area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders: That the Grantee is authorized to expand its zone in accordance with the application filed September 18, 1989. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 19th day of April 1990.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–9567 Filed 4–24–90; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[C–223–601]

Certain Cut Flowers From Costa Rica; Final Results of Countervailing Duty; Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On February 13, 1990, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica. We have now completed that review and have determined that the signatories have complied with the terms of the suspension agreement during the period January 1, 1988 through December 31, 1988.

EFFECTIVE DATE: April 25, 1990.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 5040) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation regarding certain cut flowers from Costa Rica (52 FR 1356; January 13, 1987). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Costa Rican miniature (spray) carnations, standard carnations and pompon chrysanthemums. During

the review period, such merchandise was classifiable under items 192.17 and 192.21 of the *Tariff Schedules of the United States*. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* items 0603.10.30 and 0603.10.70.

The review covers 31 producers and exporters of the subject merchandise. These 31 producers and exporters, along with the Government of Costa Rica (GOCR) and the Association of Costa Rican Flower Growers (ACOFLOR), are the signatories to the suspension agreement (see appendix A of this notice for a listing of the 31 signatory producers and exporters).

The review covers the period January 1, 1988 through December 31, 1988, and six programs: (1) Tax Credit Certificates; (2) Certificates for Increasing Exports (CIEX); (3) Income Tax Exemptions for Export Earnings; (4) Exporter Credit for Sales Tax and Consumption Tax on Certain Domestic Purchases; (5) Exporter Exemptions for Taxes and Duties on Imports; and (6) Accelerated Depreciation.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine that the signatories have complied with the terms of the suspension agreement for the period January 1, 1988 through December 31, 1988.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject cut flowers into the United States. Our information indicates that the 31 signatory companies accounted for substantially all of the imports into the United States of this merchandise during the review period.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Dated: April 8, 1990.

Appendix A—List of Signatory Producers and Exporters

1. American Flower Corporation, S.A.
2. Flores del Cerro
3. Agroflor de Paraiso, S.A.
4. Hermelink y Garces, S.A.
5. Tico Flor, S.A.
6. Cooexflo R.L.
7. Compania Agricola Flex, S.A.
8. Flor 3ella, S.A.
9. Exporflor de Cartago, S.A.
10. Lianpa, S.A.
11. Floricultura de Costa Rica, S.A.
12. Vivero El Zamorano, S.A.
13. Flores de Iztaru, S.A.
14. Inversiones Costa Flor, S.A.
15. Coopeflor
16. Euroflores, S.A.
17. Flores y Follajes del Tirol, S.A.
18. Flores del Volcan CRP, S.A.
19. Goreza, S.A.
20. Llano Claro, S.A.
21. Ornamentales Cargil, S.A.
22. Floricultura La Colina, S.A.
23. Flores Intercontinentales, S.A.
24. Fincas Nabori, S.A.
25. Flores de Coris, S.A.
26. Florex, S.A.
27. C.R.B. Internacional, S.A.
28. Flores del Caribe, S.A.
29. Zurqui Flor de Costa Rica, S.A.
30. Rio Tapezco Ltda.
31. Jardin Botanico LDL de Costa Rica, S.A.

[FR Doc. 90-9568 Filed 4-24-90; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; OPEI Inc.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-A0018."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 89-00018, which was issued on March 19, 1990 (55 FR 11041, March 26, 1990).

Summary of Application

Applicant: Outdoor Power Equipment Institute, Inc. ("OPEI"), 341 South Patrick Street, Alexandria, Virginia 22314. Contact: Laurence J. Lasoff, Esquire, Legal Counsel, Telephone: 202/342-8530.

Application No.: 89-A0018.

Date Deemed Submitted: April 16, 1990.

Request For Amended Conduct: OPEI seeks to amend its Certificate by adding the following company as a "Member" of the Certificate: Ariens Company of Brillion, Wisconsin.

Dated: April 20, 1990.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-9585 Filed 4-24-90; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of application for an export trade certification of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of

Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from State and Federal Government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 90–00006." A summary of the application follows.

Summary of the Application

Applicant: Forging Industry Association (FIA), 25 Prospect Avenue West, Suite 300 LTV Building, Cleveland, Ohio 44115.

Contact: Robert W. Atkinson, Executive Vice President, Telephone: (216) 781–6260.

Application No.: 90–00006.

Date Deemed Submitted: April 10, 1990.

Members (in addition to applicant): AeroForge Corporation, Muncie, IN; Ajax Rolled Ring Company, Wayne, MI; Aluminum Company of America, Forging Division, Cleveland, OH; The American Welding & Manufacturing Company, Warren, OH; Bethlehem Steel Corporation, BethForge Division, Bethlehem, PA; Bula Forge, Inc., Cleveland, OH; Cameron Forge Company, Cypress, TX; Canton Drop Forge, Canton, OH; Clifford-Jacobs Forging Company, Champaign, IL; Cold Extrusion Company of America, Inc., Jacksonville, AR; Columbus McKinnon Corporation, Amherst, NY; Commercial Forged Products, Inc., Bedford Park, IL; Cooper Tools—Brewer-Titchener/Merrill, Cortland, NY; Edgewater Steel Company, Oakmont, PA; Ellwood City Forge Corporation, Ellwood City, PA; Ellwood Texas Forge Company, Houston, TX; Federal Forge Inc., Lansing, MI; A. Finkl & Sons Co., Chicago, IL; The Harris-Thomas Drop Forge Co., Dayton, OH; Illinois Forge, Inc., Rock Falls, IL; Impact Forge, Inc., Columbus, IN; Interstate Drop Forge Company, Milwaukee, WI; Jernberg Industries, Inc., Chicago, IL; Kaiser Aluminum & Chemical Corporation, Forging Division, Erie, PA; Keystone Forging Company, Northumberland, PA; Lake City Forge, Lake City, MI; Charles E. Larson & Sons, Inc., Chicago, IL; Molloy Manufacturing Company, Fraser, MI; McInnes Steel Company, Corry, PA; McWilliams Forge Company, Inc., Rockaway, NJ; Milwaukee Forge, Milwaukee, WI; Modern Drop Forge Company, Blue Island, IL; Moline Forge, Inc., Moline, IL; Monroe Forgings, Rochester, NY; Pittsburgh Forgings Company, Coraopolis, PA; Presrite Corporation, Cleveland, OH; The Queen City Forging Company, Cincinnati, OH; Rockford Drop Forge Co., Rockford, IL; Schaefer Equipment, Inc., Warren, OH; Schlosser Forge Company, Cucamonga, CA; Scot Forge, Spring Grove, IL; SIFCO Forge Group, Cleveland, OH; Specialty Ring Products, Inc., Bensalem, PA; Standard Steel, Burnham, PA; Storms Forge Inc., Springfield, MA; Teledyne Portland Forge, Portland, IN; Unit Drop Forge Co., Inc., West Allis, WI; Walker Forge, Inc., Racine, WI; Waltec American Forgings Inc., Waterbury, CT; Weber Metals, Inc., Paramount, CA; and Wyman-Gordon Company, Worcester, MA.

Export Trade

Products

Forgings from any ferrous materials (carbon, alloy, stainless or tool steel), non-ferrous materials (aluminum, titanium, brass, copper, bronze, magnesium), or high temperature alloy materials (those designed for use at temperatures of 1000 degrees Fahrenheit or more) that are produced by the several processes shown immediately below. Such forgings, whether machined or not machined, may be made by the following forging processes: impression die, open die, and/or seamless rolled ring, whether forged hot, warm, or cold.

Services

Design services related to Products and related manufacturing processes; licensing of Technology Rights concerning Products and related processes.

Technology Rights

Patents, trademarks, service marks, trade names, copyrights, trade secrets, know-how, industrial designs, first die proofs, design of die block impressions, inserts, and forms of computer software protection associated with the above.

Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; liaision with U.S. and foreign government agencies, trade associations, and banking institutions; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except: (a) the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands); and (b) Canada.

Export Trade Activities and Methods of Operation

FIA and/or any of its Members may:

1. Engage in joint bidding or other joint selling arrangements for Products and Services and allocate sales resulting from such arrangements;

2. Establish export prices for sales of Products and Services by the Members in the Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

3. Discuss and reach agreements relating to the interface specifications and engineering requirements demand by specific potential customers of Products for Export Markets;

4. Refuse to quote prices for, or to market or sell in, Export Markets with respect to to Products and Services;

5. Solicit Suppliers to sell their Products and Services or offer their Export Trade Facilitation Services through the certified activities of FIA

and/or its Members; provided, however, that Suppliers will not participate in the full range of certified export trade activities and methods of operation under this Certificate; rather, their participation shall be limited to those activities typically associated with Supplier services;

6. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with FIA or any Member;

7. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

8. Bring together from time to time groups or Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets;

9. Enter into agreements wherein they agree to act in certain Export Markets as the Members' exclusive or non-exclusive Export Intermediary for Products or Services in the Export Markets. In exclusive Export Intermediary agreements, (i) FIA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant Export Market, and (ii) Members may agree that they will export for sale in the relevant Export Market only through FIA or the Member(s) acting as exclusive intermediary, and that they will not export independently to the relevant Export Market, either directly or through any other Export Intermediary. FIA and/or its Members when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its services on non-discriminatory terms to those Members that are parties to the exclusive arrangements and which request such services;

10. Exchange and discuss the following types of information solely about the Export Markets:

a. Information about sales or marketing efforts in the Export Markets; activities and opportunities for sales of Products and Services in the Export Markets; selling strategies in the Export Markets; pricing in the Export Markets; projected demand in the Export Markets; customary terms of sale in the Export Markets; the types of Products and Services available from competitors for sale in particular Export Markets, and the prices for such Products and Services; and customer specifications for Products and Services in the Export Markets;

b. Information about the export prices, quality, quantity, source, and delivery dates of Products and Services available from Members for export, provided, however, that exchanges of information and discussions as to export prices, quality, quantity, source, and delivery dates must be on a transaction by transaction basis only and involve only those Members which are participating or have a genuine interest in participating in such transaction;

c. Information about terms, conditions, and specifications of particular contracts for sale in the Export Markets to be considered and/or bid on by FIA and its Members;

d. Information about joint bidding, selling, or servicing agreements for Export Markets and allocations of sales resulting from arrangements among the Members;

e. Information about expenses specific to exporting to and within the Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations affecting sales in the Export Markets; and

g. Information about FIA's or its Members' export operations, including, without limitation, sales and distribution networks established by FIA and its Members in the Export Markets, and prior export sales by Members (including export price information);

11. Forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information;

12. Provide Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products and Services to the Export Markets. This may be accomplished by FIA itself, or by agreement with Members or other parties; and

13. Meet to engage in the activities described in the preceding paragraphs.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means the member companies of FIA listed above and subject to the provisions of this proposed Certificate. New FIA Members may be incorporated in the Certificate through an abbreviated amendment procedure. An abbreviated amendment shall consist of a written notification to the Secretary of Commerce and the Attorney General identifying the FIA members that desire to become a Member under the Certificate pursuant to the abbreviated amendment procedure, and certifying for each such FIA member so identified its sales of individual Products, Services, and/or Technology Rights in its prior fiscal year. Notice of the members so identified shall be published in the **Federal Register**. However, FIA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate of Review, such amendment must be sought through the nonabbreviated amendment procedure.

Dated: April 20, 1990.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-9586 Filed 4-24-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act,

since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 18, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Mayland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests ot OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: April 19, 1990.

George P. Sotos,

Acting Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited.

Title: Application for Demonstration and Innovation Projects of National Significance for Technology-Related Assistance for Individuals with Disabilities.

Abstract: This form will be used by non-profit agencies and for-profit entities to apply for funding under the Demonstration and Innovation Projects of National Significance for Technology-Related Assistance for Individuals with Disabilities. The Department will use the information to make grant awards.

Additional Information: An expedited review is requested for this new application form to allow nonprofit agencies, including institutions of higher education, and for-profit entities adequate time in applying for grants. Without the expedited review, the Department would be unable to make awards this fiscal year. This submission contains the standard forms SF–424 (Federal Assistance Form), SF–424A (Budget Information Sheet), SF–424B (Assurances), Debarment Certifications, Drug-Free Certifications, and Lobbying Disclosures.

Frequency: Annually.

Affected Public: Businesses or other for-profit; nonprofit institutions.

Reporting Burden:

Responses: 50. *Burden Hours:* 1,000.

Recordkeeping:

Recordkeepers: 0. *Burden Hours:* 0.

BILLING CODE 4000–1–M

Part III - Program Narrative

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reduction this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-NEW, Washington, D.C. 20503.

The program office recommends that the applicant specify in the title whether this is an application for a Service Delivery Demonstration project, a Research and Development project, or a Direct Loan project.

The program office further recommends that the narrative section include information that is required to meet the evaluation criteria in 346.31, 346.32 or 346.33, as appropriate.

The applicant is advised to include all necessary assurances and other required information.

The program office suggests that the applicant may find it advantageous to organize its applicatoin according to the selection criteria.

[FR Doc. 90-9534 Filed 4-24-90; 8:45 am]
BILLING CODE 4000-1-C

[CFDA No.: 84.073A]

Notice Inviting Applications for New Developer Demonstrator Awards Under the National Diffusion Network Program for Fiscal Year 1990

Purpose of Program: To provide grants to disseminate, to new sites nationwide, exemplary education programs that have current approval by the Department of Education's Program Effectiveness Panel.

Deadline for Transmittal of Applications: June 15, 1990

Deadline for Intergovernmental Review Comments: August 15, 1990

Applications Available: May 1, 1990

Estimated Available Funds: $1,365,000

Estimated Range of Award: $57,000 to $70,000 per year

Estimated Average Size of Awards: $67,000

Estimated Number of Awards: 19

Project Period: Up to 48 months

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; (b) the regulations under 34 CFR part 98 (Student Rights in Research, Experimental Activities, and Testing); and (c) The regulations for this program in 34 CFR parts 785 and 786.

Absolute Priorities:

Under 34 CFR 75.105(c)(3) and 786.3(b), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary intends to reserve $547,000 for applications proposing projects in mathematics or higher mathematics or science, and $188,000 for applications proposing projects to conduct programs for handicapped students. These amounts may be adjusted if the Secretary does not receive sufficient high quality applications addressing the priorities listed above to use the funds reserved. The remainder of the funds will be used to support applications in any other subject areas listed in 34 CFR 786.3(b).

For Applications or Information Contact: Mr. Eric Evans, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 510, Washington, DC 20208–5645. Telephone: (202) 357–6134.

Authority: 20 U.S.C. 2962.

Dated: April 19, 1990.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–9506 Filed 4–24–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Idaho Operations Office; Intent To Issue a Program Research and Development Announcement (PRDA) for the Office of Technology Development (OTD); Research and Development of Innovative and Unique Methods for Environmental Restoration and Waste Management Technologies

The U.S. Department of Energy (DOE) Office of Technology Development (OTD) has been established to implement an aggressive national program to solicit, identify, expand, improve and select projects which, if successful, could make a major contribution to longer-term DOE needs and provide better, faster, and more cost effective solutions than existing environmental restoration and waste management technologies. These projects would typically be on the cutting edge of technology where probabilities of success and, in fact, the precise outcomes, are insufficiently characterized, but where a success would represent a major breakthrough to an intractable problem. This program solicits creative and innovative methods, systems, and processes for waste management, environmental restoration, remediation, site characterization, decontamination, decommissioning, waste treatment, and waste minimization, which can lead to an innovative technology to solve the problems and needs of the Environmental Restoration and Waste Management (ER&WM) Program. For the purposes of this solicitation, an innovative or unique technique is defined as a technique that has not been commercialized and industry has not implemented in practice. The application of the proposed technology for a number of problems at multiple DOE sites and industrial installation in the U.S. will be evaluated. Projects under the OTD Program must address one or more of DOE's ER&WM needs. It is anticipated that multiple awards will be initiated for a period of 6 to 18 months from a total available DOE funding of approximately $2 million dollars. However, DOE reserves the right to make no award, a single award, or multiple awards as determined to be in the best interest of the Government. It is anticipated that this PRDA will result in cost-plus-fixed fee contracts. The PRDA is anticipated to be available in early May and proposals will be due approximately 45 days thereafter. The evaluation of Proposals will be performed by a DOE source evaluation panel. Individuals, industry, academia, institutions, non profit organizations, foreign organizations, or other private entities are invited to respond to this announcement. Potential proposers desiring to receive a copy of the PRDA should provide a written request to the following address: U.S. Department of Energy, Idaho Operations Office, Contracts Management Division, 785 DOE Place, Idaho Falls, Idaho 83402, ATTN: Joe C. Price.

Dated: April 17, 1990.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 90–9604 Filed 4–24–90; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award, Intent To Award Grant to National Academy of Sciences

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make a non-competitive financial award.

SUMMARY: The Department of Energy announces that it intends to make a non-competitive award of $60,000, under grant number DE–FG01–90FE62072, to the National Academy of Sciences (NAS). The purpose of this grant is to evaluate the scientific information and data bases on anthropogenic emission sources that contribute to haze in Class I area (National Parks and Wilderness Areas), and consider various alternative source control measures. DOE's contribution represents 19% of the total estimated study cost of $450,000. The remaining funds will be provided by the Environmental Protection Agency, Arizona Salt River Project and the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Linda S. Sapp, PR–531, 1000 Independence Avenue SW., Washington, DC 20585, Telephone No. (202) 586–1030.

SUPPLEMENTARY INFORMATION: The National Academy of Sciences is a uniquely qualified, unbiased, external organization chartered by Congress in 1863, during the Lincoln Administration to conduct studies in the fields of science or art when called upon by the Government. The close and special relationships of the Academy to the Government is further manifested by Executive Order 2859, which established the role of NAS to seek and establish cooperative links between Government and nongovernment research activities. Executive Order 10688 established further objectives for the NAS for the promotion of research and efforts to

avoid duplication in research. This latter Executive Order also established roles for bringing foreign and U.S. research efforts together and gathering scientific data from public and private sources. The Academy is uniquely qualified to assemble scientific and engineering expertise of the highest reputation from the public and private sectors to address national problems of high priority. It is able, through its advisory panels and committees to provide independent and objective findings and opinions as well as acceptance of these findings and opinions by the target audience.

Jeffrey Rubenstein,

Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 90-9603 Filed 4-24-90; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

U.S. Alternative Fuels Council, Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: United States Alternative Fuels Council.

Date and Time: Wednesday, May 9, 1990, 10 p.m.-1 p.m.

Location: Department of Energy, Forrestal Auditorium, GE-086, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Mark Bower, Office of Policy, Planning and Analysis, U.S. Department of Energy, Mail Stop PE-40, Washington, DC 20585, Phone: (202) 586-3891.

Purpose of the Council: To provide to the Interagency Committee on Alternative Motor Fuels to help:

1. "* * * Coordinate Federal agency efforts to develop and implement a national alternative motor fuels policy."
2. "* * * Ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."
3. "* * * Ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."
4. * * * Provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

U.S. Alternative Fuels Council Agenda Outline

May 9, 1990

I. Welcome (10 a.m.)—W. Henson Moore
II. Charge to the Council by the Interagency Commission on Alternative Motor Fuels—W. Henson Moore
III. Opening Statements by Council Co-chairmen—Robert Hahn, Charles Imbrecht
IV. Opening Statements by Congressional Members—Senator Rockefeller, Senator Grassley, Congressman Alexander, Congressman Lewis

Break

V. Integrating Environmental and Energy Goals of Alternative Fuel Use
VI. Issues that Need to be Addressed to Develop a Comprehensive Alternative Fuels Policy
VII. Goals for the Council
VIII. Focus of Next Meeting
IX. Adjourn (1 p.m.)

Public Participation: The meeting is open to the public. Written statements may be filed with the Council either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC., on April 20, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90-9605 Filed 4-24-90; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Extension of Comment Period for Proposal for Adoption of Policy on Sales of Surplus Energy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Extension of comment period on proposal for adoption of policy.

SUMMARY: BPA is reviewing its practices and developing a policy on key issues affecting sales of surplus firm power and nonfirm energy. Pursuant to notice published in the **Federal Register** February 23, 1990 (55 FR 6420), BPA stated that comments should be filed by April 30, 1990. Several of BPA's customers have notified BPA that to be able to comment effectively they would like additional information and additional time to provide comments regarding issues related to BPA's surplus firm power and nonfirm energy marketing practices. BPA wishes to comply with requests for further information by scheduling one or more briefing sessions for the parties. Therefore, to provide the additional time required, BPA is extending the period for written comments to July 30, 1990. BPA will provide separate notice to the parties of the date and time of any informational briefing(s).

Responsible Official: Mr. Robert Griffin, Director, Division of Power Supply.

DATES: Written comments on the initial list of issues to be addressed should be filed with BPA by July 30, 1990.

ADDRESSES: Comments should be submitted to the Public Involvement Manger—ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon, 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Griffin at the above address or by telephone at 206-690-2102. Or contact BPA's Public Involvement Office at 503-230-3478. BPA has toll-free numbers available: Oregon callers may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.
Mr. Robert N. Laffel, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.
Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-353-2518.
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.
Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377, extension 379.
Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109-1030, 206-442-4130.
Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Popler, Walla Walla, Washington 99362, 509-522-6225.
Mr. Richard J. Itami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706.
Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION:

I. Background

Section 5(f) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), Pub. L. 96-501, provides that BPA may sell or otherwise dispose of power

that is surplus to the obligations of the Administrator under sections 5 (b), (c), and (d) in accordance with that Act and other applicable provisions of statute. The Northwest Power Act and the Pacific Northwest Regional Power Preference Act, Pub. L. 88–552, provide that BPA may sell outside of the Pacific Northwest only that power that is surplus energy or surplus capacity.

In most years, BPA has significant quantities of surplus nonfirm energy available to offer for sale. Also, in periods when BPA firm energy resources exceed firm energy loads, surplus firm energy is available. BPA's 1989 estimate of firm energy loads and resources predicts that between 0 and 388 average megawatts of firm surplus energy will be available during the study period, until the year 2001. BPA markets these energy surpluses, firm and nonfirm, in accordance with applicable statutes.

The timing, amounts, and other conditions under which BPA markets this surplus energy constitue specific marketing practices, which interpret applicable statutory provisions under particular conditions and circumstances. Since BPA's customers are affected by these marketing practices, it is appropriate that BPA periodically review them if conditions and circumstances change. The gradual decline in the amount of surplus firm power available in the Pacific Northwest and available to BPA in the past year consitutes such a change. BPA is conducting a review of its practices and developing a policy on key issues affecting sales of surplus firm power and nonfirm energy.

This proceeding is considering highly technical issues regarding the definition of loads in the Pacific Northwest, pricing at established rates, and power marketing related to surplus firm power and nonfirm energy. The issues may affect the utilities in the Pacific Northwest if they purchase power from PBA other than firm requirements power under their Northwest Power Act requirements contracts. Utilities out of region that make purchases of energy from BPA also may be affected.

This proceeding is not a rate proceeding under section 7(i) of the Northwest Power Act. BPA will employ the interpretations developed in its 1983, 1985, and 1987 rate cases regarding production cost of surplus firm power or nonfirm energy as may be applicable to any proposed policy developed in this process. Additionally, any policy resulting from this proceeding will not propose any modification in system operations as presently performed by the Corps of Engineers, U.S. Department of the Army, and the Bureau of Reclamation, U.S. Department of Interior. Issues regarding operational constraints are being considered in a separate process.

II. Proposed Issues

The issues upon which BPA wishes to take comment are listed below.

A. Should the definition of "energy requirements of any Pacific Northwest customer" and "electric power requirements of any Pacific Northwest customer" as used in the Northwest Preference Act and the Northwest Power Act be further defined? What definition should BPA use in determining the future energy or power requirements of Pacific Northwest customers? What types of loads should be included, and should any type of load be excluded?

B. Should BPA further define the terms "the lack of a market therefor at any established rate" (section 1(c) of the Northwest Perference Act) and "for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy" (section 9(c) of the Northwest Power Act)? Does BPA'S price flexibility affect BPA's determination of whether there is a market for electric energy or capacity in the Pacific Northwest? Does BPA's price flexibility affect BPA's determination of any Pacific Northwest customer?

C. What standard should BPA adopt for Federal system reliability of service to Pacific Northwest loads and availability of Federal power for use in the Pacific Northwest? Should this standard of reliability include the purchase of power or acquisition of resources to support the standard?

Issued in Portland, Oregon, on April 18, 1990.

Steven G. Hickok,

Executive Assistant Administrator, Bonneville Power Administration.

[FR Doc. 90–9606 Filed 4–24–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP90–83–001]

CNG Transmission Corp.; Compliance Filing

April 18, 1990.

Take notice that on April 13, 1990, CNG Transmission Corporation (CNG), tendered for filing with the Commission revised tariff sheets in accordance with ordering paragraph (B) of the Commission's order dated March 29, 1990, in Docket No. RP90–83–000. That order required CNG to refile tariff sheets to include language clarifying that the new standby election provision of the tariff did not override the terms of the service agreements entered into as a result of the settlement in Docket No. RP85–169 and that the provision does not impose any minimum load factor requirement.

CNG states the new standby service provisions are consistent with the terms of the settlement in RP85–169, which expressly permitted changes in the tariff. CNG states that the settlement in Docket No. RP85–169 expired with the filing of its current section 4 rate case in Docket No. RP88–211. CNG states that the only standby rights provided in the service agreements were the standby service levels actually received by the customers as a result of the immediate 25 percent conversion each customer was entitled to elect. CNG states the service agreements do not provide for additional standby service upon any further conversions. CNG states that its service agreements provide for conversion rights as a percentage of the effective billing determinants, which are an issue in Docket No. RP88–211. CNG states that any change in billing determinant levels would cause corresponding changes in conversion rights and would impact standby rights.

Any peron desiring to protest said filing should file 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 (1989)). All such protests should be filed on or before April 26, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–9511 Filed 4–24–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–8–22–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 18, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on April 12, 1990, pursuant to section 4 of the Natural Gas Act, the terms and conditions of the

Stipulation and the Agreement approved by the Commission in Docket No. RP88–217, *et al.* by order issued October 6, 1989, and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Fifth Revised Sheet No. 49
Sixth Revised Sheet No. 49
Third Revised Sheet No. 49B

The purpose of this filing is to flow through changes in take-or-pay costs allocated to CNG by Texas Eastern Transmission Corporation in a tariff filing made on February 28, 1990, in Docket No. TM90–5–17–000. The filing was approved by letter order issued March 30, 1990.

Copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene 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 and 385.211). All motions or protests should be filed on or before April 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–9516 Filed 4–24–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA89–1–21–002; TM89–2–21–002]

Columbia Gas Transmission Corp.; Response to Commission Order

April 18, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia), on April 12, 1990, tendered for filing its response to the Commission's March 13, 1990, order terminating the Technical Conference in the referenced Dockets.

Columbia states that the aforesaid response is being filed in compliance with the Commission's order issued March 13, 1990. Such order directed Columbia to (i) make certain adjustments to its Account No. 191 subaccount to reflect prior period adjustments and associated carrying charge effects arising from prior period exchange transactions, and (ii) remove increments of cost in monthly exchange gas valuation. The order also directed Columbia to furnish working papers which illustrate the computations made to effect the corrections. In addition with regard to storage revaluation eliminating estimated storage rates from the carrying charge base, the order directs Columbia to either modify its PGA filing to conform with § 154.305(h)(3)(ii)(D) or request a waiver of that regulation supported by the showing required by Order No. 483.

Columbia indicates in its response that the language used in the subject order may have been overbroad in requiring certain modifications to the method Columbia uses to account for exchange gas transactions when viewed in the context of Columbia's 1985 PGA Settlement. Columbia submits that the workpapers supplied with its annual PGA filing to become effective May 1, 1989 contained presentation errors which had no effect on the Account No. 191 balance; therefore, no correcting entries are required. Columbia states that it made certain other adjustments mentioned in the Commission's order in December, 1989, and that further adjustments will be recorded in 1990. Columbia notes that workpapers supporting the aforesaid December, 1989 adjustments have been provided to the Commission Staff. Furthermore, Columbia states that for the reasons set forth in its transmittal letter it should be granted waiver of the Commission's regulations requiring the use of the rolling weighted inventory costing methodology to eliminate estimates from storage gas pricing to ensure that only actual costs are included in its carrying charge base in Account No. 191.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 25, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–9512 Filed 4–24–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–144–004]

Pacific Interstate Offshore Co.; Compliance Filing

April 18, 1990.

Take notice that Pacific Interstate Offshore Company (PIOC) on April 11, 1990, tendered for filing the following tariff sheets from its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1989:

Original Sheet Nos. 6–19, 21–A, 26–A, 31–A, 105–108
First Revised Sheet Nos. 1, 22–26, 27–31, 32–34
Second Revised Sheet Nos. 2, 20

PIOC states that the tariff sheets have been filed in compliance with the Commission's Order of May 3, 1989 and Letter Orders of August 29, 1989 and October 16, 1989 in Docket No. RP89–144. These tariff sheets establish transportation service in accordance with Order Nos. 509 and 509–A.

Copies of the filing were served on all parties on the official service list.

Any person desiring to be heard or to protest said filing should file a 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. All such protests should be filed on or before April 25, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–9513 Filed 4–24–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–143–004]

Pacific Offshore Pipeline Co.; Compliance Filing

April 18, 1990.

Take notice that Pacific Offshore Pipeline Company (POPCO) on April 11, 1990, tendered for filing the following tariff sheets from its FERC Gas Tariff,

Original Volume No. 1, to be effective April 1, 1989:

Original Sheet Nos. 8–9, 11–17, 18–A–19, 22–A, 22–B, 25–A, 105–108
Alternate Original Sheet Nos. 10, 18
First Revised Sheet Nos. 2, 23–25, 26, 28, 31, 32, 34
Second Revised Sheet Nos. 1, 20–22

POPCO states that the tariff sheets have been filed in compliance with the Commission's Order of May 2, 1989 and Letter Orders of June 19, 1989 and March 28, 1990 in Docket No. RP89–143. These tariff sheets establish transportation service in accordance with Order Nos. 509 and 509–A.

Copies of the filing were served on all parties on the official service list.

Any person desiring to protest said filing should file a 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. All such protests should be filed on or before April 25, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–9514 Filed 4–24–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–101–000]

Panhandle Eastern Pipe Line Co. Notice of Proposed Changes in FERC Gas Tariff

April 18, 1990.

Take notice that on April 10, 1990, Panhandle Eastern Pipe Line Company, (Panhandle) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2.

Panhandle proposes that the tariff sheets become effective December 1, 1988, April 1, 1989, October 1, 1989, November 1, 1989, and January 1, 1990, respectively.

Panhandle requests waiver of § 154.22 of the Commission's Regulations. To the extent required, Panhandle requests that the Commission grant any other waivers as may be necessary for the acceptance of the revised tariff sheets.

Panhandle states that such changes are made to amend certain Rate Schedules for the transportation of natural gas on behalf of various Panhandle transport customers to reflect Trunkline Gas Company's (Trunkline) current transportation rates as approved in (1) Trunkline's Docket No. RP88–180–000 by the Commission's Order Approving Offer of Settlement issued December 21, 1989 to be effective December 1, 1988 and (2) Trunkline's Docket No. RP89–160–009 by the Commission's Letter Order dated March 19, 1990 to be effective November 1, 1989.

The revised tariff sheets submitted herewith also reflect (1) rates approved in Docket No. RP88–262–000 effective April 1, 1989, (2) revised rates in Panhandle and Trunkline's August 31, 1989 filings of the Annual Charge Adjustment (ACA) effective October 1, 1989 in docket No. TM90–1–28–000 and docket No. TM90–2–30–000, respectively, and (3) revised rates in the Gas Research Institute (GRI) adjustment December 1, 1989 filings in Docket No. TM90–9–28–000 and Docket No. TM90–5–30–000, respectively, effective January 1, 1990.

Panhandle states that copies of the filing have been served on Panhandle's various transport customers.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–9515 Filed 4–24–90; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PP 9G3746/T592; FRL 3735–2]

Rohm and Haas Co.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the fungicide 2-(2-(4-chlorophenyl)ethyl)-2-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile in or on the raw agricultural commodity stone fruits group (except dried plums) at 1.0 part per million (ppm).

DATES: This temporary tolerance expires October 31, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–557–1900.

SUPPLEMENTARY INFORMATION: Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, has requested in pesticide petition (PP) 9G3746, the establishment of a temporary tolerance for residues of the fungicide 2-(2-(4-chlorophenyl)ethyl)-2-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile in or on the raw agricultural commodity stone fruits group (except dried plums) at 1.0 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 707–EUP–121, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rohm and Haas Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires October 31, 1991. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally

applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: April 6, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90–9469 Filed 4–24–90; 8:45 am]

BILLING CODE 6560–50–D

[FRL–3758]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before May 25, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Final Authorization for Hazardous Waste Management Program. (EPA ICR #0969.02; OMB #2050–0041). This ICR reinstates a previously approved collection for which approval has expired.

Abstract: The Resource Conservation and Recovery Act of 1976 as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires the EPA to authorize State hazardous waste programs. In applying for authorization, States must demonstrate compliance with the Federal guidelines which regulate State program standards (e.g. adequate enforcement of compliance, procedures for public notice and hearing, public availability of information). Application for final authorization consists of the following: (a.) A Governor's letter, (b.) a program description, (c.) a statement from the State's Attorney General, (d.) a memorandum of Agreement and copies of all applicable State statues and regulations.

Burden Statement: The public reporting burden for this collection of information is estimated to average 46 hours and 15 minutes per respondent. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: State Hazardous Waste Program Offices.

Estimated Number of Respondents: 47.

Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 4,348.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: April 19, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90–9578 Filed 4–24–90; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140134; FRL–3735–4]

Access to Confidential Business Information by Battelle, Columbus Division, and Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Battelle, Columbus Division (BCD), of Columbus, Ohio, and the subcontractors named in this notice for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than May 9, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D8–0115, BCD, of 505 King Avenue, Columbus, Ohio and 2101 Wilson Boulevard, Suite 800, Arlington, VA, and its subcontractors, Survey Research Associates, Inc. (SRA), 217 East 25th St., Baltimore, MD; Clement Associates, Inc. (CAI), 9300 Lee Highway, Fairfax, VA; The University of North Carolina (UNC), CB #7400, Rosenau Hall, Chapel Hill, NC; Dr. Kenneth Brown (DKB), 310 Carl Drive, Chapel Hill, NC; and The Washington Consulting Group (WCG), 1625 I St., NW., Suite 214, Washington, DC will assist the Office of Toxic Substances (OTS), in generating statistical, epidemiological, and toxicological support for OTS regulatory programs. This will be implemented by critical reviews of studies and other submissions and the analysis and development of statistical and epidemiological procedures. This will also be accomplished by the review of designs of tests supporting submissions, the development of data sets for special study, the design of survey protocols, and the execution of hazard identification and dose response assessments for risk assessment.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68–D8–0115, BCD and its subcontractors will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may

provide BCD and its subcontractors access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters and BCD's facilities. BCD has been authorized access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved BCD's security plan and has performed the required inspection of its facilities and has found the facilities to be in compliance with the manual.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1991.

Battelle and its subcontractors personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: April 17, 1989.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-9575 Filed 4-24-90; 8:45 a.m.]

BILLING CODE 6560-50-D

[OPTS-140133; FRL-3735-3]

Access to Confidential Business Information by Battelle, Columbus Division, and Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Battelle, Columbus Division (BCD), of Columbus, Ohio, and the subcontractors named in this notice for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than May 9, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, - Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, -TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-02-4294, BCD, of 505 King Avenue, Columbus, Ohio, and its subcontractors, Westat Inc. (WES), 1650 Research Boulevard, Rockville, MD; Chesson Consulting Inc. (CHC), 1717 Massachusetts Avenue, NW., Suite 601, Washington DC; Bertram Price Associates Inc. (BPA), 1825 K St., NW., Suite 501, Washington DC; and Midwest Research Institute (MRI), 425 Volker Boulevard, Kansas City, MO will assist the Office of Toxic Substances (OTS) in generating statistical support for OTS regulating programs, including the PCB regulatory program, by the implementation of study design and design of OTS human monitoring activities, data collection, and analysis. In addition, BCD will provide technical support to OTS's biotechnology hazard assessment team in the preparation of hazard summaries or proposals for field trials.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68-02-4294, BCD and its subcontractors will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide BCD and its subcontractors access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters and BCD's facility. BCD has been authorized access to TSCA CBI at its facility under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved BCD's security plan and has performed the required inspection of its facility and has found the facility to be in compliance with the manual.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1991.

BCD and its subcontractors personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: April 17, 1990.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-9576 Filed 4-24-90; 8:45 a.m.]

BILLING CODE 6560-50-D

[FRL-3758-4]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ["CERCLA"], 42 U.S.C. 9622(i), notice is hereby given that a proposed administrative cost recovery settlement concerning the Wheeling Acid Spill Site in Wheeling, West Virginia, was issued by the Agency on March 30, 1990. The settlement resolves an EPA claim under section 107 of CERCLA, 42 U.S.C. 9607, against Interstate Chemical Company, Inc. The settlement requires the settling party to pay $23,287.43 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be submitted on or before May 25, 1990.

AVAILABILITY: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed settlement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RCOO), 841 Chestnut Building, Philadelphia, PA 19107. Comments should reference the "Wheeling Acid Spill Site" and "EPA Docket No. III-90-25-DC" and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew S. Goldman (3RC21), Assistant Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut

Building, Philadelphia, PA 19107, (215) 597–4840.

Dated: April 16, 1990.

Edwin B. Erickson,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 90–9577 Filed 4–24–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 90–592]

Comments Invited on Michigan Regional Public Safety Plan

April 17, 1990.

The Commission has received the public safety radio communications plan for the Michigan Area (Region 21).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of **Federal Register** publication of this public notice to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87–112, Region 21 consists of the State of Michigan (except Ottawa, Kent, Van Buren, Kalamazoo, Barry, Muskegon, Allegan, Berrien, Cass and St. Joseph Counties). General Docket No. 87–112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to General Docket 90–221, Michigan Area—Region 21, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Maureen Cesaitis, Private Radio Bureau, (202) 632–6497 or Fred Thomas, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–9522 Filed 4–24–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Seattle/ Clipper Navigation, Inc.

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 10220. 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 Nos.: 224–200280–001 and 224–200280–002

Title: Port of Seattle/Clipper Navigation, Inc. Terminal Agreement.

Parties:

Port of Seattle (Port).

Clipper Navigation, Inc. (CN).

Synopsis: The Agreements amend the basic agreement. Agreement No. 224–200280–001 provides CN with a temporary additional 100 linear feet of berthing space at the Port's Pier 69, Port of Seattle. As compensation, CN will pay the Port a rent of $900.00 per month plus applicable taxes and utilities. Agreement No. 224–200280–002 provides CN with additional space to be used by CN for storage and engine repair. The rent for this space is $976.00 per month plus applicable taxes and utilities.

Agreement No.: 224–010903–004

Title: Maryland Port Administration/ Atlantic Container Line, Ltd. Terminal Agreement.

Parties:

Maryland Port Administration.

Atlantic Container Line, Ltd.

Synopsis: The Agreement amends the basic agreement to reflect that all drayage subsidy provisions will be discontinued effective May 18, 1990.

By order of the Federal Maritime Commission.

Dated: April 20, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–9610 Filed 4–24–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Puerto Rico Ports Authority/Island Stevedoring, Inc.

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 10220. 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.: 224–200152–001

Title: Puerto Rico Ports Authority/ Island Stevedoring, Inc. Lease Agreement.

Parties:

Puerto Rico Ports Authority (Authority)

Island Stevedoring, Inc. (Lessee).

Synopsis: The Agreement amends Agreement No. 224–200152 to provide for exclusive use, rather than preferential use, of 42,308.7320 square feet of open space area now leased under the agreement and adds 15,000 square feet of warehouse space for exclusive-use. With respect to the additional exclusive-use areas, the monthly rent shall be $3,109.01; penalty for lessee's failure to vacate said area upon request of the Authority shall be $310.90; and the security deposit shall be $9,327.03. The Agreement also extends the term of the basic agreement to September 13, 1991.

By Order of the Federal Maritime Commission.

Dated: April 19, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–9528 Filed 4–24–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Puerto Rico Ports Authority/Seaboard Caribbean Terminal, Inc./Seaboard Shipping Co. Ltd.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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 10220. Interested parties may submit protests or 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 and protests are found in § 560.602 and/or § 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–003963–001

Title: Puerto Rico Ports Authority/ Seaboard Caribbean Terminal, Inc./ Seaboard Shipping Co. Ltd. Terminal Agreement.

Parties:

Puerto Rico Ports Authority
Seaboard Caribbean Terminal, Inc.
Seaboard Shipping Co. Ltd.

Filing Party: Ms. Mayra N. Cruz Alvarez, Contracts Supervisor, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, Puerto Rico 00936.

Synopsis: The Agreement amends the basic agreement to extend its term for five years.

By Order of the Federal Maritime Commission

Dated: April 19, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–9526 Filed 4–24–90; 8:45 am]

[BILLING CODE 6730–01–M

Agreement(s) Filed; United States/ Panama Freight Assn., et al.

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.: 202–010717–024

Title: United States/Panama Freight Association.

Parties:

Crowley Caribbean Transport, Inc.
Seaboard Marine Line, Ltd.

Synopsis: The proposed amendment would delete Nicaragua from the geographic scope of the Agreement. The parties have requested a shortened review period.

Agreement No.: 202–010987–011

Title: United States/Central America Liner Association.

Parties:

Crowley Caribbean Transport, Inc.
Sea-Land Service, Inc.
Seaboard Marine, Ltd.
Crowley Trailer Marine Transport, Corp.

Synopsis: The proposed amendment would add Nicaragua to the geographic scope of the Agreement. The parties have requested a shortened review period.

Agreement No.: 203–011075–011

Title: Central America Discussion Agreement.

Parties:

United States/Central America Liner Association
Nordana Line, Inc.
Tropical Shipping and Construction Co. Ltd.
Central America Shippers, Inc.
Nexos Line
Thompson Shipping Co., Ltd.
Gran Golfo Express
Concorde Shipping Inc.
Norwegian American Enterprises, Inc.

Synopsis: The proposed amendment would add Nicaragua to the geographic scope of the Agreement. The parties have requested a shortened review period.

Agreement No.: 212–011213–015

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Transatlantica Espanola, S.A.
d'Amico Societa de Navigazione S.P.A.
Nordana Line AS
Sea-Land Service, Inc.

Synopsis: The proposed modification would provide that no member may withdraw from the Agreement or any Pool Section until December 31, 1991.

By Order of the Federal Maritime Commission.

Dated: April 19, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–9527 Filed 4–24–90; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 90–13]

Memphis Forwarding Company, Inc.; Order of Investigation

This proceeding is instituted pursuant to sections 11, 13 and 19 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1710, 1712 and 1718 and the Commission's rules at 46 CFR 510.16(a)(1) and 510.23(h).

Memphis Forwarding Company, Inc. ("MFC") is a licensed freight forwarder, license no. FMC–3050, which is wholly-owned by Alexandria Navigation Co. (London) Ltd. ("Alexandria"). Alexandria is wholly-owned by the Egyptian Navigation Company which is, in turn, wholly-owned by the Government of Egypt ("GOE"). GOE is the parent of most of the shippers for whom MFC performs freight forwarder services.

Section 19(d)(4) of the 1984 Act prohibits freight forwarders from receiving compensation from a common carrier with respect to a shipment in which the forwarder has a direct or indirect beneficial interest. It appears that MFC is a freight forwarder for shippers that are owned by the GOE. As a result of its relationship with GOE and those shippers, MFC appears to have a beneficial interest in the shipments it handles. On those shipments MFC collects freight forwarder compensation from ocean carriers.

Now therefore it is ordered, That pursuant to sections 11, 13, and 19(d)(4) of the Shipping Act of 1984, an investigation is hereby instituted to determine:

1. Whether MFC violated section 19(d)(4) of the 1984 Act and 46 CFR 510.23(h) by collecting freight forwarder compensation on shipments in which MFC had a beneficial interest;

2. Whether, in the event MFC violated section 19(d)(4) of the 1984 Act, MFC's freight forwarder license should be revoked or suspended pursuant to 46 CFR 510.16(a)(1);

3. Whether MFC should be ordered to cease and desist from collecting freight forwarder compensation on shipments when the shipper is owned by the GOE; and

4. Whether, in the event MFC violated section 19(d)(4) of the 1984 Act, civil penalties should be assessed against MFC, and if so, the amount of such penalties.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge at a date and place to be hereafter determined by the Administrative Law

Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination at the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the developments of an adequate record.

It is further ordered, That Memphis Forwarding Company, Inc., be named a Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by April 19, 1991, and the final decision of the Commission shall be issued by August 19, 1991.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-9530 Filed 4-24-90; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Lift Forwarders Inc., 15605 SW 72nd Ave., Tigard, Oregon 97224. Officers: Wendell B. Lile, Chairman, Joseph C. Sopko, President, Louise Awmiller, Secretary.

Coastal Forwarding, 701 Parkway 575, Woodstock, CA 30188. Officer: Rita R. Frady, Sole Proprietor.

Challenge Crating and Storage Inc., 950 Eller Drive, P.O. Box 350582, Ft. Lauderdale, FL 33335. Officers: Ian Elder, President/Director, James Elder, Vice President/Director, Irving Smyth, Director.

International Consulting and Services, Inc., 2121 Packerland Drive, Green Bay, WI 54304. Officers: Dennis L. Sedlacek, President, Patricia A. Martin, Secretary/Treasurer.

S.O.S. Global Express, Ltd., 132-06 11th Ave., College, NY 113565. Officers: Stephen G. O'Connell, President, Fernando Soler, Vice President.

Dal Farra Company Inc., 1465 N.W. 97th Ave., Miami, FL 33172. Officers: Paolo Dal Farra, President, Manuela Dal Farra, Vice President.

Emel Transport Inc., 147-40 184 St., Jamaica, NY 11413. Officer: Matthew M. Lubrano, President.

F.M.W. Transportkontor Inc., 8110 Cross Coutnry Drive, Humble, TX 77346. Officers: Wolfgang Freymuth, President, Rodolf Barraza, Vice President, William Vincent Walker, Secretary.

King City/Northway Forwarding, Ltd., 5441 Notre-Dame Street West, Suite 201, Montreal, Quebec, Canada H4C 1T7. Officers: Gerald P. Gamache, President, Michel O. Berard, Director.

Del-Med Inc. dba DMCO Corp. D.M.I.C. International Div., 3001 Hadley Road, South Plainfield, NJ 07080. Officers: John Hardy, President, Darnell Hardy, Secretary/Treasurer, Gregorio R. Francisco, Vice President.

Dated: April 19, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-9529 Filed 4-24-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

William Biles III; Change in Bank Control Notices Acquisition of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 90-8608) published as page 13958 of the issue for Friday, April 13, 1990.

Under the Federal Reserve Bank of Chicago, the entry for William Biles III is amended to read as follows:

1. *William Biles III*, John Biles, and Brian Riddell; to each acquire 31.45 percent of the voting shares of First Sioux Bancshares, Ltd., Sioux Center, Iowa, and First National Bank of Sioux Center, Sioux Center, Iowa.

Comments on this application must be received by April 27, 1990.

Board of Governors of the Federal Reserve System, April 19, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-9540 Filed 4-24-90; 8:45 am]

BILLING CODE 6210-01-M

First Grayson Bancorp, 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 Bank 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 May 14, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Grayson Bancorp, Inc.*, Grayson, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Grayson, Grayson, Kentucky.

B. Federal Reserve Bank of Richmond (Fred L. Bagwell, Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Fidelity Bancorp, Inc.*, Fairmont, West Virginia; to acquire 100 percent of the voting shares of FirstBank Shinnston, Shinnston, West Virginia.

Board of Governors of the Federal Reserve System, April 19, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-9541 Filed 4-24-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 882 3199]

Twin Star Productions, Inc., et al.; 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, an infomercial marketing corporation and six individuals, all based in Scottsdale, Arizona, from making specified representations regarding the efficacy of certain purported weight loss, baldness and impotence products; from making unsubstantiated efficacy claims concerning weight loss, baldness and impotence for any products or services; from using endorsements, unless they reflect the honest opinion or belief of the endorser; from disseminating four different infomercials, including a 30-minute advertisement for a book; and from misrepresenting that their commericals are independent programs and not paid advertising. In addition, the consent agreement would require the corporation and five of the six individuals to pay a total of $1.5 million in consumer redress.

DATES: Comments must be received on or before June 25, 1990.

ADDRESSES: Comments should be directed to: FTS/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Charles Harwood or Patricia Hensley, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174. (206) 442-4656.

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)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Twin Star Productions, Inc., a corporation and Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation:

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of Twin Star Productions, Inc., a corporation, and Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individuals, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Twin Star Productions, Inc., a corporation, by its duly authorized officer and its attorney, and Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Twin Star Productions, Inc., is a Delaware corporation. Its principal office or place of business is at 7345 E. Evans Road, Scottsdale, Arizona 85260.

2. Jerald H. Steer resides at 4906 East Desert Fairways, Paradise Valley, Arizona 85253. He is an officer and shareholder of Twin Star Productions, Inc.

3. Allen R. Singer resides at 6809 North 48th Street, Paradise Valley, Arizona 85253. He is an officer and shareholder of Twin Star Productions, Inc.

4. Judith P. Singer resides at 6809 North 48th Street, Paradise Valley, Arizona 85253. She is or was an officer of Twin Star Productions, Inc.

5. Douglas E. Gravink resides at 14836 North 57th Place, Scottsdale, Arizona 85254. He is an officer and shareholder of Twin Star Productions, Inc.

6. Peter Claypatch resides at 6514 East Paradise Lane, Scottsdale, Arizona 85254. He is an officer and shareholder of Twin Star Productions, Inc.

7. Steven L. Singer resides at 5702 East LeMarche, Scottsdale, Arizona 85254. He is an officer and shareholder of Twin Star Productions, Inc.

8. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

9. Proposed respondents waive:

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.

10. 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 hereby and related material pursuant to Rule 2.34 of the Commission's Rules, 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 respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

11. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondents that they have violated the law as alleged in the draft of complaint here attached or have engaged in any other unlawful conduct.

12. 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 respondents, (1) issue its complaint corresponding in form and substance with the draft of 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. Post Service of the

complaint and decision containing the agreed-to order to proposed respondent's addresses as stated in this agreement shall constitute service. Proposed respondents waive any rights they 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.

13. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

14. If it is accepted by the Commission, this agreement constitutes a full settlement between the Federal Trade Commission and Twin Star Productions, Inc., Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer as to the activities alleged in the complaint to have constituted violations of the Federal Trade Commission Act and which occurred prior to the date of entry of the order. As to those activities alleged in the complaint, and which occurred prior to the date of entry of the order, the Federal Trade Commission hereby releases proposed respondents from all further liability to the Federal Trade Commission. The Federal Trade Commission hereby releases proposed respondents from all further liability to the Federal Trade Commission as to their sale, broadcast or dissemination, prior to the date of entry of the order, of the 30-minute television advertisement for the book *How to Start Your Own Business by Doing Business With the Government* described in the complaint and sometimes known as "Government Grants."

Order

I

It is ordered, That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting or otherwise disseminating, or assisting others to sell, broadcast or otherwise disseminate, in part or in whole:

A. The 30-minute television advertisement for the EuroTrym Diet Patch described in the complaint and sometimes known as "The Michael Reagan Show."

B. The 30-minute television advertisement for Foliplexx described in the complaint and sometimes known as "Breakthrough '88."

C. The 30-minute television advertisement for Y-Bron described in the complaint and sometimes known as "Let's Talk" or "Let's Talk with Lyle Waggoner."

D. The 30-minute television advertisement for the book *How to Start Your Own Business by Doing Business With the Government* described in the complaint and sometimes known as "Government Grants."

II

It is further ordered, That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of the EuroTrym Diet Patch or any other substantially similar weight control or weight reduction product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of such product or service prevents feelings of hunger;

(2) Use of such product or service enables users to lose substantial amounts of weight;

(3) Use of such product or service enables users to lose weight in a large majority of cases; or

(4) Any competent and reliable test or study establishes that such product or service promotes weight loss.

For purposes of this part II a "substantially similar weight control or weight reduction product" shall be defined as any product that is advertised to cause or aid weight loss through acupressure, acupathy or homeopathy that uses a bandaid or patch to apply a solution to the skin or that purportedly contains as its active ingredient calcarea carbonica.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribtuion of any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of the product or service prevents or reduces feelings of hunger;

(2) Use of the product or service enables users to lose substantial amounts of weight;

(3) Use of the product or service enables users to lose weight in a substantial number of cases; or

(4) Any competent and reliable test or study establishes that use of the product or service promotes weight loss,

unless the representation is true and, at the time of making the representation, respondents possess and rely upon a reasonable basis consisting of competent and reliable scientific evidence that substantiates the representation. Competent and reliable scientific evidence shall mean for purposes of this Order any test, analysis, research, study, survey or other evidence that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

C. Failing to disclose clearly and prominently in any advertisement for any weight control or weight reduction product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that dieting and/or exercise is required in order to lose weight; provided, however, that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that the product or service in question is effective without dieting and/or exercise.

It is further ordered, That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondent's agents, representatives and employees, directly or through any partnership, corporation,

subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Foliplexx or any other substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of such product curtails loss of hair;

(2) Use of such product promotes growth of new hair where hair has already been lost;

(3) Use of such product relieves, cures, prevents or reverse baldness;

(4) Such product is an effective remedy for baldness in a large majority of cases; or

(5) Any competent and reliable test or study establishes that such product relieves, cures, prevents or reverses the advance of baldness.

For purposes of this part III, a "substantially similar product" shall be defined as any product that is advertised as preventing or reversing baldness or hair loss and that purportedly contains as an ingredient; sulfanated muccopolysaccharides, polysorbates, trichopeptides, takanal, kallikrein, alpha-tocopheral, methyl nicotinate, retinyl palmitate, alantoin, or bovine serum albumin.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of the product prevents or reduces loss of hair;

(2) Use of the product promotes growth of new hair where hair has already been lost;

(3) Use of the product relieves, cures, prevents or reverses baldness;

(4) The product is an effective remedy for baldness in a substantial number of cases; or

(5) Any competent and reliable test or study establishes that the product relieves, cures, prevents or reverses baldness,

Unless the representation is true and, at the time of making the representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

IV

It is further ordered, That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Y-Bron or any other substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of such product relieves, cures, prevents or reverses impotence;

(2) Use of such product increases sexual drive, ability, desire or libido;

(3) Such product is an effective remedy for impotence or increases sexual drive, ability, desire or libido in a substantial number of cases; or

(4) Any competent and reliable test or study establishes that such product is an effective remedy for impotence or increases sexual drive, ability, desire or libido.

For purposes of this part IV, a "substantially similar product" shall be defined as any product that is advertised for sale over-the-counter as a sexual stimulant or as a treatment for impotence and that purportedly contains as its active ingredient yohimbine or any derivative thereof.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

(1) Use of the product relieves, cures, prevents, reverses or is an effective remedy for impotence;

(2) Use of the product increases sexual drive, ability, desire or libido;

(3) The product is an effective remedy for impotence or increases sexual drive, ability, desire or libido at any stated measure of efficacy; or

(4) Any competent and reliable test or study establishes that the product relieves, cures, prevents or reverses impotence or increases sexual drive, ability, desire or libido,

unless the representation is true and, at the time of making the representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

V

It is further ordered, That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug or device, as those terms are defined in section 15 of the FTC Act, 15 U.S.C. 55, unless at the time of making the representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

B. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service (other than a product or service covered under subpart V.A above), unless at the time of making the representation respondents possess and rely upon a reasonable basis for each such representation.

VI

It is further ordered. That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using, publishing, or referring to any endorsement (as "endorsement" is defined in 16 CFR 225(b)), unless respondents have good reason to believe that at the time of such use, publication

or reference, the endorsement reflects the honest opinions, findings, beliefs or experience of the endorser and contains no representation that would be false or unsubstantiated if made directly by respondents.

B. Failing to disclose, clearly and prominently, a material connection, where one exists, between an endorser of any product or service and any respondent or respondents. For purposes of this Part VI, a "material connection" shall mean any relationship between an endorser of any product or service and any individual or other entity advertising, promoting, offering for sale, selling or distributing such product or service, which relationship might materially affect the weight or credibility of the endorsement and which relationship would not reasonably be expected by consumers.

C. Representing, directly or by implication, that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service, unless the representation is true.

VII

It is further ordered. That respondent Twin Star Productions, Inc., a corporation, its successors and assigns, and its officers, and respondents Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, individually and as officers of said corporation, and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling or disseminating:

A. Any commercial or other advertisement for any such product or service that misrepresents, directly or by implication, that it is an independent program and not a paid advertisement;

B. Any commercial or other advertisement for any such product or service fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time solt of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner, within the first thirty (30) seconds of the commerical and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]

VIII

It is further ordered. That respondent Twin Star Productions, Inc., shall pay to the Federal Trade Commission the total amount of one million dollars ($1,000,000) in three installements in the following manner:

A. The first installment payment of four hundred thousand dollars ($400,000) shall be paid by respondent Twin Star Productions, Inc., on or before the tenth day following the date of entry of this Order.

B. The second installment payment of three hundred fifty thousand dollars ($350,000) shall be paid by respondent Twin Star Productions, Inc., no later than one (1) year following the date of entry of this Order.

C. The third installment payment of two hundred fifty thousand dollars ($250,000) shall be paid by respondent Twin Star Productions, Inc., no later than eighteen (18) months following the date of entry of this Order.

D. All payments required by subparts VIII.A, VIII.B and VIII.C of this Order shall be made by cashier's check or certified check payable to the Federal Trade Commission and shall be delivered to the Federal Trade Commission, 915 Second Avenue, Suite 2806, Seattle, Washington 98174.

E. Should Twin Star Productions, Inc., default on any portion of any payment required by subparts VIII.A, VIII.B or VIII.C of this Order, Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be jointly and severally liable for the full amount of such payment and for any interest required by subpart VIII.F of this Order.

F. In the event of default of any payment required by subparts VIII.A, VIII.B or VIII.C of this Order, which default continues for more than ten (10) days beyond the due date, all unpaid installments shall become immediately due and payable without any notice required to be given to respondent Twin Star Productions, Inc., and interest, at the rate prescribed under 28 U.S.C. 1961, as amended, as of the date of entry of this Order, shall begin to accrue on the unpaid balance commencing as of the date of such default.

G. Respondent Twin Star Productions, Inc., shall execute and record a mortgage, in compliance with the laws of the State of Arizona, on or before the tenth day following the date of entry of this Order, to grant and perfect a security interest to the Federal Trade Commission in property acceptable to the Federal Trade Commission and valued by an independent appraisal to have a value of one million dollars ($1,000,000) or more, in excess of all other perfected security interests, as security for the payments required to be paid by Twin Star Productions, Inc. under subparts VIII.B and VIII.C of this Order and for the payments required to be paid by Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer under subparts IX.B and IX.C of this Order. The appraisal required by this subpart shall be conducted by an appraiser acceptable to the Federal Trade Commission and paid by Twin Star Productions, Inc. Default by Twin Star Productions, Inc. or by Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer under the terms of this Order will entitle the Federal Trade Commission to enforce this security interest after ten (10) days' notice to respondents. The Federal Trade Commission will release this security interest upon receipt of all payments required by subparts VIII.B, VIII.C, IX.B and IX.C of this Order.

H. The funds paid by respondent Twin Star Productions, Inc., shall be deposited by the Federal Trade Commission in an interest-bearing account and shall be used to provide direct redress to purchasers of the EuroTrym Diet Patch, Foliplexx and/or Y-Bron and to pay any attendant expenses of administration. If the Commission determines that redress to purchasers of these products is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent Twin Star Productions, Inc., shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

I. Within ninety (90) days after the date of entry of this Order, Twin Star Productions, Inc., shall furnish to the Federal Trade Commission a complete written list containing the name, last known address, telephone number, date of purchase and amount of any refund for each past purchaser of the EuroTrym Diet Patch, Foliplexx and Y-Bron. Twin Star Productions, Inc., shall also provide this list of purchasers in computer readable form, on standard MS–DOS diskettes or IBM-mainframe compatible tape. Further, Twin Star shall provide the name and last known address of each purchaser on pressure-sensitive labels.

IX

It is further ordered, That respondents Jerald H. Steer, Allen R. Singer, Douglas

E. Gravink, Peter Claypatch and Steven L. Singer shall pay to the Federal Trade Commission the total amount of five hundred thousand dollars ($500,000) in three installments in the following manner:

A. The first installment payment of one hundred thousand dollars ($100,000) shall be paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer on or before the tenth day following the date of entry of this Order.

B. The second installment payment of one hundred fifty thousand dollars ($150,000) shall be paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer no later than one (1) year following the date of entry of this Order.

C. The third installment payment of two hundred fifty thousand dollars ($250,000) shall be paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer no later than eighteen (18) months following the date of entry of this Order.

D. All payments required by subparts IX.A, IX.B and IX.C of this Order shall be made by cashier's check or certified check payable to the Federal Trade Commission and shall be delivered to the Federal Trade Commission, 915 Second Avenue, suite 2806, Seattle, Washington 98174.

E. Should Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer default on any portion of any payment required by subparts IX.A., IX.B or IX.C of this Order, Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be jointly and severally liable for the full amount of such payment and for any interest required by subpart IX.F of this Order.

F. In the event of default of any payment required by subparts IX.A, IX.B or IX.C of this Order, which default continues for more than ten (10) days beyond the due date, all unpaid installments shall become immediately due and payable without any notice required to be given to respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer, and interest, at the rate prescribed under 28 U.S.C. 1961, as amended, as of the date of entry of this Order, shall begin to accrue on the unpaid balance commencing as of the date of such default.

G. The funds paid by respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be deposited by the Federal Trade Commission in an interest-bearing account and shall be used to provide direct redress to purchasers of the EuroTrym Diet Patch, Foliplexx and/or Y-Bron and to pay any attendant expenses of administration. If the Commission determines that redress to purchasers of these products is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondents Jerald H. Steer, Allen R. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

It is further ordered, That respondent Twin Star Productions, Inc., shall:

A. Within thirty (30) days after service of this Order, provide a copy of the Order to each of respondent's current principals, officers, directors and managers, and to all personnel, agents and representatives having sales, advertising or policy responsibility with respect to the subject matter of this Order.

B. For a period of ten (10) years from the date of entry of this Order, provide a copy of this Order to each of respondent's principals, officers, directors and managers, and to all personnel, agents and representatives having sales, advertising or policy responsibility with respect to the subject matter of this Order who are associated with respondent or any subsidiary, successor or assign, within three (3) days after the person assumes his or her position.

XI

It is further ordered, That respondent Twin Star Productions, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate structure, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

XII

It is further ordered, That each individual respondent shall, for a period of ten (10) years from the date of entry of this Order, notify the Commission within thirty (30) days of the discontinuance of his or her present business or employment and of his or her affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his or her duties and responsibilities. The expiration of the notice provision of this Part XII shall not affect any other obligation arising under this Order.

XIII

It is further ordered, That for three (3) years from the date that the practices to which they pertain are last employed, respondents shall maintain and upon reasonable request make available to the Federal Trade Commission, at a place designated by Commission staff for inspection and copying:

A. All advertisements and promotional materials subject to this Order;

B. All materials relied on as substantiation for any representation covered by this Order;

C. All test reports, studies or other materials in respondents' possession or control at any time that contradict, qualify or call into question any representation of respondents covered by this Order or the basis on which respondents relied for such claim or representation; and

D. All other materials and records that relate to respondents' compliance with this Order.

This part XIII shall expire ten (10) years after the date of entry of this Order.

XIV

It is further ordered, That respondents shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Twin Star Productions, Inc., a corporation, and its principals, Jerald H. Steer, Allen R. Singer, Judith P. Singer, Douglas E. Gravink, Peter Claypatch and Steven L. Singer. 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 made for a weight loss product, a baldness product and an impotence product in program-length television commercials produced and distributed by Twin Star. The EuroTrym Diet Patch, the weight loss product, was advertised on "The Michael Reagan Show." The baldness product, Foliplexx, was advertised on "Breakthrough '88." The impotence product, Y–Bron, was advertised on "Let's Talk."

The Commission's complaint in this matter charges respondents with making deceptive representations regarding the efficacy of these products. According to the complaint, respondents falsely claimed (1) that the EuroTrym Diet Patch prevents feelings of hunger, enables users to lose substantial amounts of weight, and enables users to lose weight in a large majority of cases; (2) that use of Foliplexx relieves or prevents baldness, cures or reverses the advance of baldness, and is an effective remedy for baldness in a large percentage of cases; and (3) that use of Y–Bron relieves, cures, prevents, or reverses impotence, that use of Y–Bron increases sexual drive, ability, desire or libido, and that Y–Bron is an effective remedy for impotence in a substantial percentage of cases. The complaint also alleges that the respondents falsely claimed that competent and reliable tests or studies established the efficacy of the EuroTrym Diet Patch, Foliplexx and Y–Bron.

Further, the complaint alleges that respondents represented that their program-length commercials, including the commercials for the three products, are independent consumer programs that discuss a variety of topics or conduct independent and objective investigations of products. In fact, the complaint alleges, Twin Star's program-length commercials are not independent programs that discuss a variety of topics or conduct independent and objective investigations of products.

The complaint also alleges that respondents falsely represented that endorsements appearing in advertisements for the EuroTrym Diet Patch, Foliplexx and Y–Bron reflect endorsers' honest opinions or experiences, reflect the typical experience of members of the public who have used these products, and where obtained from persons who were independent from those marketing these products.

The consent order contains provisions designed to remedy the advertising violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Part I of the order prohibits respondents from disseminating the 30-minute television advertisements known as "The Michael Reagan Show," "Breakthrough '88," and "Let's Talk," as well as the 30-minute television advertisement for the book How to Start Your Own Business by Doing Business With the Government.

Parts II, III and IV of the order prohibit respondents from making specified representations regarding the efficacy of the EuroTrym Diet Patch, Foliplexx, Y–Bron or any substantially similar products products or services. Parts II, III and IV also prohibit respondents from making specified claims regarding the efficacy of any weight loss, hair loss, or impotence product or service unless the representation is true and respondents rely upon competent and reliable scientific evidence that substantiates those representations. Part II also requires respondents to disclose in any advertisement for any weight control or weight reduction product or service that dieting and/or exercise is required to lose weight, unless there is competent and reliable scientific evidence demonstrating otherwise.

Part V of the order prohibits respondents from making representations about the performance, benefits, efficacy or safety of any food, drug or device without competent and reliable scientific evidence for the representations. Part V of the order also prohibits respondents from making any representations about the performance, benefits, efficacy or safety of any product without a reasonable basis for the representations.

Part VI of the order prohibits respondents from using any endorsement without having reason to believe that it reflects the honest opinion, finding, belief or experience of the endorser and contains no representation that would be false or unsubstantiated if made directly by respondents. Part VI also requires respondents to disclose material connections between an endorser and the respondents and prohibits respondents from misrepresenting the typicality of any endorsement.

Part VII of the order prohibits respondents from creating, producing, selling or disseminating any advertisement that misrepresents that it is an independent program and not a paid advertisement. Part VII also requires respondents to include, in any advertisement 15 minutes long or longer, a disclosure indicating that the program is a paid advertisement. The order sets out the specific language for the disclosure and the times it must appear.

The order also requires five of the six respondents to pay $1.5 million in consumer redress, payable in three installments of $500,000 over an 18-month period. In order to secure payment, the order requires respondents to pledge real estate as collateral.

Parts X–XIV of the order contain provisions relating to compliance with the order.

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

Donald S. Clark,

Secretary.

[FR Doc. 90–9573 Filed 4–24–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the General Counsel; Statement of Organization, Functions and Delegations of Authority

The Statement of Organization, Functions, and Delegation of Authority, sections AG.00 through AG.22A3 was published on January 19, 1990 53 FR 1872. There were two technical errors in the published Statement which incorrectly identified the Chief Counsels in the Regional Offices and also a typographical error. This Statement is republished.

Section AG.00 Mission. The General Counsel, as special advisor to the Secretary on legal matters, is responsible for providing all legal services and advice to the Secretary, Under Secretary, and all subordinate organizational components of the Department in connection with the operations and administration of the Department.

Section AG.10 Organization. The Office of the General Counsel under the supervision of a General Counsel consists of:

1. Immediate Office of the General Counsel
2. Divisions in the Office of the General Counsel
3. Offices of the Chief Counsels (Regions I–X).

Section AG.12 The General Counsel.

A. The General Counsel is directly responsible to the Secretary.

B. In the event of the General Counsel's absence or disability or during

a vacancy in the office of General Counsel, the Principal Deputy General Counsel shall act in his place. In the event of a vacancy in the offices of General Counsel and Principal Deputy General Counsel, the Secretary shall designate an Acting General Counsel.

C. Each division is under the general supervision of the General Counsel, the Principal Deputy Counsel and, to the extent applicable, the Deputy General Counsel. Each division is under the immediate supervision of an Associate General Counsel/Chief Counsel [program].

Section AG.14 Immediate Office of the General Counsel. A. The Immediate Office of the General Counsel consists of:

1. The General Counsel
2. Principal Deputy General Counsel
3. Deputy General Counsel
4. Deputy General Counsel-Legal Counsel
5. Special Counsel for Ethics
6. Executive Assistant to the General Counsel

Section AG.15 Chief Counsels (Regions I–X).

Section AG.18 Divisions in the Office of the General Counsel. The Divisions of the Office of the General Counsel are:

Business and Administrative Law Division
Civil Rights Division
Inspector General Division
Food and Drug Division
Legislation Division
Public Health Division
Health Care Financing Division
Social Security Division
Family Support and Human Development Division

Section AG.20 Functions. The General Counsel is authorized to promulgate such directives, in accordance with established procedures, as are necessary to carry out the responsibilities assigned. The Office of the General Counsel is responsible for:

1. Furnishing all legal services and advice to the Secretary, Under Secretary, and all offices, branches, or units of the Department in connection with the operations and administration of the Department.

2. Furnishing legal services and advice on such other matters as may be submitted by the Secretary, the Under Secretary, and any other person authorized by the Secretary to request such service or advice.

3. Representing the Department in all litigation when such direct representation is authorized by law, and in other cases making and supervising contacts with attorneys responsible for the conduct of such litigation.

4. Performing all liaison functions in connection with legal matters involving the Department, and formulating or reviewing requests for formal opinions or rulings by the Attorney General and the Comptroller General.

5. Drafting all proposals for legislation originating in the Department and reviewing all proposed legislation submitted to the Department or to any operating agency of the Department for comment, preparing reports and letters to congressional committees, the Office of Management and Budget, and others on proposed legislation; prescribing procedures to govern the routing and review, within the Department, of material relating to proposed Federal legislation.

6. Performing liaison functions with the Office of the Federal Register, National Archives and Records Administration.

7. Generally supervising all legal activities of the Department and its operating agencies and directing the activities of the legal staff in the field.

Section AG.21 Immediate Office of the General Counsel. A. The General Counsel:

1. Is responsible to and serves as Special Advisor to the Secretary on legal matters in connection with the administration of the Department.

2. Exercises general direction and supervision over all legal activities carried on by the Department.

B. The Principal Deputy General Counsel assists the General Counsel in developing formal and informal advice issued by the Office of the General Counsel and supervises the Associate General Counsels/Chief Counsels [program] in the issuance of legal advice. In the absence or disability of the General Counsel or during a vacancy in the office of General Counsel the Principal Deputy General Counsel shall serve as the Acting General Counsel.

C. The Deputy General Counsel assists the General Counsel by coordinating efforts by the Offices of the regional Chief Counsel, carrying out office-wide management responsibilities, and performing such other duties as the General Counsel prescribes.

D. The Deputy General Counsel-Legal Counsel assists the General Counsel in providing formal and informal legal advice and opinions to the Secretary, the Under Secretary, and the Assistant Secretaries relating to major new policy directions, innovative programs not clearly delineated by statutory authority, and Departmental programs and initiatives involving more than a single operating component of the Department.

E. The Special Counsel for Ethics assists the General Counsel by providing legal advice to officials of the Department regarding ethics and other standards of conduct issues and serves as the Designated Agency Ethics Official responsible for Department-wide activities required by the Ethics in Government Act (5 U.S.C. App. 4).

F. The Executive Assistant performs such administrative tasks in accordance with established procedures as are necessary to maintain routine operating of the Office of the General Counsel.

Section AG.22 Divisions in the Office of the General Counsel. A. The Divisions in the Office of the General Counsel, under the direction of an Associate General Counsel/Chief Counsel [program] have the following responsibilities:

1. Business and Administrative Law Division. The Business and Administrative Law Division shall be responsible for:

a. Legal services on business management activities and administrative operations throughout the Department, including procurement, contracting, copyrights, personnel, budget, appropriations, employment, compensation, travel and claims by and against the Department.

b. Legal services for the Department's civil defense, and security programs.

c. Liaison with the Comptroller General.

d. Legal services under the National Environmental Policy Act.

e. Liaison with the Department of Justice on administration of the Freedom of Information Act and the Privacy Act.

2. Civil Rights Division. The Civil Rights Division shall provide legal services for the Office for Civil Rights.

3. Inspector General Division. The Inspector General Division shall provide legal services to the Inspector General and shall be responsible for prosecuting claims by the Department for civil money penalties under section 1128A of the Social Security Act. 42 U.S.C. 1320–7a.

Dated: April 17, 1990.

James E. Larson,

Acting Deputy Assistant Secretary for Information and Resources Management

[FR Doc. 90–9572 Filed 4–24–90; 8:45 am]

BILLING CODE 4110–60–M

Alcohol, Drug Abuse, and Mental Health Administration

Model Drug Abuse Treatment Programs for Correctional Settings; Correction

OFFICE: Office for Treatment Improvement, ADA, MHA, HHS.

ACTION: Request for Applications for Model Drug Abuse Treatment Programs for Correctional Settings; Correction.

SUMMARY: Public notice was given in the **Federal Register** on April 13, 1990, Volume 55, No. 72, on page 13963 that application kits for the Office for Treatment Improvement Program, Model Drug Abuse Treatment Programs for Correctional Settings, could be obtained from: National Clearinghouse for Alcohol and Drug Information, Office for Treatment Improvement Grant Program, P.O. Box 2345, Rockville, MD 20852. The correct source for application kits is: Office for Treatment Improvement, Technical Resources, Inc., P.O. Box 919, Rockville, MD 20848–0919.

Dated: April 17, 1990.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90–9617 Filed 4–24–90; 8:45 am]

BILLING CODE 4160–20–M

Advisory Committee Meeting in May

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the **Federal Register** on April 12, 1990, Volume 55, No. 71, on page 13837 that the National Advisory Mental Health Council, NIMH, would meet at the National Institutes of Health, on May 21 and 22. The location of the meeting on May 21 (closed session) has been changed to the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Dated: April 19, 1990.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90–9618 Filed 4–24–90; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 90N–0150]

Drug Export; Isoproterenol Hydrochloride Injection, USP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lyphomed, Inc., has filed an application requesting approval for the export of the human drug Isoproterenol Hydrochloride Injection, USP, to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide the FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Lyphomed, Inc., 2045 North Cornell Avenue, Melrose Park, IL 60260–1002, has filed an application requesting approval for the export of the drug Isoproterenol Hydrochloride Injection, USP, to Canada. This drug is indicated in the treatment of mild or transient episodes of heart block that do not require electric shock or pacemaker therapy, serious episodes of heart block and Adams-Stokes attacks, and cardiac arrest until electric shock or pacemaker therapy is available. The application was received and filed in the Center and Drug Evaluation and Research on April 2, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 7, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: April 16, 1990.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90–9612 Filed 4–25–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90N–0152]

Drug Export; Pseudoephedrine Hydrochloride Controlled Release Tablets (Caplets), 120 Mg

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that KV Pharmaceutical Co. has filed an application requesting approval for the export of the human drug Pseudoephedrine Hydrochloride Controlled Release Tablets (Caplets) 120 mg, to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62. 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquires concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144, has filed an application requesting approval for the export of the drug Pseudoephedrine Hydrochloride Controlled Release Tablets (Caplets) 120 mg, to Canada. This product is used for the temporary relief of nasal congestion due to the common cold, hay fever or other upper respiratory allergies, and nasal congestion associated with sinusitis; promotes nasal and/or sinus drainage. The application was received and filed in the Center for Drug Evaluation and Research on April 6, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by (April 7, 1990), and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: April 16, 1990.

Sammie R. Young,

Acting Director, Office of Compliance Center for Drug Evaluation and Research.

[FR Doc. 90–9613 Filed 4–24–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90N–0151]

Drug Export; Vigabatrin Active Ingredient (Sabril Tablets)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Marion Merrell Dow, Inc., has filed an application requesting approval for the export of the human drug vigabatrin active ingredient to France where it is not yet approved for re-exportation to the Republic of Ireland and the United Kingdom as Sabril Tablets where it is approved.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Marion Merrell Dow, Inc., 10123 Alliance Rd., Cincinnati, OH 45242, has filed an application requesting approval for the export of the drug vigabatrin active ingredient, to France for re-exportation to the Republic of Ireland and the United Kingdom as Sabril Tablets. This active ingredient is used in an anti-epilepsy medicine marketed in the Republic of Ireland and the United Kingdom under the tradename Sabril. The application was received and filed in the Center for Drug Evaluation and Research on April 9, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 7, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: April 16, 1990.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90–9614 Filed 7–24–90; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Device Good Manufacturing Practice Advisory Committee

Date, time, and place. June 19 and 20, 1990, 9 a.m., Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 19, 1990, 9 a.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 4:30 p.m.; open committee discussion, June 20, 1990, 9 a.m. to 4:30 p.m.; Sharon M. Kalokerinos, Center for Devices and Radiological Health (HFZ–330), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1131.

General function of the committee. The committee reviews regulations for promulgation regarding current good manufacturing practices (CGMP's) governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and makes recommendations regarding the feasibility and reasonableness of those regulations. The committee may also provide advice with regard to any petition submitted by a manufacturer for an exemption or variance from CGMP regulations.

Agenda—Open public hearing. Interested persons may present data, information, or views orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 18, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will consider whether the agency should revise the CGMP regulations to include design, servicing and purchasing controls, and to expand certain existing requirements. This is based on FDA's recall analyses, CGMP experience, and in light of the European Community's development of "harmonized" CGMP's.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: April 18, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–9545 Filed 4–24–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84N–0241]

1989 Revision of the National Shellfish Sanitation Program Manual of Operations, Part I "Sanitation of Shellfish Growing Areas" and Part II "Sanitation of the Harvesting, Processing, and Distribution of Shellfish"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the 1989 revision of the National Shellfish Sanitation Program Manual of Operations, part I, "Sanitation of Shellfish Growing Areas" and part II, "Sanitation of the Harvesting, Processing, and Distribution of Shellfish." This project was initiated in cooperation with the Interstate Shellfish Sanitation Conference (ISSC) to help assure that only safe and sanitary shellfish are offered for sale in interstate commerce.

ADDRESSES: Submitt written requests for copies (free of charge) of the Manual to the Food and Drug Administration, Shellfish Sanitation Branch (HFF–344), 200 C St. SW., Washington, DC 20204. Send two self-addressed adhesive lables to assist that office in processing your requests. The Manual is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David M. Dressel, Center for Food Safety and Applied Nutrition (HFF–344), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0149.

SUPPLEMENTARY INFORMATION: FDA is responsible for the Federal administration of the National Shellfish Sanitation Program (NSSP), which is a voluntary program involving State Shellfish control agencies, the shellfish industry, FDA and other Federal agencies. Five foreign countries also actively participate in the NSSP through international bilaterial agreements.

The NSSP is concerned with the sanitary control of fresh and frozen molluscan shellfish (oysters, clams, and mussels) offered for sale in interstate commerce. The program has been in existence since 1925. In the interest of assuring uniform administrative and technical controls, the NSSP has developed and maintained recommended shellfish control practices. These control practices have been published in the form of a Manual of Operations, parts I and II.

In 1982, interested State officials and members of the shellfish industry formed the ISSC, whose purpose is to provide a formal structure wherein State regulatory authorities can establish updated guidelines for improving shellfish sanitation and safety. The ISSC has established uniform procedures for the development and adoption of new guidelines. Those persons interested in obtaining additional information about the ISSC should contact Kenneth Moore, Chairman, Interstate Shellfish Sanitation Conference, c/o South Carolina Department of Health and Environmental Control, 2600 Bull St., Columbia, SC 29202.

FDA and the ISSC entered into a memorandum of understanding (MOU) in March 1984 (49 FR 12751; March 30, 1984). This agreement states, among other things, that FDA will provide technical assistance to the ISSC, including participating in the cooperative efforts of the Conference, to develop or revise program criteria and guidelines.

Based on the MOU, FDA developed draft revisions of the NSSP Manual of Operations, parts I and II, in cooperation with the ISSC. FDA announced the availability of the 1986 revision of part I on June 5, 1987 (52 FR 21375). The initial working draft of part II was made available for comment on September 11, 1985 (50 FR 37055), with a revised second draft being made available for further comment on July 11, 1986 (51 FR 25261). Based on the comments received, and in consideration of the comments and views expressed on parts I and II by State regulatory officials, industry representatives, and other interested parties at the ISSC's 1987 and 1988 annual meetings in Austin, TX, and Denver, CO, respectively, FDA announced the availability of the 1988 revision of the completed Manual of Operations on February 17, 1989 (54 FR 7281). Continuing with this successful alliance, FDA and ISSC now announce the availability of the 1989 revision of the NSSP Manual of Operations, part I, "Sanitation of Shellfish Growing Areas" and part II, "Sanitation of the Harvesting, Processing, and Distribution of Shellfish." The 1989 revision contains changes and improvements to the NSSP considered and passed at the 1989 ISSC meeting held in Stamford, CT.

The revised manual provides guidance and procedures governing (1) the sanitation of shellfish growing areas and (2) the harvesting, processing, and distribution of shellfish. Major topics include: General administrative and laboratory procedures; growing area surveys and classification; contingency plans for the control of marine biotoxins; and the accepted sanitary procedures for the harvesting, handling, shucking, and packing of shellfish.

Dated: April 18, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-9546 Filed 4-24-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of May 1990:

Name: Subcommittee on Medical Education Programs and Financing of the Council on Graduate Medical Education.

Time: May 17, 1990, 8:30 a.m.

Place: Maryland Room, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857. Open for entire meeting.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; Federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

Agenda: (1) The Subcommittee discussion of proposed conclusions and recommendations, and supporting text. (2) Develop a workplan for the 1991 Statutory Report to the Secretary and Congress.

Anyone requiring information regarding the subject Subcommittee should contact F. Lawrence Clare, M.D. Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443-6326.

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education.

Time: May 1, 1990, 10 a.m.-4 p.m.

Place: Conference Room D, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857, Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving manpower data.

Agenda: Briefing of contractor activities on project to reexamine the adequacy of physician personnel supply made in 1980 by GMENAC for six physician specialties. Review of activities for Second COGME Report. In addition, the Subcommittee will hold a panel discussion on issues of child health and welfare and their implications for physician manpower, and will develop a workplan for the 1991 COGME report to the Secretary and the Congress.

Anyone requiring information regarding the subject Subcommittee should contact Jerald M. Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443-6326.

Name: Subcommittee on Minority Representation in Medicine of the Council on Graduate Medical Education.

Time: May 17, 1990, 6:00 p.m.-8:30 p.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852. Open for entire meeting.

Purpose: To review and discuss final draft of the section on the underrepresentation of minorities in medicine of the COGME Special Report.

Agenda: Review of Proposed Special Report of the Council on the representation of minorities in medicine, including review and discussion of the proposed conclusions and recommendations. Develop a workplan for the 1991 COGME Report to the Secretary and the Congress; Develop analytical agenda that relates to pathway problems, recruitment, enrollment, retention and graduation of underrepresented minorities in medical education.

Anyone requiring information regarding the subject Subcommittee should contact Ronald L. Craig, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-18, Parklawn

Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Name: Council on Graduate Medical Education.

Time: May 18, 1990, 8:30 a.m.–5:00 p.m.

Place: Conference Room D & E, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857, Open for entire meeting.

Purpose: Providers advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The Council will receive legislative updates from Health Resources and Service Administration, Health Care Financing Administration, and the Department of Veterans' Affairs, and will discuss the proposed draft special report on "The Financial Status of Teaching Hospitals and the underrepresentation of Minorities in Medicine," including discussion of proposed conclusions and recommendations.

Anyone requiring information regarding the subject Council should contact Marilyn H. Gaston, M.D., Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6190.

Agenda Items are subject to change as priorities dictate.

Dated: April 19, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90–9562 Filed 4–24–90; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Statement of Organization, Functions and Delegations of Authority; Assistant Secretary for Health

Part H, Public Health Service (PHS), Chapter H, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 54 FR 27213, June 28, 1989), is further amended to restate Section H–30, Public Health Service—Order of Succession. This revision updates successors to head the PHS in the absence of the Assistant Secretary for Health.

Public Health Service

Under Section H–30. Public Health Service—Order of Succession, delete the statement in its entirety and substitute the following:

During the absence or disability of the Assistant Secretary for Health, or if that position becomes vacant, the first official listed below, who is available, shall act as the Assistant Secretary for Health:

Deputy Assistant Secretary for Health
Deputy Assistant Secretary for Health Operations and Director, Office of Management
Deputy Assistant Secretary for Health Planning and Evaluation.

During a planned absence the Assistant Secretary for Health may choose to designate a different order.

Should both the positions of Assistant Secretary for Health and Deputy Assistant Secretary for Health be vacant, the Secretary of Health and Human Services shall designate an official to serve as acting head of the Public Health Service.

The above order of succession also applies upon the activation of the Emergency Health and Human Services Plan upon the order of the Secretary.

Dated: April 3, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–9495 Filed 4–24–90; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–030–90–4830–12]

Idaho Falls District Advisory Council; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeging of the Idaho Falls District Advisory Council.

SUMMARY: The Idaho Falls District Advisory Council will meet Wednesday, May 23, 1990. Notice of this meeting is in accordance with Pub. L. 92–463. The meeting will begin at 9 a.m. at the Idaho Falls District Office on 940 Lincoln Road, Idaho Falls, Idaho. This meeting is open to the public; public comments will be accepted from 9:30 a.m. to 10 a.m.

The agenda for this meeting includes, but is not limited to: Snake River Draft Activity/Operations Plan, Proposed Crater's National Park, Status of small hydroelectric proposals on Badger Creek and Birch Creek, and Indian Rocks State Park revocation.

Detailed minutes of the Council meeting will be maintained in the District Office and will be available for public review during regular business hours (7:45 a.m. to 4:30 p.m. Monday through Friday) within 30 days following the meeting.

DATES: May 23, 1990.

ADDRESSES: Written comments should be submitted to the District Manager, Bureau of Land Management 940 Lincoln Road, Idaho Falls, ID 83401.

FOR FURTHER INFORMATION CONTACT: Stephanie DeGraw, Public Affairs Specialist, Telephone: (208) 529–1020.

Dated: April 16, 1990.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 90–9548 Filed 4–24–90; 8:45 am]

BILLING CODE 4310–66–M

Minerals Management Service

Publication; Revised Outer Continental Shelf Protraction Diagrams

AGENCY: Minerals Management Service, Interior.

ACTION: Publication of revised Outer Continental Shelf Official Protraction Diagrams.

SUMMARY: Notice is hereby given that effective with this publication, the following OCS Official Protraction Diagrams, last revised on the date indicated, are on file and available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. In accordance with title 43, Code of Federal Regulations, these Official Protraction Diagrams are the basic record for the description of mineral and oil and gas lease sales in the geographic areas they represent.

Revised Maps [1]

Description	Latest revision date
NF 17–1	September 20, 1989.
Dry Tortugas, NG 17–10	September 20, 1989.
NG 16–8	September 20, 1989.
NG 16–11	September 20, 1989.

ADDRESSES: Copies of these Official Protraction Diagrams may be purchased

[1] Changes include addition to block acreages and line lengths, and/or wording of notes including reference to the 1927 Datum. There are no changes in block shapes.

for $2.00 each form Public Information Unit (OPS–3–4), Minerals Management Service, Gulf of Mexico OCS Region Office, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519. Map sets are available on microfiche for $5.00 per set.

Technical comments or questions pertaining to these maps should be directed to Office of Leasing Environment, Supervisor, Sales and Support Unit, (504) 736–2761.

Dated: April 13, 1990.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 90–9592 Filed 4–24–90; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Committee for the Preservation of the White House; Meeting

In compliance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Committee for the Preservation of the White House. The meeting will be held at the Old Executive Office Building, Washington, DC at 2:30 p.m., Thursday, May 10, 1990, to discuss the purpose and objectives of the Committee. It is expected that the agenda will include discussion of the collection policy and goals for the Committee. The meeting will be open, but subject to appointment and security clearance requirements including providing clearance information by May 3, 1990.

Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m., weekdays at (202) 485–9836. Written comments may be sent to Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive SW., Washington, DC 20242.

Dated: April 19, 1990.

James I. McDaniel,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 90–9565 Filed 4–24–90; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–284]

Certain Electric Power Tools, Battery Cartridges, and Battery Charges; Denial of Motion for Sanctions and Restraining Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission had denied the motion of respondents Jepson, Inc. and Ko Shin Machinery & Electric Co. Ltd. for sanctions and a restraining order against complainants Makita U.S.A., Inc. and Makita Corp. of America (collectively "Makita").

ADDRESSES: Copies of the Commission Order denying the motion and all documents cited below, and all other nonconfidential documents on the record of the above-captioned investigation will be made available for inspection upon request during official business hours (8:45 a.m. to 5:15 p.m. Monday-Friday) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Docket Section, room 112, Washington, DC 20436, telephone (202) 252-1802.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 252-1061. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252-1810.

SUPPLEMENTARY INFORMATION: The above-captioned investigation (now terminated) was conducted to determine whether there was a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 (1988 and Supp. I 1989), in the importation or sale of certain electric power tools, battery cartridges, and battery charges from Taiwan. The investigation focused on Makita's allegations that 31 firms in the United States and Taiwan had engaged in one or more of the following unfair acts and methods of competition in the importation or sale of accused merchandise from Taiwan: (1) Common-law trademark infringement—*i.e.*, unlicensed copying of the design, the color "Makita blue," or the design/color combination of certain Makita products; (2) infringement of the registered trademark "Makita"; (3) false representation; (4) false advertising; or (5) passing off. *See* 53 FR 31112 (Aug. 17, 1988) as amended by 53 FR 47587 (Nov. 23, 1988); 54 FR 16009 (Apr. 20, 1989); 54 FR 21490 (May 18, 1989). The Commission ultimately determined that there had been no violation of section 337 by any repondent except Equipment Importers, Inc., d/b/a Jet Equipment & Tools, Inc., a domestic firm that was found to have infringed the registered trademark "Makita" in the importation and sale of a Taiwanese power tool. *See* 54 FR 31896 (Aug. 2, 1989) Initial Determination (June 2, 1989).

About two weeks after the Commission issued notice of its final determination on violation, Makita and respondents Jepson and Ko Shin participated in the National Hardware Show in Chicago, Illinois (August 13–16, 1989). Makita displayed a sign at the show which read as follows:

> Beware!
>
> Be sure you are buying and promoting genuine Makita power tools!
>
> Copies of Makita Tools are under investigation by the International Trade Commission.

When communications with Makita's attorney did not result in immediate removal of the sign, Jepson and Ko Shin sought emergency relief from the Commission in the form of unspecified sanctions against Makita and a restraining order directing Makita to cease and desisit from the unfair and anticompetitive act of misrepresenting the Commission's findings. *See* Emergency Motion to the Full Commission for Sanctions and Order Restraining Unfair Trade Practices (Motion No. 284–138).

Makita filed a response arguing that the Commission lacked jurisdiction to grant the relief requested, that Makita had not committed any impropriety, and that the matter was moot since Makita had removed the sign. *See* Opposition to "Emergency" Motion of Jepson and Ko Shin.[1]

The Commission concluded that the sign was misleading. As Makita was well aware, the Commission had made a final determination 13 days prior to the Commencement of the National Hardware Show that the respondents' unlicensed use of a design, a blue color, or a design/color combination like that utilized by Makita for its tools was not unlawful and that no respondent had engaged in passing off, false advertising, or false representation of their imported tools as Makita products. *See* 54 FR 31896 (Aug. 2, 1989). Although Makita filed a motion for reconsideration of that determination after Jepson and Ko Shin had filed their motion for sanctions and a restraining order, the pendency of a motion for reconsideration does not stay the effectiveness of a contested determination or have the effect of reopening the proceedings, unless specifically ordered by the Commission. *See* 19 CFR 210.60 (1989). Makita did not

[1] Jepson and Ko Shin submitted a reply to Makita's arguments, which the Commission did not consider since it was not accompanied by a motion for leave to file.

seek an order staying the Commission's determination and its motion for reconsideration was denied.[2] [3] In short, while the National Hardware Show was in progress, imported Taiwanese power tools resembling Makita products were not "under investigation" by the Commission concerning the alleged unlawfulness of the importation or sale of such tools in the United States.

Although the Commission determined that the sign in question was misleading, the Commission also concluded that it could not properly grant either of the remedies requested.

The request for sanctions was denied partly because Jepson and Ko Shin failed to identify the type of sanctions they were seeking and the source of the Commission's jurisdiction to grant them. The Commission noted also that the types of sanctions that are explicitly provided for in the Commission rules and that may properly be imposed on a section 337 complainant would not be applicable in this instance (*e.g.*, sanctions for impropriety in signing a document and filing it with the Commission, or for failure to make discovery, or for violation of a Commission protective order.) *See* 19 CFR 210.5(b), 210.36(b), and 210.37(c) (1989).

The request for a restraining order against Makita was denied for lack of jursidiction to issue such relief on the basis of Jepson's and Ko Shin's motion. The Commission's statutory authority to issue restraining orders, temporary cease and desist orders, and other forms of temporary relief under setion 337 is limited to cases in which the aggrieved party(s) has filed a section 337 complaint and a motion for temporary relief and has proven that there is reason to believe that section 337 has been violated. *See generally* 19 U.S.C. 1337 (a), (e), and (f)(1); 19 CFR 210.20(a)(10) and 210.24(e) (1989). Jepson and Ko Shin failed to make the necessary showing and to follow the appropriate procedure.

The Emergency Motion to the Full Commission for Sanctions and Order Restraining Unfair Trade Practices (Motion No. 284–138) was denied in its entirety for the reasons stated above. *See* Commission Order (Apr. 20, 1990).

By Order of the Commission.

Issued: April 20, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–9581 Filed 4–24–90; 8:45 am]

BILLING CODE 7020–02–M

Investigation No. 731–TA–453 (Preliminary)

Electromechanical Digital Counters From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of electromechanical digital counters,[3] provided for in subheading 9029.10.80 of the Harmonized Tariff Schedule of the United States (previously under item 711.98 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On February 27, 1990, a petition was filed with the Commission and the Department of Commerce by ENM Company, Chicago, IL, alleging that an industry in the United States is materially injured by reason of LTFV imports of electromechanical digital counters from Brazil. Accordingly, effective February 27, 1990, the Commission instituted preliminary antidumping investigation No. 731–TA–453 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 7, 1990 (55 FR 8201). The conference was held in Washington, DC, on March 20, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 13, 1990. The views of the Commission are contained in USITC Publication 2273 (April 1990), entitled "Electromechanical Digital Counters from Brazil: Determination of the Commission in Investigation No. 731–TA–453 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Issued: April 16, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–9582 Filed 4–24–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–302 (Preliminary) and 731–TA–454 (Preliminary)]

Fresh and Chilled Atlantic Salmon From Norway

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and section 1673b(a), respectively), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Noway of fresh and chilled Atlantic salmon (fresh Atlantic salmon),[2] provided for in subheading 0302.12.00 of the Harmonized Tariff Schedule of the United States (previously provided for in item 110.20 of the former Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Norway and sold in the United States at less than fair value (LTFV).

Background

On February 28, 1990, a petition was

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[2] *See* 55 FR 7043 (Feb. 28, 1990); Commission Order (Feb. 20, 1990) and the accompanying Commission Opinion Concerning Complainants' Motion for Reconsideration and the Issues of Remedy, the Public Interest, and Bonding at 3–12 (Mar. 2, 1990).

[3] As noted, Jet Equipment and Tools, Inc. was found by the Commission to have violated section 337 in the importation and sale of certain tools bearing a mark that infringed complainants' registered trademark "Makita" The Commission notes, however, that there was no evidence that such infringement occurred after 1984, and this violation, as in the case of the other allegations contained in Makita's complaint, was no longer "under investigation" at the time of the trade show.

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Chairman Brunsdale and Vice Chairman Cass dissenting.

[3] For purposes of this investigation, electromechanical digital counters are defined as devices or instruments for summing, either directly or through inference, and indicating a total number of units of any kind (items, events, pulses, length, etc.), whether or not resettable, wherein the units to be counted are detected by electrical means, and the count is displayed by rotating numbers on wheels.

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] For the purposes of these investigations, the subject product "fresh Atlantic salmon" comprises

filed with the Commission and the Department of Commerce by The Coalition for Fair Atlantic Salmon Trade, alleging that an industry in the United States is materially injured or threatened with material injury or that the establishment of an industry in the United States is materially retarded by reason of subsidized and LTFV imports of fresh Atlantic salmon from Norway. Accordingly, effective February 28, 1990, the Commission instituted preliminary countervailing duty investigation No. 701–TA–302 (Preliminary) and preliminary antidumping investigation No. 731–TA–454 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC., and by publishing the notice in the **Federal Register** of March 21, 1990 (55 FR 9025). The conference was held in Washington, DC., on March 21, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on April 16 1990. The views of the Commission are contained in USITC Publication 2272 (April 1990), entitled "Fresh and Chilled Atlantic Salmon from Norway: Determinations of the Commission in Investigations Nos. 701–TA–302 (Preliminary) and 731–TA–454 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

Issued: April 17, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–9584 Filed 4–24–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–301]

Commission Decision Not To Review Initial Determinations Terminating Investigation Based on Settlement Agreements With the Three Remaining Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the Matter of Certain Imported Artificial Breast Prostheses and the Manufacturing Processed Therefore.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review three initial determinations (IDs) (Orders Nos. 18, 19, and 20) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation as to the last three remaining respondents. The IDs grant the joint motions of complainant Amoena Corporation (Amoena) and respondents Tru Life, Tru life Nocton, and Almost U to terminate the investigation with respect to those respondents, based on settlement agreements. There being no remaining respondents, this investigation is terminated.

ADDRESSES: Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1105. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53 (19 CFR 210.53).

On March 7, 1990, complainant and respondents Tru Life, Tru life Nocton, and Almost U filed joint motions to terminate the investigation with respect to those three respondents, based on settlement agreements between Amoena and each of the three respondents. The Commission investigative attorney filed public interest statements supporting the motions to terminate the investigation. On March 15, 1990, the ALJ issued three IDs granting the motions, and terminating the investigation with respect to the remaining respondents. In Order No. 20, the ALJ noted that termination with respect to the last remaining respondent, Almost U, terminated the investigation. No petitions for review or agency or public comments were received.

By order of the Commission.

Issued: April 13, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–9583 Filed 4–24–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31630]

Consolidated Rail Corp., et al.—Control—Monongahela Railway Co..

AGENCY: Interstate Commerce Commission.

ACTION: Applications accepted for consideration.

SUMMARY: The Commission accepts for consideration Consolidated Rail Corporation's (CR or applicant) applications to: (1) Acquire control of the Monogahela Railway Company (MGA) through the purchase of all outstanding MGA common stock from Pittsburgh & Lake Erie Railroad Comapny (PLE) and CSX Transportation, Inc. (CSX); (2) assume or guarantee the obligations of PLE and CSX for bonds related to the acquisition; and (3) purchase the outstanding MGA mortgage bonds held by PLE and CSX. The Commission finds these are minor transactions under 49 CFR part 1180.

DATES: Written comments must be filed with the Commission no later than May 25, 1990. The Commission will issue a service list shortly thereafter. Comments from the Secretary of Transportation and the Attorney General of the United States are due June 11, 1990. Comments must be served on all parties of record within 10 days of the issuance of the service list. Applicant's reply is due July 2, 1990.

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, ATTN: Finance Docket No. 31630, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and applicant's representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street SW., Washington, DC 20590

Attorney General of the United States, Washington, DC 20530

Constance L. Abrams, Anne E. Treadway, Jonathan M. Broder, 1138

fresh whole and nearly-whole Atlantic salmon, including cleaned and/or gutted fresh Atlantic salmon, whether or not with the head. Atlantic salmon is the species *Salmo salar*. Fresh Atlantic salmon is generally marketed packed in ice ("chilled"). Excluded from the subject product are fresh Atlantic salmon fillets, steaks, or other cuts; Atlantic salmon that is frozen, canned smoked, or otherwise further processed; and other species of fish, including other species of salmon, and their meats.

Six Penn Center Plaza, Philadelphia, PA 19103

John F. De Podesta, Pepper, Hamilton & Scheetz, 1300 19th Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: CR, PLE, and CSX each currently own one-third of MGA's outstanding common stock. On March 26, 1990, CR filed an application seeking Commission approval under 49 U.S.C. 11343 *et seq.*, to acquire 100 percent control of MGA by purchasing the MGA common stock owned by PLE and CSX. In the related applications, CR seeks approval to assume or guarantee the obligations of PLE and CSX for mortgage bonds related to the acquisition and to purchase MGA mortgage bond now held by PLE and CSX. CR has agreed to pay PLE $20 million for its shares and bond holdings in MGA. CR will pay CSX $20 million for its MGA shares and give CSX a note due and payable in 5 years for $1.8 million at 6 percent interest in return for its MGA bonds.

No new securities will be issued as a result of these transactions; however, CR will assume certain guarantly obligations requiring Commission approval. CR expects to fund its purchase obligations through financing at approximately 10 percent or using retained earnings.

MGA is a Class II carrier operating 162 miles of track in West Virginia and Pennsylvania. It serves 12 coal mines. In 1989 it originated 180,224 carloads of coal and earned revenues of $39.5 million. MGA's rail system consists of two branches: (1) The "Waynesburg Southern Branch," which extends 55.5 main line miles from West Brownsville to Blacksville, WV (with an additional 22 miles of branch line); and (2) the "River Branch" which runs 63.4 main line miles from Brownsville south along the Monogahela River to a point near Catawba Junction, WV. The River Branch includes an additional 20.5 miles of branch track. MGA also has trackage rights over a 5-mile segment of CSX track between Catawba Junction to Grant Town, WV, at the southern end of the line. MGA connects with CSX at Fairmont, WV, and with PLE and CR at MGA's northern terminus near Brownsville, PA.

CR is a Class I railroad operating over 13,100 route miles in 14 eastern States, the District of Columbia, and the Province of Quebec. Excluding subsidiaries, it had a work force of 30,487 employees in 1988. That same year it handled a total of 78,847 million tariff-based ton miles of freight throughout its system, earning gross revenues of $3.49 billion.

In any proceeding filed under 49 U.S.C. 11343 not involving a control or merger of two or more Class I railroads, we must determine at the outset if the transaction is significant or minor. See 49 CFR 1180.4(b)(2). If it involves at least one Class I railroad acting with one or more Class I or II railroads in a major market extension, it is considered significant. CR believes that its acquisition of control of MGA is not a major market extension and thus should be treated as a minor transaction under our railroad consolidation rules.[1]

Our rules define a major market extension as a proposal significantly increasing competition by extending service into a new market, expanding service in a currently served market, or providing significantly more efficient and effective competitive service to a market presently being served. See 49 CFR 1180.3(c). Such a market extension is not involved here, since CR already interchanges 82 percent of MGA's originating traffic. If it were to acquire MGA, CR would simply continue participating in an existing through movement. Even if CR were able to interchange all of MGA's traffic, this increment would only represent about 1 percent of CR's total volume and .05 percent of its system revenues. Moreover, CR states that its estimated 9 percent volume share of the total eastern/midwestern coal market is far surpassed by the 30 and 46 percent shares respectively held by Norfolk Southern Railroad and CSX.

Also, the transactions will not have a significant competitive impact on other connecting carriers which are, in any event, protected by commercial agreements. In this regard, CR indicates that its stock purchase agreement with PLE provides that PLE's interchange with MGA at Brownsville will be maintained on a non-discriminatory basis and that CSX has negotiated specific rates applicable to MGA's interline traffic for the next 8 years. CR states that both PLE and CSX will support the transactions, since they are direct participants in the sale and consider their interests adequately protected.

MGA's coal traffic constitutes CR's only major source of mid-sulphur coal. According to CR, this is a type of coal that, when blended with low-sulphur coal, is increasingly preferred by utilities because of environmental rules and pending acid rain legislation. Due to expansion plans by coal companies located on MGA, CR estimates that MGA's coal volume will increase by up to 40 percent in the next 5 years. Under CR management, MGA is expected to spend $24 million over this period on facilities and service improvements to handle this increase. Instead of two operation and management systems currently involved in interchange movements, CR intends to centralize MGR's transportation supervision and some of its operations to improve customer service. These expansions and efficiency gains are procompetitive and environmentally desirable. They are not, however, of a type or level that would make CR's acquisition of MGA a significant transaction. As CR has indicated, it already has a close, mutually dependent marketing relationship with MGA and its shippers and receivers.

As noted, CR plans further efficiencies through operational coordinations or consolidations or the merger of MGA into CR. These proposals, however, are not all at issue here, and CR states that it cannot predict their possible impact on MGA employees. Nevertheless, CR acknowledges that any employee adversely affected by its acquisition of MGA will be covered by the employee protective conditions in *New York Dock—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

The applications and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicant's representatives.

Interested persons may participate in this proceeding by submitting written comments. Any person who files timely written comments will be considered a party of record if they so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(1) The docket number and title of this proceeding;

(2) The name, address, and telephone number of the commenting party and its representative on whom service may be made;

(3) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transactions;

(4) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;

(5) If desired, a request for an oral hearing with supporting reasons and an indication of

[1] Alternatively, if the transaction was judged to be a "significant" one, CR sought various waivers of applicable rules and a shortened schedule. In light of our findings *infra*, these requests are moot.

the disputed facts that can only be resolved at a hearing; and

(6) A list of all information sought to be discovered from the applicant.

Because we have determined that these proposals are minor transactions, no responsive applications will be permitted. The time limits for processing minor transactions are set forth at 49 U.S.C. 11345(d). Applicant has requested that we issue a final decision by December 21, 1990, to prevent the forfeiture of its $1.5 million non-refundable downpayment as provided in its stock purchase agreement with PLE. Absent unforeseeable circumstances, our normal procedures will accommodate this request. Abbreviated time limits are thus unnecessary, and adopting them would be premature.

Discovery may begin immediately. We admonish the parties to resolve all discovery matters amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The applications in Finance Docket No. 31630 and Finance Docket No. 31630 (Sub-Nos. 1, 2, and 3) are accepted as minor transactions under 49 CFR 1180.2(c).

2. Applicant and any persons filing comments must comply with the provisions in this notice.

3. This decision is effective on April 25, 1990.

Decided: April 19, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-9569 Filed 4-24-90; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-29)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 11454, Notice Number 90-23, March 28, 1990.

PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETING: April 26, 1990, 8:30 a.m. to 5 p.m. (to be held at Airbus Service Company, Inc.); and April 27, 1990, 8:30 a.m. to 4:30 p.m. (to be held at Miami Viscount Hotel). Meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Ray Hood, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2745).

Dated: April 19, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-9607 Filed 4-24-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: Office of Technology and Standards National Communications System.

ACTION: Notice for comment on proposed standard.

SUMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1037B; "Telecommunications: Glossary of Telecommunications Terms."

DATES: Comments are due on or before July 24, 1990.

ADDRESSES: Send comments to the National Communications System, Attn: Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Mr. A. Glenn Hanson, ITS, Boulder, Colorado, telephone (303) 497-5449, or FTS 320-5449.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the first draft of proposed Federal-Standard 1037B should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Dennis Bodson,

Assistant Manager, NCS Office of Technology & Standards.

Beverly Sampson,

Federal Register Liaison Officer.

[FR Doc. 90-9611 Filed 4-24-90; 8:45 am]

BILLING CODE 3610-05-M

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held on Monday, May 14, 1990. The meeting will be held at the United Telecommunications, Inc. 13221 Woodland Park Road, Herndon, VA 22071. The meeting will start at 12:30 p.m. The agenda is as follows:

A. Opening remarks.
B. Administrative remarks.
C. Briefings on industry and Government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Edwin L. Cohrs,

LtCol, USAF, NSTAC Team Leader, NCS Joint Secretariat.

[FR Doc. 90-9547 Filed 4-24-90; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in King of Prussia, PA; Railroad Accident

In connection with the investigation of the derailment of Southeastern Pennsylvania Transportation Authority (SEPTA) Commuter Train 61, at 31st and Chestnut Streets, Near 30th Street Station, Philadelphia, Pennsylvania, on March 7, 1990, the National Transportation Safety Board will convene a public hearing at 9 a.m. (local time), on Monday, May 14, 1990, at the Sheraton Valley Forge Hotel, Valley Forge Convention Center, in the Erie Ballroom, 1200 First Avenue, King of Prussia, Pennsylvania 19406. For more information contact Alan Pollock, Office of Public Affairs, National Transportation Safety Board, 800

Independence Avenue, SW., Washington, DC 20594, telephone (202) 382–6606.

Dated: April 17, 1990.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 90–9502 Filed 4–24–90; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–322]

Environmental Assessment and Finding of No Significant Impact; Long Island Lighting Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time schedular exemption from the requirement for an annual update of the final safety analysis report as prescribed in 10 CFR 50.71(e)(4). This schedular exemption would be granted to the Long Island Lighting Company (LILCO), the licensee, for the Shoreham Nuclear Power Station (SNPS), located in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a one-time schedular exemption from the requirement of 10 CFR 50.71(e)(4) to file an annual update of the Shoreham safety analysis report. By letter dated December 5, 1989, the licensee requested an extension of the schedule for filing Revision 3 to the Shoreham Updated Safety Analysis Report (USAR). Revision 3 to the USAR was due on December 7, 1989 and would have contained all changes as of June 7, 1989 (6 months prior to filing date). The licensee seeks schedular relief to file Revision 3 of the USAR by June 1, 1990. Further, Revision 3 to the USAR would contain all changes as of June 28, 1989, the date of the Settlement Agreement between LILCO and the State of New York. This schedular exemption is the proposed action being considered by the staff.

The Need for the Proposed Action

The licensee's letter of December 5, 1989 provided justification for a delay in the filing schedule (and content) of Revision 3 to the Shoreham USAR. In the time between the required filing date (December 7, 1989) and the proposed filing date (June 1, 1990), the licensee will submit to the NRC a Defueled Safety Analysis Report (DSAR) for Shoreham Nuclear Power Station, Unit 1. Granting the request for a schedular exemption represents an appropriate ordering of priorities and prudent allocation of resources.

Environmental Impact of the Proposed Action

The proposed exemption affects the schedule of filing Revision 3 to the Shoreham USAR and does not affect the manner of normal facility operation or the risk of facility accidents. (Shoreham is currently shutdown and defueled.) The possibility that the environmental impact of licensed activities would be altered by changes in the filing schedule for USAR Revision 3 is extremely remote. The staff has determined, in a safety evaluation to be issued separately, that a change in the required filing date for Revision 3 to the USAR is offset by the licensee's submittal of a Defueled Safety Analysis Report (USAR) prior to June 1, 1990. Submittal of the DSAR would be in addition to filing Revision 3 to the USAR by June 1, 1990. Revision 3 to the USAR would contain all changes as of June 28, 1989, the date of the Settlement Agreement between LILCO and New York State. In addition, the schedular exemption in question would not authorize construction or operation, would not authorize a change in licensed activities, nor effect changes in the permitted types or amounts of radiological effluents. Post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there is no measurable environmental impact associated with the proposed exemption, alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require the licensee immediately to file Revision 3 to the Shoreham USAR, including changes up to 6 months prior to the date of filing. Such an action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Shoreham Nuclear Power Station.

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 exemption. Based upon the foregoing environmental assessment, the NRC staff concludes 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 exemption, dated December 5, 1989. which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786.

Dated at Rockville, Maryland, this 18th day of April 1990.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Acting Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–9599 Filed 4–24–90; 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 May 10–12, 1990, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on March 21, 1990.

Thursday, May 10, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–8:45 a.m.: Chairman's Remarks (Open)—The ACRS Chairman will briefly report regarding items of current interest.

8:45 a.m.–10:45 a.m.: NRC Research Program Related to Plant Aging (Open)—Representatives of the NRC staff, their contractors, and industry representatives will brief the Committee, as appropriate, regarding research related to nuclear power plant aging and aging management.

10:45 a.m.–11:45 a.m. and 12:45 p.m.–1:45 p.m.: Reactor Operations and Events (Open/Closed)—Representatives of the NRC staff will brief the

Committee regarding matters related to nuclear power plant operations including such items as a proposed change in the frequency of turbine stop valve testing and recent operating events.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matter of being discussed.

2 p.m.–4 p.m.: Individual Plant Examination for External Events (Open)—The Committee will review and comment on the proposed NRC generic letter concerning Individual Plant Examinations for Severe Accident Vulnerabilities due to External Events. Representatives of the NRC staff will participate, as appropriate.

4 p.m.–5 p.m.: BWR Core Power Instability (Open/Closed)—Representatives of the NRC staff, the General Electric Company, and the BWR plant owners group will brief the Committee regarding proposing corrective actions to deal with the issue of BWR core power instability.

Portions of this session may be closed as necessary to discuss Proprietary Information applicable to the matter.

5 p.m.–5:30 p.m.: ACRS Subcommittee Activities (Open)—The members will discuss proposed arrangements for a meeting with Japanese representatives regarding safety-related aspects of advanced LWRs and related topics.

Friday, May 11, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–10 a.m.: Siting of Nuclear Power Plants—The NRC staff will brief the Committee regarding the status of NRC staff efforts to decouple nuclear plant siting and source term.

10:15 a.m.–10:45 a.m.: Future ACRS Activities (Open)—The Committee will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

10:45–12 noon: Maintenance Performance Indicators (Open)—Representatives of the NRC staff and the nuclear industry will brief the Committee, as appropriate, regarding NRC staff efforts to implement a trial program to assist in the development of maintenance performance indicators.

1 p.m.–2 p.m.: Decommissioning of Nuclear Power Plants (Open)—Representatives of the NRC staff will brief the Committee regarding SECY–90–084, Shoreham Nuclear Power Station—Status and Development.

2 p.m.–2:45 p.m.: ACRS Subcommittee Activity (Open)—The Committee will hear and discuss the report of the ACRS Planning and Procedures Subcommittee recommendations regarding Committee procedures.

3 p.m.–6 p.m.: Proposed ACRS Reports to NRC (Open)—The Committee will discuss proposed ACRS reports to NRC regarding the matters considered during this meeting as well as a pending Committee report on the NRC Severe Accident Research Program.

Saturday, May 12, 1990

8:30 a.m.–12 noon and 1 p.m.–2 p.m.—Preparation of Reports to the NRC (Open)—The Committee will continue preparation of proposed ACRS reports to NRC regarding items considered at this meeting and the proposed ACRS report on the NRC Severe Accident Research Program.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1989 (54 FR 39594). 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 Proprietary Information applicable to the matters being considered [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 301/492–8049), between 7:45 a.m. and 4:30 p.m.

Dated: April 19, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–9615 Filed 4–24–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–414, License No. NPF–52, EA 89–178]

Order Imposing Civil Monetary Penalty; Duke Power Co., Catawba Nuclear Station Unit 2

I

Duke Power Company (licensee) is the holder of Operating License No. NPF–52 (license) issued by the Nuclear Regulatory Commission (Commission or NRC) on May 15, 1986. The license authorizes the licensee to operate Catawba Unit 2 in accordance with the conditions specified therein.

II

An NRC inspection of the licensee's activities under the license was conducted on August 1–28 and November 12–15, 1989. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated December 19, 1989. The Notice stated the nature of the violation, the provision of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. Prior to responding to the Notice, the licensee requested a meeting with NRC to discuss the licensee activities associated with the violation and the proposed civil penalty. That meeting, which was transcribed, was held at the licensee's Catawba site on January 31, 1990. The licensee responded to the Notice by letter dated January 31, 1990. In its response, the licensee admitted that the violation for which the civil penalty was proposed had indeed occurred, and that errors in judgment were made. However, the licensee asserted that, based on the corrective actions taken, full mitigation of the civil penalty is warranted.

III

After consideration of the licensee's response and the statements of fact, explanations, and argument for mitigation contained therein, the Deputy

Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support (DEDS) has determined, as set forth in the appendix to this Order, that the violations occurred as stated, and that the penalty proposed for the violation designated in section I of the Notice of Violation and Proposed Imposition of Civil Penalty should be reduced by 25 percent.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The licensee pay a civil penalty in the amount of Thirty-Seven Thousand Five Hundred Dollars ($37,500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with copies to the Assistant General Counsel for Hearings and Enforcement, at the same address, the Regional Administrator, Region II, 101 Marietta Street NW., Atlanta, Georgia 30323, and a copy to the NRC Resident Inspector at Catawba.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions to this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of Violation I as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, as reference in section II above and admitted by the licensee, this Order should be sustained.

Dated at Rockville, Maryland this 12th day of April 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusions

On December 19, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty was issued for a violation identified during a routine NRC inspection. Duke Power Company (DPC) responded to the Notice on January 31, 1990. In its response, the licensee admitted the violation for which the civil penalty was proposed occurred, but requested full mitigation of the proposed civil penalty. The NRC's evaluation and conclusions regarding DPC's arguments are as follows:

Restatement of Violation I

10 CFR part 50, appendix B, Criterion XVI requires that measures be established to assure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances are promptly identified and corrected. In the case of significant conditions adverse to quality, the measures shall assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken shall be documented and reported to appropriate levels of management.

Technical Specification 6.8.1 requires that written procedures be established, implemented, and maintained covering the applicable procedures recommended in appendix A of Regulatory Guide 1.33 (RG 1.33) Revision 2, February 1978. appendix A of RG 1.33 requires the establishment of administrative procedures for the conduct of safety-related activities and procedures for operation, maintenance, and testing, as appropriate to the circumstances.

The Administrative Policy Manual for Nuclear Stations, § 3.3.2.3, established pursuant to RG 1.33, requires that maintenance be performed under the control of the Work Request System in accordance with written procedures which conform to applicable codes, standards, specifications and criteria. section 3.3.2.5 requires that, in the event of an equipment failure, the cause shall be evaluated and equipment of the same type shall be evaluated to determine whether or not it can be expected to continue to function in an appropriate manner.

Station Directive 3.3.7, Work Request Preparation established pursuant to RG 1.33, states that the Work Request is the basic document of the Maintenance Management Program for corrective and preventive maintenance and that employees requesting maintenance assistance are required to comply with the provisions of the program.

Maintenance Management Procedure 1.0, Work Request Preparation, established pursuant to RG 1.33, further defines Work Request requirements including authorization and definition of work to be performed, documentation of clearance to begin work, procedures to be used, description of maintenance activities performed, and documentation of retest activities and acceptance by operations.

Station Directive 3.2.2, Development and Conduct of the Periodic Test Program, § 6.0, established pursuant to RG 1.33, requires that, for any reason a surveillance test fails to meet acceptance criteria, the Shift Supervisor shall ensure that the proper course of action for returning the equipment to operable status is pursued.

Station Directive 3.1.14, Operability Determination, established pursuant to RG 1.33, states that when responsible station personnel believe a component is operable but have concerns related to it, necessary actions shall be taken expeditiously to resolve the concerns, identify any root cause, and confirm operability. These actions shall include additional testing, engineering evaluations, and calculations or inspections, as appropriate to the circumstances. The directive further requires an "Operability Evaluation Form" to be completed to document the concern, the basis for the evaluation, and any alternate methods of compensatory measures needed to fulfill the component's safety function.

Contrary to the above, on July 31, 1989, the Turbine Driven Auxiliary Feedwater Pump (CAPT) filed a surveillance test on overspeed, and the root cause of the failure was not determined, nor was adequate corrective action taken to preclude repetition. After the CAPT failed the surveillance test the Shift Supervisor did not assure that the proper course of action was taken to return the equipment to operable status. The maintenance activities were not performed under the control of the Work Request System. Consequently, the root cause of the CAPT overspeed trip was not determined prior to returning it to service. This directly contributed to the CAPT trip on the subsequent

surveillance test performed on August 7, 1989.

This violation has been evaluated as a Severity Level III violation (Supplement I).

Civil Penalty—$50,000

Summary of Licensee's Response

Duke Power Company admits the violation occurred, and that errors in judgement were made relative to the event. However, the licensee protests the imposition of a civil penalty and believes that it should be mitigated based upon its corrective actions taken. The licensee's response describes its actions following the July 31 event, which included: consultation with the turbine vendor regarding potential lubrication problems; initiation of work requests to change the lubricant; and performance of a visual inspection of the Unit 1 linkage. Once the turbine oversped during a premaintenance test on August 7, 1989, additional corrective actions were taken which included rebuilding the valve as well as re-lubrication of the linkage. Further, a special test program was developed to collect critical data, industry experience was reviewed, and a working group was formed to review all aspects of the auxiliary feedwater system. As a consequence of the lessons learned, additional maintenance activities were identified and initiated to improve reliability. The licensee states that contrary to what is implied in the Notice of Violation and Imposition of Civil Penalty, it took prompt and aggressive action to fully understand the CAPT problems and to resolve the root cause of the valve stem corrosion when it was finally discovered. Additionally, the licensee states that the Auxiliary Feedwater Pump Turbine was declared operable following the overspeed trip events using approved operability criteria in effect at that time.

The licensee states that it believes that the NRC staff failed to give Duke proper credit for the plant strategies and activities surrounding this event. It is the licensee's perception that there was not a clear understanding by the NRC of all the activities that transpired during the first several days following the event or during the subsequent weeks. The licensee believes that the NRC would have exercised discretion and refrained from proposing a civil penalty if there had not been a misunderstanding.

NRC Evaluation

The NRC staff has carefully reviewed the licensee's response and information presented at the enforcement conference and other meetings. The staff has concluded that considerable efforts were made by the licensee in the days following the event to fully understand and determine a root cause of the Unit 2 Turbine Driven Auxiliary Feedwater Pump (CAPT) failures and to plan corrective maintenance. The licensee's actions ultimately led to the discovery and full understanding of the valve stem corrosion phenomena on the CAPT. However, the licensee's corrective actions from the time of the overspeed events of July 31 until the premaintenance test failure of August 7, 1989 were inadequate in that the CAPT was returned to service following three successive test failures without identification of the cause of those failures. The licensee based its decision in part on the successful completion of the fourth test and the belief that the problem had fixed itself for the short term.

The surveillance test was performed immediately after exercising the governor linkage. Although the CAPT then met the procedural acceptance criteria, which is adequate to demonstrate the ability of the CAPT to perform its intended design function absent other information to the contrary, the system had been pre-conditioned. When this information became known, the licensee failed to expeditiously resolve those concerns, identify the root cause or confirm operability of the CAPT at both units. This in and of itself constitutes inadequate corrective action.

Similarly, work conducted to loosen the linkage was not authorized by the corrective maintenance program which requires that a work request be generated to inspect and repair identified deficiencies. The personnel involved did not initiate a work request nor did the shift supervisor question their actions or operability determination. This led to work being conducted on safety-related equipment outside the scope of the approved programs and the subsequent failure to document the maintenance activities. This in turn contributed to the licensee's failure to correct the deficiency prior to returning the equipment to service. After the licensee became aware that maintenance had been performed without a work request, prompt corrective action to assure compliance with station administrative controls was not taken. This also constitutes an example of inadequate corrective actions.

The above examples underscore the NRC's initial and residual concerns over the licensee's corrective action activities related to the CAPT failure.

The corrective actions, which the licensee suggests in its letter of January 31, 1990, warrant mitigation of the civil penalty, were considered and understood by the NRC staff. However, corrective actions, consisting of the identification and correction of the "condition adverse to quality," by definition, must be completed prior to returning a failed component to service. Those actions are intended to be effective and prevent the recurrence of the problem. This was not the case. However, it is recognized that considerable efforts were expended by the licensee in the days following the event to fully understand and establish a root cause of the Unit 2 Turbine Driven Auxiliary Feedwater Pump failures and to plan corrective maintenance.

Thus, after careful reconsideration of all the information provided, the NRC staff concludes that 25 percent mitigation of the civil penalty is appropriate on the basis of the considerable efforts expended by the licensee in pursuing the CAPT problem.

NRC Conclusion

The NRC has concluded that the violation as set forth in section I of the Notice occurred as stated. However, for the reasons set forth above, the NRC has concluded that a 25% mitigation of the proposed civil penalty is warranted. Therefore, a civil penalty in the amount of $37,500 should be imposed.

[FR Doc. 90–9600 Filed 4–24–90; 8:45 am]

BILLING CODE 7590–01–M

THE PRESIDENT'S EDUCATION POLICY ADVISORY COMMITTEE

Meeting

AGENCY: The President's Education Policy Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: The President's Education Policy Advisory Committee was formed under Executive Order 12687 and signed by the President of the United States on August 15, 1989.

TENTATIVE AGENDA ITEMS: The tentative agenda for the meeting includes discussion of national education goals and ways to improve literacy.

DATE: The third meeting will be held on May 1, 1990.

ADDRESS: The meeting is currently scheduled from 1–4:30 in Room 180 of the Old Executive Office Building.

FOR FURTHER INFORMATION CONTACT: Rae Nelson at the White House Office of Policy Development. The phone number is (202) 456–7777. For clearance purposes, please notify Rae Nelson no less than twenty-four hours before the

meeting. Please provide over the phone, your social security number, date of birth, and name as read on your driver's license. When entering the building, you will be required to show picture identification.

Dated: April 18, 1990.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 90-9532 Filed 4-24-90; 8:45 am]

BILLING CODE 3127-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27914; File No. SR-NYSE-90-13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. Relating to an Increase in the Examination Development Fee for the Series 7 Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 23, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the examination development fee for the Series 7 Examination from the current fee of $10 to the proposed fee of $40. The fee will be charged to members and member organization for each examination applicant.

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. 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

Purpose

According to the Exchange, the initial exam development fee of $10 was adopted in 1986 and was intended to offset in part the costs of supplying qualification services provided by the Exchange. Prior to 1986, the Exchange received no fees to cover such expenses. The purpose of the proposed increase to $40 is to offset, in part, the current costs of supplying qualifications examination and other sales practice related services provided by the Exchange.[1] These costs include industry meetings, manpower, supplies, overhead and other costs associated with developing and maintaining the examination.

Statutory Basis

The basis under the Act for the proposed rule change is Section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-13 and should be submitted by May 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 18, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-9496 Filed 4-24-90; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* letter from Donald van Weezel, Managing Director, Regulatory Affairs, NYSE to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated April 4, 1990.

[Release No. 34-27913; File No. SR-NYSE-90-18]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Fingerprint Processing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 12, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE, pursuant to Rule 19b-4 of the Act, submitted a proposed rule change to amend its plan for fingerprinting pursuant to Rule 17f–2(c) under the Act. The Exchange proposes to increase its fingerpring processing fees to $21.50 per fingerprint card processed, consisting of a $20.00 charge per fingerprint card for Federal Bureau of Investigation ("FBI") processing and a $1.50 charge per fingerprint card for Exchange processing.

I. 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 purpose of the proposed rule change is to pass along the increase in the processing charge for user-fee applicant fingerpring cards promulgated by the FBI. The FBI increased its fee from $14.00 to $20.00 per fingerprint card submitted, effective March 1, 1990, requiring a simultaneous increase in the Exchange's charge from $15.50 to $21.50. The Exchange's portion of the total fee remains at $1.50.

The Exchange acts as a processor of fingerprints for its members and others pursuant to a plan filed with the Commission pursuant to Rule 17f–2(c) under the Act.

The proposed rule change is consistent with the requirement under section 6(b)(4) of the Act that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. This proposed rule change is also consistent with section 6(b)(5) of the Act in that it enables the Exchange to recover its costs with respect to fingerprint card processing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members of other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such propossed rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–90–18 and should be submitted by May 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 18, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–9497 Filed 4–24–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Air Resorts Airline

AGENCY: Office of the Secretary, Transportation.

ACTION: Notice of commuter air carrier fitness determination—order 90–4–39, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Flight Trails d/b/a Air Resorts Airlines is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street SW., room 6401, Washington, DC 20590, and serve them on all persons listed in attachment A to the order. Responses shall be filed no later than April 26, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2340.

Dated: April 19, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–9563 Filed 4–24–90; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Fitness Determination of Corporate Air, Inc.

AGENCY: Office of the Secretary, Transportation.

ACTION: Notice of commuter air carrier fitness determination—order 90–4–37, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that

Corporate Air, Inc., is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 4, 1990.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: April 19, 1990.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–9494 Filed 4–24–90; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Proposed Advisory Circular 21–GIDEP, Government Industry Data Exchange Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–GIDEP, Government Industry Data Exchange Program (GIDEP) for review and comment. The proposed AC 21–GIDEP is designed to familiarize manufacturers of civil aeronautical products with the GIDEP.

DATES: Comments submitted must identify the proposed AC 21–GIDEP, File Number P8–220–0175, and be received by July 25, 1990.

ADDRESSES: Copies of the proposed AC 21–GIDEP can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Donald E. Plouffe Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Room 333, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The GIDEP is a cost-free, cooperative activity between the United States Government and industry which seeks to reduce or eliminate duplicate expenditures of time and money by making the maximum use of existing knowledge. The program provides a means to exchange technical data essential in the research, design, development, production and operational phases of the life cycle of systems and equipment. Benefits include, but are not limited to, improvement of reliability, quality, productivity, safety, and logistics support.

Comments Invited

Interested persons are invited to comment on the proposed AC 21–GIDEP listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–GIDEP may be examined, before and after the comment closing date in Room 333, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Wasington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on April 19, 1990.

Ronald T. Wojnar,

Manager, Aircraft Manufacturing Division.

[FR Doc. 90–9560 Filed 4–24–90; 8:45 am]

BILLING CODE 4910–13–M

Proposed Advisory Circular 21–SQA; Quality Assurance of Software Used in Aircraft of Related Products; Availability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–SQA, Quality Assurance of Software Used in Aircraft or Related Products. The proposed AC provides information and guidance concerning an acceptable means of showing compliance with the Federal Aviation Regulations (FAR) part 21, Certification Procedures for Products and Parts.

DATES: Comments submitted must identify the AC File Number P8–220–0011, and be received by July 24, 1990.

ADDRESSES: Copies of the proposed AC can be obtained from and comments may be directed to the following: Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Joseph Chin, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, room 333, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

This proposed AC provides information and guidance to FAA production approval applicants or holders concerning acceptable quality assurance programs and related procedures used in the manufacturer of software for aircraft and related products.

Comments Invited

Interested persons are invited to comment on the proposed AC listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service before issuing the final AC.

Comments received on the proposed AC may be examined, before and after the comment closing date in room 333, FAA Headquarters Building (FOB–10) 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on March 21, 1990.

Sandy McClure,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 90–9559 Filed 4–24–90; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–90–18]

Petitions for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: May 16, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on April 19, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26093
Petitioner: AeroVesta Air Charter
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow petitioner's pilots to change the configuration of its aircraft N2623Y from a passenger configuration to an air ambulance configuration when needed.

Docket No.: 26161
Petitioner: General Electric Government Services
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought: To allow petitioner to contract for the overseas inspections, repair, and overhaul of selected parts by the original equipment manufacturers.

[FR Doc. 90-9558 Filed 4-26-90; 8:45 am]
BILLING CODE 4910-13-M

Reestablishment of Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration.

ACTION: Notice of reestablishment of the Air Traffic Procedures Advisory Committee.

ANNOUNCEMENT: Notice is given of the reestablishment of the Air Traffic Procedures Advisory Committee. This advisory committee was initially established in 1975 following a recommendation of a task force formed by the Secretary of Transportation. The task force recommended the establishment of a standing committee to review air traffic control procedures and practices. The Federal Aviation Administrator is the sponsor of the committee. The membership includes experts from the Government, the aviation industry, and those representing the viewpoints of other elements of the aviation community. The committee will make recommendations for standardizing, clarifying, and upgrading present air traffic control procedures, practices, and terminology and will make recommendations for new or revised procedures necessary to accommodate new air traffic control concepts.

PUBLIC INTEREST: The Secretary of Transportation has determined that the reestablishment and continued use of the committee is necessary in the public interest in connection with performance of duties imposed on FAA by law. Meetings of the committee will be open to the public except as provided for in section 10(d) of the Federal Advisory Committee Act.

Issued in Washington, DC on

John Mayrhofer,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 90-9557 Filed 4-24-90; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 90-01-VE-NO1]

Tentative Determinations That Certain Nonconforming Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Tentative determinations of nonconforming vehicles that are eligible for importation.

SUMMARY: This notice requests comments on tentative determinations by the National Highway Traffic Safety Administration (NHTSA) that certain motor vehicles which do not comply with the Federal motor vehicle safety standards are nevertheless eligible for importation into the United States because they are

(1) Substantially similar to motor vehicles which were originally manufactured to conform to the Federal standards and to be imported into and sold in the United States, and

(2) Capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

DATES: Comments by May 16, 1990.

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Enforcement, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined, either pursuant to a petition or on its own initiative, that the motor vehicle

is substantially similar to a motor vehicle originally manufactured for importation and sale into the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards,

(section 108(c)(3)(A)(i)(I) or that, "where there is no substantially similar United States motor vehicle," the agency has determined that the

safety features of the motor vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary determines to be adequate * * *

(section 108(c)(3)(A)(i)(II).

As NHTSA noted in the preamble to the final rule (54 FR 49003; September 29, 1989) establishing 49 CFR part 593, regarding determinations that a vehicle not originally manufactured to conform to the Federal motor vehicle safety standards is eligible for importation, the phrases "substantially similar" and "capable of being readily modified" are not defined by the 1988 amendments to the Act.

As to the first phrase, NHTSA begins with the assumption that vehicle A is "substantially similar" to a vehicle (vehicle B) which was originally manufactured for importation and sale in the United States and which bore its original manufacturer's certification, if the differences between vehicles A and B in visual appearance and structural details, aside from differences owing to the noncompliance of vehicle A with the FMVSS, are minor.

The question of modification capability is not reached if a vehicle already conforms to a safety standard. To substantiate that no modification is required with respect to that standard, a letter from the vehicle's original manufacturer would confirm that the vehicle model under consideration was manufactured to comply with the standard. This method of substantiation would be appropriate for determinations based on substantial similarity as well as for determinations which are not so based.

As for whether a vehicle is "capable of being readily modified", NHTSA suggests, as the first level of decision, that many components that are visible when the vehicle is fully assembled may be considered capable of being readily modified if they may be easily replaced with parts intended as replacement for conforming parts on substantially similar certified vehicles. For passenger cars, these components would include, but are not limited to, tires (Standard No. 109), rims (Standard No. 110), and wheel covers (Standard No. 211), glazing (Standard No. 205), reflecting surfaces (Standard No. 107), controls and displays (Standard No. 101), and lighting devices (Standard No. 108). Other components, not readily visible, are also easily replaced with conforming parts. These include brake hoses (Standard No. 106), and brake fluid (Standard No. 116).

However, this first level of decision, based upon the ease of replacement of parts, could not determine conformance with vehicle rather than equipment standards. Conformance with vehicle standards would typically require more than switching of easily replaceable parts. Further, visual inspection would not indicate whether the steering column would need to be replaced so that the vehicle would comply with Standard No. 204, or whether the interior fabrics (other than leather) would meet the flammability resistance required by Standard No. 302, because these tests incorporate destructive demonstration procedures.

To address compliance with the vehicle standards, a second level of decision is necessary. It rests upon the question whether the modifications necessary for conformance are "readily" achievable. In this instance, information demonstrating that compliance can be achieved without major structural modifications or destructive component testing is relevant. A major structural modification could mean, for example, strengthening of the rear frame bars in order to achieve conformance with Standard No. 301. An example of a non-major structural modification could be installation of windshield retaining clips for conformance with Standard No. 212. On the assumption that a "substantially similar" vehicle may be more likely to incorporate structural features of vehicles certified by their original manufacturer for sale in the U.S., than vehicles for which there is no U.S. certified model, the Administrator may be more willing to accept data other than crash data to indicate that a substantially similar vehicle is readily modifiable to achieve conformance. On the other hand, a vehicle would not appear to be capable of being readily modified if major structural modifications are required for compliance. It may be difficult to readily modify a vehicle to achieve conformance with the applicable standards: automatic restraints (Standard No. 208), seat belt anchorages (Standard No. 210), roof structure (Standard No. 216), windshield intrusion (Standard No. 219), and fuel system integrity (Standard No. 301).

NHTSA has made tentative determinations of eligibility with respect to two categories of motor vehicles that have not been certified by their original manufacturers under section 114 of the Act. The first of these categories is comprised of passenger cars of 1989 and earlier model years, and all other vehicle types, that are certified by their original manufacturers as complying with all applicable Canadian motor vehicle safety standards, but not all applicable Federal motor vehicle safety standards, and which are substantially similar to vehicles that, having been originally manufactured for sale in the United States, are certified as complying with all Federal safety standards. The second category is comprised of certain nonconforming passenger cars manufactured in Great Britain, Germany, Italy, and Japan, which are substantially similar to conforming counterparts manufactured for sale in the United States and which have been the subject of sufficient demonstrations of conformance since 1987 to justify release of the performance bond under which they entered the United States.

Substantially Similar Vehicles Certified as Meeting Canadian Standards

Two commenters during the course of rulemaking to issue regulations (part 593) to implement the legislation under which eligibility determinations are made advanced their views that vehicles manufactured in Canada and certified to conform with the Canadian Motor Vehicle Safety Standards (CMVSS) deserved to be treated differently than vehicles manufactured to conform to European or Japanese standards. These commenters frequently import for sale in the United States vehicles which were manufactured in Canada and which have U.S. counterparts, but which have not been certified to U.S. standards. Alleging that the CMVSS and Federal motor vehicle safety standards (FMVSS) are virtually identical, these commenters asked to be excused from requirements for bond and importation through registered importers.

NHTSA replied that the 1988 amendments to the Act appeared to require identical treatment for the importation of all vehicles that were not certified by their original manufacturers as meeting all applicable Federal motor vehicle safety standards. However, it promised to examine the question of whether the path to importation might be smoothed for Canadian-certified vehicles by a determination on the agency's own initiative, allowing importation of Canadian-certified vehicles without the necessity of a petition for such a determination.

NHTSA has examined the CMVSS. In most essential respects, they are identical to the Federal motor vehicle safety standards. To be sure, there are certain differences. Two examples will suffice. Under CMVSS No. 101, *Controls and Displays*, speedometers/odometers must be marked in kilometers, whereas those complying with FMVSS No. 101, *Controls and Displays*, need only to be marked in miles per hour. Headlamps meeting ECE requirements are permissible under CMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*, but they are not permissible under FMVSS No. 108. As NHTSA noted earlier, where a vehicle already conforms to a safety standard,

the question of its capability of modification is not reached. Further, because of the near identicality of the Canadian and U.S. standards, such modifications as may be required are comparatively minor in nature, and hence such vehicles are capable of being readily modified.

There is, however, one important exception. CMVSS No. 208, *Occupant Restraint Systems*, does not require a motor vehicle to be equipped with an automatic restraint. Therefore, this Canadian standard lacks the mandatory requirements that became effective for a percentage of passenger cars manufactured on or after September 1, 1986, and increased in each of the three subsequent years, culminating in the requirement for installation of automatic restraints in all passenger cars manufactured on and after September 1, 1989. Heretofore, NHTSA has not required any individual importer of only a single 1987–89 Canadian car to equip it with an automatic restraint system. With respect to the two importers of Canadian cars for resale during this period, it has required them, as "manufacturers" under the National Traffic and Motor Vehicle Safety Act, to equip a percentage of their vehicles with automatic restraints. These importers have obtained such systems from the parts departments of U.S. dealers for the makes concerned. NHTSA has accepted the installation of those systems as evidence of compliance with FMVSS No. 208.

Thus, NHTSA's experience with 1987, 1988, and 1989 model year cars imported from Canada has led it to conclude that those vehicles that are substantially similar to vehicles manufactured for sale in the United States are readily capable of being converted from active restraints to passive restraints.

At this point, NHTSA has not compared the similarities and differences between 1989 and 1990 automatic restraint systems in U.S.-certified models. Since the agency does not know whether replacement systems could be installed in 1990 model Canadian cars, it is not able at present to make a determination of ready capability of modification. However, in the absence of a determination by NHTSA on its own initiative, a manufacturer or Registered Importer may nevertheless petition NHTSA for a determination.

The agency's tentative determination regarding motor vehicles manufactured in Canada would cover two types of vehicles:

—Those substantially similar to vehicles originally manufactured for importation and sale in the United States (such as Canadian-manufactured Volvos with U.S.-certified counterparts), and

—Those substantially similar to vehicles manufactured in the United States for sale in the United States (such as makes and models manufactured in both the U.S. and Canada by Ford, General Motors, and Chrysler).

The second group of Canadian vehicles poses a classification problem for the agency. The statute specifies that, in order for the agency to permit the importation of a noncomplying motor vehicle, it must have determined either that the noncomplying motor vehicle is substantially similar to a motor vehicle "originally manufactured for importation into and sale in the United States, certified under section 114", or "where there is no substantially similar United States motor vehicle," that the "safety features of the motor vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary determines to be adequate* * *"

A number of the models manufactured in Canada appear to be substantially similar to motor vehicles manufactured in Canada and imported into the United States for sale. Last year, according to the 1989 Automotive News Data Book, these include the Eagle Premier, Ford Tempo and Crown Victoria, Mercury Topaz and Grand Marquis, Chevrolet Lumina and Celebrity, Oldsmobile Cutlass Ciera, Buick Regal, Honda Civic, Toyota Corolla, and Volvo 740.

However, NHTSA is also aware that there are other Canadian vehicles not sold in the U.S. whose "substantially similar" counterpart is manufactured in the U.S. (and hence not manufactured for importation into the U.S.), such as the Canadian Pontiac Tempest and the corresponding Chevrolet Corsica. These vehicles do not readily fall into either the section 108(c)(3)(A)(i)(I) category of vehicles or the section 108(c)(3)(A)(i)(II) category of vehicles. These Canadian vehicles are not substantially similar to vehicles manufactured in compliance with the Federal safety standards and imported into the U.S. because the versions sold in the U.S. are manufactured in the U.S. At the same time, the premise of section 108(c)(3)(A)(i)(II), i.e., that there are no substantially similar United States motor vehicles, is not true, at least in the broad sense of there being vehicles, regardless of their place of manufacture, which are substantially similar to those Canadian vehicles and which do comply with the Federal safety standards.

The agency believes that it is most suitable to regard these Canadian vehicles as falling within the section 108(c)(3)(A)(i)(I) category of vehicles. These Canadian vehicles are no less similar to complying vehicles for sale in the United States than the Canadian produced Volvos are to the Volvos produced in Sweden for sale in the United States. The agency sees no policy reason for applying the language of section 108(c)(3)(A)(i) so strictly as to exclude those Canadian vehicles lacking a complying imported counterpart. There is no compelling safety reason to do so; vehicles certified as meeting the CMVSS are in almost all respects identical to those certified under section 114.

Accordingly, in consideration of the above, the National Highway Traffic Safety Administration hereby tentatively determines that all passenger cars which were manufactured between January 1, 1968, and August 31, 1989, and which bear as a model year designation any year from 1968 through 1989, and all other types of motor vehicles manufactured from January 1, 1968 on,

Which are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, and which are of the same make, model, and model year of any passenger car, multipurpose passenger vehicle, truck, bus, trailer, and motorcycle that was originally manufactured for importation into and sale in the United States, or originally manufactured in the United States for sale there, and that bore a certification of compliance with all applicable Federal motor vehicle safety standards,

are substantially similar to those vehicles originally manufactured in compliance with the FMVSS and are capable of being readily modified to conform to all applicable FMVSS.

Vehicles Successfully Conformed Since January 1, 1988

Over the years, the typical practice of manufacturers outside the United States who wish to sell passenger cars in the American market has been to offer versions of their home-market products that they have re-engineered and originally manufactured to conform to the Federal motor vehicle safety standards. The so-called "grey market" is comprised of foreign motor vehicles not originally manufactured to conform to the U.S. standards. In many instances, these vehicles are equipped with a body whose visual appearance, other than lighting equipment, bumpers, and rear view mirrors, is identical to that of U.S.-certified vehicles, and share a large number of the same structural

components. Thus, there is a large body of passenger cars which the agency tentatively determines are substantially similar to vehicles of the same model and model year certified by their original manufacturers for sale in the United States.

Many of these nonconforming vehicles have been imported into the United States over the years, under bond, and subject to the condition that they be brought into conformance with the standards. This experience provides the basis for NHTSA to make determinations of whether vehicles are readily capable of conformance.

In making a determination of eligibility for importation, NHTSA is required by section 108(c)(3)(C)(iii) to give due consideration to information available to it. The primary information that is readily available to the agency consists of its own records, reflecting the importation of noncomplying motor vehicles under bond over the years, and data submitted by their importers in substantiation of statements that the vehicles have been brought into compliance with all applicable Federal motor vehicle safety standards. Much of the data that NHTSA found acceptable were based upon modifications of a relatively minor nature, without the necessity for major structural modifications or destructive component testing. For example, there is no European standard for side intrusion, but NHTSA does not consider the installation of reinforcement beans in doors to be a major structural modification. Installation of beams has been considered sufficient support for the importer's declaration that the vehicle has been brought into conformance with Standard No. 214, *Side Door Strength,* after review of stress analysis calculations for the configurations utilized. Adhesives have been added to windshields as a guarantor of compliance under the dynamic test conditions of Standard No. 212 *Windshield Mounting.* Because a vehicle certified as complying with the Federal motor vehicle safety standards by its original manufacturer is a variation of one that is not so certified, but is "substantially similar" to it, the agency believes that a "substantially similar" vehicle will be more likely to incorporate structural features adaptable to conformance than will vehicles for which there is no substantially similar U.S. certified model.

On the basis of its enforcement history with respect to those models and model years of substantially similar non-certified vehicles for which NHTSA has accepted such statements with some frequency so as to afford familiarity with the vehicle, NHTSA has tentatively determined that these vehicles are readily capable of conformance.

The agency has reviewed its records for the calendar years 1988 and 1989, and has identified almost 500 imported nonconforming passenger cars that are equivalent counterparts to passenger cars certified by their original manufacturers for importation into and sale in the United States, and for which not less than 10 acceptable compliance packages have been received. These makes, models, and different model years, as divided, cover BMW (106), Ferrari (5), Jaguar (15), Mazda (3), Mercedes-Benz (279), Nissan (10), Porsche (51), Rolls-Royce (10), and Toyota (12). A complete listing of these makes, models, and model years appears as an Annex to this notice.

Tentative Determinations

Accordingly, on the basis of the foregoing, NHTSA hereby tentatively determines that each of the passenger cars listed in Annex A is substantially similar to a passenger car originally manufactured for importation into and sale in the United States, certified under section 114 of the National Taffic and Motor Vehicle Safety Act, and of the same model year, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Fees

Section 108(c)(3)(A)(iii) requires registered importers to pay such fees as NHTSA reasonably establishes to cover its cost in making determinations under subsection (i)(I) on its own initiative that motor vehicles are eligible for importation. In implementation of this requirement, NHTSA has specified $1,560 as the fee payable by a registered importer for a determination on the agency's own initiative that a motor vehicle is substantially similar and readily capable of conformance (49 CFR 594.8(a)). Such a fee is payable by the first person importing a vehicle under the determination (594.8(b)).

When the fee structure was developed, it was based upon the estimated costs for individual determinations covering a single model and model year. At that time, the agency did not contemplate that expediency and the public interest in facilitating commerce might result in a blanket determination, as with the Canadian vehicles, or a single determination covering a large number of vehicles. The 1988 Act, however, does not preclude such determinations; it requires comparison between models and model years of vehicle originally certified for importation, and those that were not. The agency has made this comparison, and it is inclusive. The 1988 Act also requires that a fee be established to cover the cost of making eligibility determinations, and that fee has been set at $1,560 for those relating to "substantially similar" vehicles. However, to multiply the number of vehicles to which each of the tentative determinations of this notice applies by $1,560 would result in large sums bearing no relation to NHTSA's costs. NHTSA believes that the cost of making a blanket determination with respect to Canadian passenger cars, or a single determination covering a large number of vehicles with which it has had prior experience, is equivalent to the cost of making an individual determination covering a single model and model year with which it has not had experience. Therefore, a fee of $1,560 still appears appropriate for each of the two determinations in order to cover the costs of making such determinations, and for paying the costs of Federal Register publication. In accordance with section 594.8(b), this fee is payable by the first registered importer importing a vehicle covered by the determination. After NHTSA's final determinations, and upon its receipt of the first declaration covering a vehicle eligible for importation under each of these determinations, it will inform the sender of the declaration of its obligation to pay the stated fee. Commenters may address this issue if they wish.

Comments

Section 108(c)(3)(C)(iii) requires NHTSA to provide a minimum period for public notice and comment on the determinations made on its own initiative consistent with ensuring expeditious, but full, consideration and avoiding delay by any person. Because the regulation governing importation of motor vehicles subject to the Federal motor vehicle safety standards became effective January 31, 1990, NHTSA believes that a minimum comment period of 21 calendar days is justified. Interested persons are invited to submit comments on the tentative determinations described above. It is requested, but not required, that five copies be minimum comment period of 21 calendar days is justified. Interested persons are invited to submit comments on the tentative determinations described above. It is requested, but not required, that five copies be submitted.

All comments received before the close of business on the comment date indicated below will be considered. A

document providing the make, type, year of manufacture, and number of imported nonconforming vehicles released as conforming by NHTSA, since January 1, 1988, and all comments received are available for examination in the docket. Comments received after the closing date will be considered to the extent practicable. Notice of NHTSA's final determination will be published in the **Federal Register** pursuant to the authority indicated below.

Comment due date: May 16, 1990.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and 1397(c)(3)(C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 19, 1990.

Jeffrey R. Miller,

Deputy Administrator.

ANNEX A—PASSENGER CARS COVERED BY TENTATIVE DETERMINATION

Vehicle make	Vehicle model	Year manufactured
BMW	3.0CS	72
BMW	3.0CSi	72
BMW	3.0CSi	73
BMW	3.0CSi	74
BMW	316	78
BMW	316	79
BMW	316	80
BMW	316	81
BMW	316	82
BMW	318i	81
BMW	318i	82
BMW	318i	84
BMW	318i	85
BMW	318i	86
BMW	320	76
BMW	320	77
BMW	320	78
BMW	320	79
BMW	320	80
BMW	320	81
BMW	320	82
BMW	320i	83
BMW	320i	84
BMW	320i	85
BMW	323i	78
BMW	323i	79
BMW	323i	80
BMW	323i	81
BMW	323i	82
BMW	323i	83
BMW	323i	84
BMW	323i	85
BMW	325	86
BMW	325E	85
BMW	325E	86
BMW	325E	87
BMW	325i	86
BMW	325i	87
BMW	520	78
BMW	520	79
BMW	520	80
BMW	520i	82
BMW	520i	83
BMW	525	79
BMW	525	80
BMW	525i	82
BMW	528i	79
BMW	528i	80
BMW	528i	81
BMW	528i	82
BMW	528i	83
BMW	528i	84

ANNEX A—PASSENGER CARS COVERED BY TENTATIVE DETERMINATION—Continued

Vehicle make	Vehicle model	Year manufactured
BMW	535i	85
BMW	535i	87
BMW	633CSi	77
BMW	633CSi	78
BMW	633CSi	79
BMW	635	85
BMW	635CSi	79
BMW	635CSi	80
BMW	635CSi	81
BMW	635CSi	82
BMW	635CSi	83
BMW	635CSi	84
BMW	635CSi	85
BMW	635CSi	86
BMW	728	77
BMW	728	78
BMW	728	79
BMW	728	80
BMW	728	82
BMW	728i	79
BMW	728i	80
BMW	728i	81
BMW	728i	82
BMW	728i	83
BMW	728i	84
BMW	728i	85
BMW	730	78
BMW	730	79
BMW	730	80
BMW	732i	80
BMW	732i	81
BMW	732i	82
BMW	732i	83
BMW	732i	84
BMW	733i	77
BMW	733i	78
BMW	733i	79
BMW	733i	80
BMW	735	80
BMW	735i	80
BMW	735i	81
BMW	735i	82
BMW	735i	83
BMW	735i	84
BMW	735i	85
BMW	735i	86
BMW	735i	87
BMW	745i	80
BMW	745i	81
BMW	745i	82
BMW	745i	83
BMW	745i	84
BMW	745i	85
BMW	745i	86
Ferrari	308GTSi	80
Ferrari	328GTS	86
Ferrari	328GTS	87
Ferrari	GTO	85
Ferrari	TESTAROSSA	87
Ferrari	TESTAROSSA	88
Jaguar	XJ	81
Jaguar	XJ	86
Jaguar	XJ6	76
Jaguar	XJ6	79
Jaguar	XJ6	80
Jaguar	XJ6	81
Jaguar	XJ6	82
Jaguar	XJ6	85
Jaguar	XJ6	86
Jaguar	XJS	80
Mazda	RX7	78
Mazda	RX7	79
Mazda	RX7	80
Mercedes Benz	190	83
Mercedes Benz	190D	84
Mercedes Benz	190D	85

ANNEX A—PASSENGER CARS COVERED BY TENTATIVE DETERMINATION—Continued

Vehicle make	Vehicle model	Year manufactured
Mercedes Benz	190E	80
Mercedes Benz	190E	83
Mercedes Benz	190E	84
Mercedes Benz	190E	85
Mercedes Benz	190E	86
Mercedes Benz	190E	87
Mercedes Benz	200	76
Mercedes Benz	200	77
Mercedes Benz	200	78
Mercedes Benz	200	79
Mercedes Benz	200	80
Mercedes Benz	200	81
Mercedes Benz	200	82
Mercedes Benz	200	83
Mercedes Benz	200	84
Mercedes Benz	200	85
Mercedes Benz	200D	80
Mercedes Benz	200D	81
Mercedes Benz	200D	82
Mercedes Benz	230	76
Mercedes Benz	230	77
Mercedes Benz	230	78
Mercedes Benz	230	79
Mercedes Benz	230	80
Mercedes Benz	230C	78
Mercedes Benz	230C	79
Mercedes Benz	230C	80
Mercedes Benz	230CE	80
Mercedes Benz	230CE	81
Mercedes Benz	230CE	82
Mercedes Benz	230CE	83
Mercedes Benz	230CE	84
Mercedes Benz	230E	80
Mercedes Benz	230E	81
Mercedes Benz	230E	82
Mercedes Benz	230E	83
Mercedes Benz	230E	84
Mercedes Benz	230E	85
Mercedes Benz	230E	86
Mercedes Benz	230E	87
Mercedes Benz	230TE	83
Mercedes Benz	230TE	85
Mercedes Benz	240D	79
Mercedes Benz	240D	80
Mercedes Benz	240D	81
Mercedes Benz	240D	82
Mercedes Benz	240D	83
Mercedes Benz	240D	84
Mercedes Benz	250	76
Mercedes Benz	250	77
Mercedes Benz	250	78
Mercedes Benz	250	79
Mercedes Benz	250	80
Mercedes Benz	250	81
Mercedes Benz	250	82
Mercedes Benz	250	83
Mercedes Benz	260E	86
Mercedes Benz	280	76
Mercedes Benz	280	77
Mercedes Benz	280	78
Mercedes Benz	280	79
Mercedes Benz	280	80
Mercedes Benz	280C	78
Mercedes Benz	280CE	77
Mercedes Benz	280CE	78
Mercedes Benz	280CE	79
Mercedes Benz	280CE	80
Mercedes Benz	280CE	81
Mercedes Benz	280CE	82
Mercedes Benz	280CE	83
Mercedes Benz	280E	76
Mercedes Benz	280E	77
Mercedes Benz	280E	78
Mercedes Benz	280E	79
Mercedes Benz	280E	80
Mercedes Benz	280E	81

ANNEX A—PASSENGER CARS COVERED BY TENTATIVE DETERMINATION—Continued

Vehicle make	Vehicle model	Year manufactured
Mercedes Benz	280E	82
Mercedes Benz	280E	83
Mercedes Benz	280E	84
Mercedes Benz	280S	71
Mercedes Benz	280S	73
Mercedes Benz	280S	74
Mercedes Benz	280S	75
Mercedes Benz	280S	76
Mercedes Benz	280S	77
Mercedes Benz	280S	78
Mercedes Benz	280S	79
Mercedes Benz	280S	80
Mercedes Benz	280S	81
Mercedes Benz	280S	82
Mercedes Benz	280S	83
Mercedes Benz	280SE	70
Mercedes Benz	280SE	71
Mercedes Benz	280SE	72
Mercedes Benz	280SE	73
Mercedes Benz	280SE	74
Mercedes Benz	280SE	75
Mercedes Benz	280SE	76
Mercedes Benz	280SE	77
Mercedes Benz	280SE	78
Mercedes Benz	280SE	79
Mercedes Benz	280SE	80
Mercedes Benz	280SE	81
Mercedes Benz	280SE	82
Mercedes Benz	280SE	83
Mercedes Benz	280SE	84
Mercedes Benz	280SE	85
Mercedes Benz	280SEL	78
Mercedes Benz	280SEL	79
Mercedes Benz	280SEL	80
Mercedes Benz	280SEL	81
Mercedes Benz	280SEL	82
Mercedes Benz	280SEL	83
Mercedes Benz	280SEL	84
Mercedes Benz	280SEL	85
Mercedes Benz	280SL	69
Mercedes Benz	280SL	70
Mercedes Benz	280SL	75
Mercedes Benz	280SL	76
Mercedes Benz	280SL	78
Mercedes Benz	280SL	79
Mercedes Benz	280SL	80
Mercedes Benz	280SL	81
Mercedes Benz	280SL	82
Mercedes Benz	280SL	83
Mercedes Benz	280SL	84
Mercedes Benz	280SL	85
Mercedes Benz	280SLC	75
Mercedes Benz	280SLC	77
Mercedes Benz	280SLC	78
Mercedes Benz	280SLC	79
Mercedes Benz	280SLC	80
Mercedes Benz	280SLC	81
Mercedes Benz	280TE	79
Mercedes Benz	280TE	80
Mercedes Benz	280TE	81
Mercedes Benz	280TE	82
Mercedes Benz	280TE	83
Mercedes Benz	280TE	85
Mercedes Benz	300D	76
Mercedes Benz	300D	78
Mercedes Benz	300D	79
Mercedes Benz	300D	80
Mercedes Benz	300D	81
Mercedes Benz	300D	82
Mercedes Benz	300D	83
Mercedes Benz	300D	84
Mercedes Benz	300D	85
Mercedes Benz	300D	86
Mercedes Benz	300E	85
Mercedes Benz	300E	86
Mercedes Benz	300E	87
Mercedes Benz	300SE	86
Mercedes Benz	300SE	87
Mercedes Benz	300SEL	86
Mercedes Benz	300SL	86
Mercedes Benz	300SL	87
Mercedes Benz	300SL	88
Mercedes Benz	300TD	80
Mercedes Benz	300TD	81
Mercedes Benz	300TD	83
Mercedes Benz	300TD	85
Mercedes Benz	300TE	87
Mercedes Benz	350SE	73
Mercedes Benz	350SE	74
Mercedes Benz	350SE	75
Mercedes Benz	350SE	76
Mercedes Benz	350SE	77
Mercedes Benz	350SE	78
Mercedes Benz	350SE	79
Mercedes Benz	350SE	80
Mercedes Benz	350SEL	76
Mercedes Benz	350SEL	77
Mercedes Benz	350SEL	78
Mercedes Benz	350SEL	79
Mercedes Benz	350SL	71
Mercedes Benz	350SL	72
Mercedes Benz	350SL	73
Mercedes Benz	350SL	78
Mercedes Benz	350SLC	72
Mercedes Benz	350SLC	73
Mercedes Benz	350SLC	74
Mercedes Benz	350SLC	75
Mercedes Benz	350SLC	76
Mercedes Benz	350SLC	77
Mercedes Benz	350SLC	78
Mercedes Benz	350SLC	79
Mercedes Benz	380SE	80
Mercedes Benz	380SE	81
Mercedes Benz	380SE	82
Mercedes Benz	380SE	83
Mercedes Benz	380SE	84
Mercedes Benz	380SE	85
Mercedes Benz	380SEL	80
Mercedes Benz	380SEL	81
Mercedes Benz	380SEL	82
Mercedes Benz	380SEL	83
Mercedes Benz	380SEL	84
Mercedes Benz	380SEL	85
Mercedes Benz	380SL	80
Mercedes Benz	380SL	81
Mercedes Benz	380SL	82
Mercedes Benz	380SL	85
Mercedes Benz	420SE	86
Mercedes Benz	420SEL	86
Mercedes Benz	420SL	86
Mercedes Benz	450SE	74
Mercedes Benz	450SE	75
Mercedes Benz	450SE	76
Mercedes Benz	450SE	77
Mercedes Benz	450SE	78
Mercedes Benz	450SE	79
Mercedes Benz	450SE	80
Mercedes Benz	450SEL	73
Mercedes Benz	450SEL	74
Mercedes Benz	450SEL	75
Mercedes Benz	450SEL	76
Mercedes Benz	450SEL	77
Mercedes Benz	450SEL	78
Mercedes Benz	450SEL	79
Mercedes Benz	450SEL	80
Mercedes Benz	450SL	73
Mercedes Benz	450SL	79
Mercedes Benz	450SLC	73
Mercedes Benz	450SLC	74
Mercedes Benz	450SLC	76
Mercedes Benz	450SLC	77
Mercedes Benz	450SLC	78
Mercedes Benz	450SLC	79
Mercedes Benz	450SLC	80
Mercedes Benz	450SLC	81
Mercedes Benz	500SE	80
Mercedes Benz	500SE	81
Mercedes Benz	500SE	82
Mercedes Benz	500SE	83
Mercedes Benz	500SE	84
Mercedes Benz	500SE	85
Mercedes Benz	500SE	86
Mercedes Benz	500SEC	80
Mercedes Benz	500SEC	82
Mercedes Benz	500SEC	83
Mercedes Benz	500SEC	84
Mercedes Benz	500SEC	85
Mercedes Benz	500SEC	86
Mercedes Benz	500SEL	80
Mercedes Benz	500SEL	81
Mercedes Benz	500SEL	82
Mercedes Benz	500SEL	83
Mercedes Benz	500SEL	84
Mercedes Benz	500SEL	85
Mercedes Benz	500SEL	86
Mercedes Benz	500SL	80
Mercedes Benz	500SL	82
Mercedes Benz	500SL	84
Mercedes Benz	500SL	85
Mercedes Benz	500SL	86
Mercedes Benz	560SEL	86
Nissan	280Z	78
Nissan	280Z	79
Nissan	Fairlady	75
Nissan	Fairlady	76
Nissan	Fairlady	78
Nissan	Fairlady	79
Nissan	Fairlady Z	77
Nissan	Fairlady Z	78
Nissan	Fairlady Z	79
Nissan	Z	79
Porsche	911	70
Porsche	911	71
Porsche	911	72
Porsche	911	73
Porsche	911	74
Porsche	911	75
Porsche	911	76
Porsche	911	77
Porsche	911	78
Porsche	911	79
Porsche	911	80
Porsche	911	81
Porsche	911	82
Porsche	911	83
Porsche	911	84
Porsche	911	85
Porsche	911	86
Porsche	911SC	77
Porsche	911SC	78
Porsche	911SC	79
Porsche	911SC	80
Porsche	911SC	81
Porsche	911SC	82
Porsche	911SC	83
Porsche	911T	70
Porsche	911T	71
Porsche	911T	72
Porsche	924	76
Porsche	924	77
Porsche	924	78
Porsche	924	79
Porsche	924	80
Porsche	924	81
Porsche	928	76
Porsche	928	78
Porsche	928	79
Porsche	928	80

ANNEX A—PASSENGER CARS COVERED BY TENTATIVE DETERMINATION—Continued

Vehicle make	Vehicle model	Year manufactured
Porsche	928	81
Porsche	928	82
Porsche	928	84
Porsche	928S	80
Porsche	928S	81
Porsche	928S	83
Porsche	928S	84
Porsche	928S	85
Porsche	944	82
Porsche	944	83
Porsche	944	84
Porsche	944	85
Rolls Royce	Silver Shadow	70
Rolls Royce	Silver Shadow	71
Rolls Royce	Silver Shadow	72
Rolls Royce	Silver Shadow	73
Rolls Royce	Silver Shadow	74
Rolls Royce	Silver Shadow	75
Rolls Royce	Silver Shadow	76
Rolls Royce	Silver Shadow	77
Rolls Royce	Silver Shadow	79
Toyota	Camry	87
Toyota	Camry	88
Toyota	Camry Deluxe	87
Toyota	Camry DL	87
Toyota	Camry DL	88
Toyota	Camry LE	87
Toyota	Camry LE	88
Toyota	Celica	87
Toyota	Celica GT	87
Toyota	Celica GTS	87
Toyota	Corolla	88
Toyota	Corolla DL	88

[FR Doc. 90-9564 Filed 4-20-80; 11:38 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 19, 1990.

The Department of Treasury has submitted the follwing public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 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 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1013
Form Number: IRS Form 8612
Type of Review: Extension
Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts
Description: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.
Respondent: Businesses or other for-profit
Estimated Number of Responses/Recordkeeping: 20
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hrs., 59 min.
Learning about the law or the form—1 hr., 29 min.
Preparing and sending the form to IRS—1 hr., 40 min.
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 182 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 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-9574 Filed 4-24-90; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 11-90]

Treasury Notes of April 30, 1992, Series Y-1992

Washington, April 19, 1990.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $10,500,000,000 of United States securities, designated Treasury Notes of April 30, 1992, Series Y-1992 (CUSIP No. 912827 YU 0), hereinafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated April 30, 1990, and will accrue interest from that date, payable on a semiannual basis on October 31, 1990, and each subsequent 6 months on April 30 and October 31 through the date that the principal becomes payable. They will mature April 30, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR Part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, April 25, 1990. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, April 24, 1990, and received no later than Monday, April 30, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The

minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, April 30, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, April 26, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90-9663 Filed 4-23-90; 10:23 am]

BILLING CODE 4810-40-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 700; Ref: ATF O 1100.77J]

Delegation Order; Authority to Affix the Seal of the Department of the Treasury; Associate Director (Compliance Operations) et al.

Delegation Order

1. *Purpose.* This order sets forth delegation of authority to affix the seal of the Department of the Treasury.

2. *Cancellation.* ATF O 1100.77I, Delegation Order—Authority to Affix the Seal of the Department of the Treasury, dated July 28, 1988, is canceled.

3. *Delegation.* Authority has been delegated to the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Directive 12–51, dated January 29, 1987, to affix the seal of the Department of the Treasury to authenticate originals and copies of books, records, papers, writings, and documents of the Department, for all purposes, including the purposes authorized by 28 U.S.C. 1733(b). Such authority is hereby redelegated as follows:

a. To the officials listed below, without restriction:

(1) Associate Director (Compliance Operations).

(a) Chief, Industry Compliance Division.
(b) Chief, Product Compliance Branch.
(c) Chief, Alcohol Import/Export Branch.
(d) Chief, Special Programs Branch.
(e) Chief, Revenue Programs Division.
(f) Chief, Wine and Beer Branch.
(g) Chief, Distilled Spirits and Tobacco Branch.
(h) Chief, Tax Compliance Branch
(i) Chief, Tax Processing Branch.
(j) Assistant Chief, Tax Processing Branch.
(k) Chief, Firearms and Explosives Division.
(l) Chief, Firearms and Explosives Licensing Center.
(m) Chief, National Firearms Act Branch.
(n) Chief, Firearms and Explosives Imports Branch.
(o) Chief, Regional Directors (Compliance).
(p) Chief, Technical Services.

(2) Associate Director (Law Enforcement).

(a) Deputy Associate Director (Law Enforcement).
(b) Chief, Planning and Analysis Staff.
(c) Chief, Special Operations Division.
(d) Chief, Firearms Division.
(e) Chief, Explosives Division.
(f) Chief, Systems and Records Division.
(g) Special Agent in Charge, Firearms Tracing Branch.
(h) Special Agent in Charge, Systems Support Branch.

(3) Comptroller and the Director (Laboratory Services).

b. To the officials listed below, with restrictions as indicated:

(1) Supervisor, Revenue Accounting Unit, to authenticate records that pertain to the special occupational tax.
(2) Supervisor, Special Tax Processing Unit, to authenticate records that pertain to the special occupational tax.

c. This authority may not be redelegated.

4. *For further Information Contact.* Daniel J. Hiland, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, (202) 566–7602.

5. *Effective Date.* This delegation order becomes effective on April 25, 1990.

6. *Approval.*

Dated: April 13, 1990.

Stephen E. Higgins,

Director.

[FR Doc. 90–9366 Filed 4–24–90; 8:45 am]

BILLING CODE 4810–31–M

Internal Revenue Service

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of petitions requesting that *polybutylene homopolymer pellets* and *polybutylene copolymer pellets* be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be delivered by June 25, 1990. Any modification of the list of taxable substances based upon this petition would be effective as of July 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:T (Petition), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on September 11, 1989. The petition is Pecten Chemicals, an exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Polybutylene homopolymer pellets

HTS number: 3902.90.00.10
Schedule B number: 3902.90.0010
CAS number: 25036–29–7

This substance is derived from the taxable chemical *butylene*. Polybutylene homopolymer pellets is produced predominantly by the Zeigler-Natta Catalyzed, Bulk, Polymerization Process.

The stoichiometric material consumption formula for this substance is:

$$n\ C_4H_8 \underset{\text{butylene}}{} + [\text{Catalyst}] \dashrightarrow \underset{\text{polybutylene}}{\text{poly}\ (C_4H_8)}$$

According to the petition, taxable chemicals constitute 97 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.18 per ton. This is based upon a conversion factor for butylene of 1.063.

Polybutylene copolymer pellets

HTS number: 3902.90.00.10
Schedule B number: 3902.90.0010
CAS number: 54570–68–2

This substance is derived from the taxable chemicals *butylene* and *ethylene*. Polybutylene copolymer pellets is produced predominantly by the Zeigler-Natta Catalyzed, Bulk, Polymerization Process.

The stoichiometric material consumption formula for this substance is:

$$n\ C_4H_8 + m\ C_2H_4 + [\text{Catalyst}] \text{ ---------->} \text{ poly } (C_4H_8.C_2H_4)$$

butylene ethylene polybutylene-coethylene

According to the petition, taxable chemicals constitute 92 percent by weight of the materials used to produce polybutylene (1.5 percent copolymer) and 100 percent by weight of the materials used to produce polybutylene (5.5 percent copolymer). The rate of tax for polybutylene (1.5 percent copolymer) would be $4.94 per ton. This is based upon a conversion factor for butylene of 0.999 and a conversion factor for ethylene of 0.015. The rate of tax for polybutylene (5.5 percent copolymer) would be $5.35 per ton. This is based upon a conversion factor for butylene of 1.044 and a conversion factor for ethylene of 0.055.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-9489 Filed 4-24-90; 8:45 am]

BILLING CODE 4830-01-M

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89-61, 1989-1 C.B. 717, of petitions requesting that *tetrabromobisphenol-A, decabromodiphenyl oxide,* and *ethylene dibromide* be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89-61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and requests for a public hearing relating to these petitions must be delivered by June 25, 1990. Any modification of the list of taxable substances based upon these petitions would be effective as of July 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (Petition), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202-566-4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on September 27, 1989. The petitioner is Ethyl Corporation, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Tetrabromobisphenol-A

HTS number: 2908.10.25
Schedule B number: 2908.10.6000
CAS number: 79-94-7

This substance is derived from the taxable chemical *bromine.* Tetrabromobisphenol-A (TBBPA) is produced predominantly via reaction of a bromine/methanol solution with bisphenol-A.

The stoichiometric material consumption formula for this substance is:

$$C_{15}H_{16}O_2 + 4\ Br_2 \text{ ----------> } C_{15}H_{12}O_2Br_4 + 4\ HBr$$

bisphenol-A bromine (methanol) TBBPA hydrogen bromide

According to the petition, taxable chemicals constitute 59 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.61 per ton. This is based upon a conversion factor for bromine of 0.5875.

Decabromodiphenyl Oxide

HTS number: 2909.30.07
Schedule B number: 2909.30.0000
CAS number: 1163-19-5

This substance is derived from the taxable chemical *bromine.*

Decabromodiphenyl oxide (DBDPO) is produced predominantly via direct bromination of diphenyl oxide in the presence of a catalyst.

The stoichiometric material consumption formula for this substance is:

$$C_{12}OH_{10} + 10\ Br_2 \text{ ----------> } C_{12}OBr_{10} + 10\ HBr$$

diphenyl oxide bromine DBDPO hydrogen bromide

According to the petition, taxable chemicals constitute 83 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.71 per ton. This is based upon a conversion factor for bromine of 0.833.

Ethylene dibromide

HTS number: 2903.30.05
Schedule B number: 2903.30.0500
CAS number: 106-93-4

This substance is derived from the taxable chemicals *ethylene* and *bromine.* Ethylene dibromide is produced predominately via ethylene reaction with bromine.

The stoichiometric material consumption formula for this substance is:

$$C_2H_4 + Br_2 \text{ ----------> } C_2H_4Br_2$$

ethylene bromine ethylene dibromide

According to the petition, taxable chemicals constitute 100 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.51 per ton. This is based upon a conversion factor for ethylene of 0.149 and a conversion factor for bromine of 0.851.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-9490 Filed 4-24-90; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 80
Wednesday, April 25, 1990

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).

BLACKSTONE RIVER VALLEY
National Heritage Corridor

Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, May 3, 1990.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the Blackstone Valley Historical Society, Old Louisquisset Pike, Lincoln, Rhode Island for the following reasons:

1. Report of the Chairman
2. Report of the Executive Director
3. Report of the Treasurer
4. Committee Reports
5. Report on the Town of Lincoln: Historic Restoration
6. Follow Up Report on the Blackstone River Cleanup Program "ZAP IV" Cleanup
7. Public Comments

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentation to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone (508) 278–9400 or (508) 278–5124.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

Shirley Cleaves,

Acting Executive Director, Blackstone River Valley, National Heritage Corridor Commission.

[FR Doc. 90–9738 Filed 4–23–90; 2:42 pm]

BILLING CODE 4310–70–M

Corrections

Federal Register
Vol. 55, No. 80
Wednesday, April 25, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

27 CFR Part 300

[Docket 89-164]

Importation of Grapes From Australia

Correction

In proposed rule document 90-2695 beginning on page 3965 in the issue of Tuesday, February 6, 1990, make the following corrections:

1. On page 3966, in the third column, in the seventh line "100" should read "1000".

2. On the same page, in the same column, under "*Refrigeration Plus Fumigation for Australian Grapes*", in the fifth line "100" should read "1000".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 900257-0057]

West-West Decontrol of Certain High Purity Polycrystalline Silicon

Correction

In rule document 90-8699 beginning on page 14089 in the issue of Monday, April 16, 1990, make the following corrections:

1. On page 14089, in the second column, the document subject heading should read as set forth above.

2. On page 14090, in the third column, in the heading for ECCN 1757A, "§ 1757A" should read "1757A".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ90-2-40-001]

Raton Gas Transmission Co.; Change in Tariff Filing

Correction

In notice document 90-8715 appearing on page 14121 in the issue of Monday, April 16, 1990, make the following correction:

In the second column the first docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meeting; Cancellation

Correction

In notice document 90-8422 beginning on page 13846 in the issue of Thursday, April 12, 1990, make the following correction:

On page 13846, in the third column, under "**AGENCY**" "USDA" should read "HHS".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regs. No. 4]

RIN 0960-AC27

Federal Old-Age, Survivors, and Disability Insurance; Employment, Wages, Self-Employment, and Self-Employment Income

Correction

In rule document 90-4588 beginning on page 7306 in the issue of Thursday, March 1, 1990, make the following corrections:

1. On page 7307, in the first column, in the eighth line, "employers" should read "employer".

§ 404.1046 [Corrected]

2. On page 7309, in the third column, in § 404.1046(a), in the 16th line, "lease" should read "least".

§ 404.1049 [Corrected]

3. On page 7310, in the first column, in § 404.1049(a), in the fourth line, "you" should read "your".

BILLING CODE 1505-01-D

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Proposed New System of Records

Correction

In notice document 90-5827 beginning on page 9531, in the issue of Wednesday, March 14, 1990, make the following corrections:

1. On page 9531, in the second column, under **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**, in the first line, "Authorization" should read "Authority".

2. On the same page, in the third column, under **NOTIFICATION PROCEDURE:**, in the fourth line, "systems" should read "system".

3. On the same page, in the third column, under **RECORD ACCESS PROCEDURE:**, in the second line, "systems" should read "system".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AC54

Procedural Due Process

Correction

In rule document 90-8279 beginning on page 13522 in the issue of April 11, 1990, make the following correction:

§ 3.103 [Corrected]

On page 13527, in the second column, in the last line "(a)(3)" should read "(b)(3)".

BILLING CODE 1505-01-D

federal register

Wednesday
April 25, 1990

Part II

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy Duty Vehicles, Including Heavy Light-Duty Trucks; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EN-87-02; FRL-3682-9]

RIN 2060-AC39

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy Duty Vehicles, Including Heavy Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing that nonconformance penalties (NCPs) be made available for specific emission standards taking effect in the 1991 model year. The availability of NCPs would allow a manufacturer of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs, which include heavy light-duty trucks) whose engines or vehicles fail to conform with certain applicable emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty.

In addition to the specific emission standards for which NCPs would be made available, EPA is proposing upper limits and penalty rates for those emission standards. EPA is also proposing several revisions and additions to the generic NCP rule (50 FR 35374, August 30, 1985) governing whether and how EPA may make NCPs available for specific standards.

Other issues included are the interaction between the NCP and emissions averaging programs, the issue of retroactivity of NCPs, and the issue of overpayment of an NCP.

Regulations affected by this rulemaking are codified in subpart L of 40 CFR part 86.

DATES: *Public Hearing:* If requested, EPA will hold a public hearing regarding this proposed rule on May 16, 1990, beginning at 10 a.m. Any person desiring to present oral testimony must request the hearing by noon, EDT, May 9, 1990. Requests for, or questions about, the hearing should be directed to the EPA contact person listed below. To the extent possible, any person desiring to participate in a hearing should, prior to the hearing, notify the EPA contact person of his or her intention and submit an outline of the points to be discussed and the time needed to discuss these points. Pursuant to section 307 of the Clean Air Act, the record of the hearing, if held, will be kept open for 30 days following its conclusion to provide an opportunity for submission of rebuttal or other information.

Public Comment: All comments should be received on or before May 25, 1990, or within 30 days following the conclusion of the public hearing, if held, whichever is later.

ADDRESSES: The hearing will take place at the MOD Conference Room, 499 S. Capitol Street, Suite 202, Washington, DC 20003. Any person wishing to attend should call the EPA contact person, listed below, to determine if the hearing will be held.

Send written comments to: Public Docket EN-87-02 at the Air Docket (LE-131), US Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. If possible, a copy of the written comments should be submitted to the EPA contact person listed below.

Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN-87-02 at the Air Docket of the US Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, and are available for review in Room M-1500 between the hours of 8 a.m. to noon and 1 to 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. H. Scott Rauenzahn, Manufacturers Operations Division (EN-340F), US Environmental Protection Agency, 401 M St., SW. Washington, DC 20460, telephone (202) 382-2496.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for HDEs or HDVs which exceed an applicable section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays an NCP established by rulemaking. In placing section 206(g) in the Clean Air Act amendments of 1977, Congress intended NCPs as a response to perceived problems with technology-forcing heavy-duty emissions standards. (It should be noted, however, that the existence of NCPs does not change the criteria under which the standards have been and will be set under section 202). Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers, "technological laggards," might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem; the laggards would have a temporary alternative to permit them to sell their engines or vehicles through payment of a penalty, yet leaders would not suffer an economic disadvantage compared to nonconforming manufacturers, because the NCP would be based, in part, on the amount of money the laggard and his customer saved from the nonconforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for HDVs or HDEs, which are engines to be installed in HDVs. The penalty may vary by pollutant and by class or category of vehicle or engine.

HDVs are defined by section 202(b)(3)(C) as vehicles in excess of 6,000 pounds gross vehicle weight rating (GVWR). HDVs include the part of the light-duty truck (LDT) class between 6,001 and 8,500 pounds GVWR (the heavy light-duty trucks, or HLDTs). It is important to note that HLDTs are not synonymous with another category referred to as light-duty trucks—category 2 (LDT2s). LDT2s are trucks with loaded vehicle weight greater than 3,750 pounds, while HLDTs are that portion of the LDT2 category which have a GVWR greater than 6,000 pounds. It is possible to have a LDT2 with GVWR less than or equal to 6,000 pounds. Such trucks are not HDVs and are not eligible for NCPs.

Section 206(g)(3) requires that NCPs:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconformig manufacturers to achieve the emission standards; and
- Remove competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer. If the emission is below the upper limit, it becomes the "compliance level," which is also the benchmark for warranty and recall liability; the manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in-use. The manufacturer does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

II. Availability of Nonconformance Penalties

A. Review of NCP Eligibility Criteria

The generic NCP rule (Phase I) established three basic criteria for determining the eligibility of emission standards for nonconformance penalties in any given model year. First, the emission standard in question must become more difficult to meet. This can occur in two ways, either by the emission standard itself becoming more stringent, or due to its interaction with another emission standard that has become more stringent.

Second, substantial work must be required in order to meet the emission standard. "Substantial work" usually means the application of technology not previously used in that vehicle or engine class/subclass, or a significant modification of existing technology, in order to bring that vehicle/engine into compliance. Minor modifications or calibration changes are not normally classified as substantial work.

Third, a technological laggard must be likely to develop. A technological laggard is defined as a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs, might be forced from the marketplace. EPA is to make the determination that a technological laggard is likely to develop, based in large part on the above two criteria. However, these criteria are not always sufficient to determine the likelihood of a technological laggard. An emission standard may become more difficult to meet and substantial work may be required for compliance, but if that work merely involves transfer of well-developed technology from another vehicle class, it is unlikely that a technological laggard would develop. Therefore, the determination of whether a technological laggard is likely to exist entails judgment as well.

B. Phase II NCPs

The above criteria were used to determine eligibility for NCPs during Phase II of the NCP rulemaking (50 FR 53465, December 31, 1985). NCPs were offered for the following 1987 and 1988 model year standards: the particulate matter (PM) standard for 1987 diesel-fueled light-duty trucks with loaded vehicle weight in excess of 3,750 pounds (LDDT2s), the 1987 gasoline-fueled light HDE (LHDGE) HC and CO emission standards, the 1988 HDDE PM standard, and the 1988 HDDE NO_x standard. As discussed in the Phase II preamble, NCPs were considered, but not offered, for the 1987 HLDT NO_x standard and the 1988 (later, the 1990) HDGE NO_x standard.

Since the Phase II NCP rule, there have been several developments regarding two of the emission standards mentioned above that affect the 1990 and 1991 model year emission standards. First, EPA recently revised the 1987 and later model year LDDT2 PM standard from the original level of 0.26 g/mi, which would possibly have required the use of trap-oxidizers (traps), to 0.50 and 0.45 g/mi for the 1987 and 1988 model years, respectively, which will not require traps. At the same time, EPA instituted a more stringent trap-based standard of 0.13 g/mi for 1991 and later model year LDDT2s (52 FR 47858, October 31, 1988). In that rulemaking, EPA also delayed the availability of NCPs for HLDDTs under the LDDT2 PM standard until 1991 to accompany the more stringent standard and deferred determination of the penalty rate to this rulemaking in order to allow consideration of more recent information on the cost of compliance with that standard.

Second, the HDE NO_x standard, originally promulgated to take effect in 1988, was revised to take effect in 1990 (52 FR 47858, December 16, 1987) as a result of *NRDC* v. *Thomas*, 805 F.2d 410 (D.C. Cir. 1986). Consequently, the accompanying NO_x NCP for HDDEs was also delayed until 1990. As stated previously, EPA decides not to offer NCPs for the NO_x standard as it applied to HLDTs and HDGEs and the delay of the HDE NO_x standard does not change this decision.

C. 1990 and Later Model Year Methanol Standards

With the recent adoption of emission standards for 1990 and later model year methanol-fueled vehicles and engines (54 FR 14426, April 11, 1989), the question arises as to whether NCPs should be offered for these methanol engine standards. Regulated pollutants from methanol-fueled engines are the same as those now controlled from gasoline- or diesel-fueled (collectively referred to herein as petroleum-fueled) LDT2s and HDEs, *i.e.*, HC, CO, NO_x, and PM, and the standards are numerically identical. Available test data suggest that methanol-fueled engines should experience no more difficulty in complying with the applicable HC and CO emission standards, and should experience less difficulty in complying with the NO_x and PM standards than their petroleum-fueled counterparts.

The similarity in emission characteristics between petroleum-fueled engines and their Otto- and Diesel-cycle methanol-fueled counterparts also allows the application of similar control technologies to methanol-fueled vehicles. Available test data suggest that existing gasoline-fueled Otto-cycle and petroleum-fueled Diesel-cycle engine emission control methods can be applied to equivalent methanol-fueled engines without substantial effort on the part of manufacturers. Although EPA determined that substantial work was necessary for HDGEs to meet the 1987 HC and CO emission standards and offered NCPs for those pollutants, EPA believes that by the 1990 model year manufacturers will have developed the technology to comply with the 1987 HC and CO standards. As previously mentioned, HDGE emission control methods can be applied to equivalent methanol-fueled engines without substantial effort. Consequently, methanol-fueled engines should not require substantial work to bring these engines into compliance.

Furthermore, since there are presently no commercially available methanol-fueled LDT2s or HDEs, it is difficult to determine if a technological laggard will exist. The available technological evidence is to the contrary. Therefore, EPA proposes to not offer NCPs for the methanol standards at this time because EPA believes that compliance with these new methanol emission standards can be achieved without substantial effort on the part of manufacturers. However, since there are currently no production methanol-fueled vehicles or engines, EPA seeks comment as to the possible need for methanol-fueled HLDT/HDE NCPs.

D. NCP Eligibility for 1991 and Later Emission Standards

Because EPA was operating under the constraints of a court order (*NRDC* vs. *Ruckelshaus*, D.D.C., No. 87–758, September 14, 1984) to publish the Phase II final rule by December 31, 1985, NCP determinations were made only for near-term (1987 and 1988 model year) standards. Also, the availability of NCPs for the 0.13 g/mi PM standard for 1991 and later HLDDTs was addressed in a separate rulemaking (52 FR 47858, October 31, 1988). This proposal addresses whether NCPs should be made available for the 1991 model year HDE standards.

Four standards are eligible for NCPs (and have not previously been considered for NCPs) as a result of emission standards being revised.

They are:

- 1991 HDDE urban bus engine particulate standard: 0.10 g/BHP-hr,

- 1991 HDDE particulate standard for other than urban buses: 0.25 g/BHP-hr,
- 1991 HDDE NO_x standard: 5.0 g/BHP-hr, and
- 1991 HDGE NO_x standard: 5.0 g/BHP-hr.

The eligibility of each of these standards for NCPs is discussed below.

1. 1991 Petroleum-Fueled HDDE Particulate Matter Standard for Urban Bus Engines

Tightening the HDDE PM standard applicable to 1991 and later model year petroleum-fueled urban bus engines from 0.60 g/BHP-hr to 0.10 g/BHP-hr represents a significant increase in stringency. To meet the tightened standard, petroleum-fueled urban bus engines will have to be equipped with trap oxidizers or other aftertreatment devices that are being developed for application to HDEs, including urban buses. Therefore, EPA believes that manufacturers will have to make substantial efforts to achieve compliance and that there is a possibility that a technological laggard may develop. The Agency consequently proposes to offer NCPs for the 1991 petroleum-fueled urban bus diesel particulate standard.

The President's Clean Air Proposal contains a section which addresses urban buses. The Administration's proposal would require that new urban buses in cities which have a population of greater than one million people operate on clean alternative fuel, such as methanol, ethanol, or compressed natural gas, beginning in the year 1991. Also, the President's Clean Air Act proposal would relax, from 1991 through 1993, the urban bus engine PM standard to 0.25 g/BHP-hr. If this proposal is enacted, or if for some other reason the standard is relaxed to 0.25 g/BHP-hr, then urban bus engines would be considered, for NCP purposes, part of the heavy heavy-duty diesel subclass.

2. 1991 Particulate Matter Standard For Petroleum-Fueled HDDEs Other Than Urban Bus Engines

Although the 0.25 g/BHP-hr standard for other petroleum-fueled HDDEs is not as stringent as the urban bus standard, it nevertheless represents a significant increase in stringency over the current 0.60 g/BHP-hr standard. EPA believes (50 FR 10606, March 15, 1985) that a substantial portion of the HDDE fleet will require significant engine changes and/or other new or improved technology to comply with this standard. Some manufacturers have claimed that trap oxidizers may still be needed for some engine families. This would represent the application of emission control technology not previously used on HDDEs. Even if trap oxidizers or other aftertreatment devices are not needed to meet the 0.25 g/BHP-hr standard, achieving engine-out levels low enough to meet the standard will still require substantial effort on the part of manufacturers. Therefore, EPA considers it possible that a technological laggard will develop and proposes to offer NCPs in 1991 for the 0.25 g/BHP-hr standard for petroleum-fueled HDDEs other than urban bus engines.

3. 1991 Petroleum-Fueled HDDE NO_x Standard (For All Petroleum-Fueled HDDEs)

Tightening the HDDE NO_x standard from 6.0 to 5.0 g/BHP-hr represents a 17 percent increase in stringency, as compared to a 44 percent increase for the 1988 6.0 g/BHP-hr NO_x standard over the previous 10.7 g/BHP-hr NOx standard. Also, current certification levels indicate that many 1988 and 1989 model year engines are capable of meeting a 5.0 g/BHP-hr standard with very little additional effort. Thus, there would appear to be little need for NCPs for the 5.0 g/BHP-hr NO_x standard, based solely on the increase in stringency from the previous standard. However, when this increase is coupled with the increased stringency of the 1991 PM standard, there appears to be a need for an NCP. As was stated above, there will be a substantial increase in the stringency of the PM standard, and efforts to achieve the more stringent PM standard are likely to place upward pressure on NOx levels, especially if they involve changes in injection timing. This is particularly true for urban buses, which must meet a much tighter 0.10 g/BHP-hr PM standard, or those engines that do not utilize traps or other aftertreatment PM control technology to meet the 0.25 g/BHP-hr PM standard. The likelihood of a technological laggard developing as a result of choosing an unsuccessful compliance strategy is thereby increased, so EPA proposes to offer an NCP for the 1991 5.0 g/BHP-hr petroleum-fueled HDDE NO_x standard.

4. 1991 Petroleum-Fueled HDGE NOx Standard

NCPs were not offered for the 1988 HDGE NOx standard of 6.0 g/BHP-hr. EPA found that average 1985 certification levels for gasoline-fueled engines utilized in vehicles in excess of 14,000 pounds. GVWR (HHDGEs) were 7.0 g/BHP-hr, indicating that the new standard would not be significantly more difficult to meet, and that the vast majority of the manufacturers could meet the standard with only minor calibration changes. Gasoline-fueled engines utilized in vehicles between 8501 and 14,000 pounds GVWR (LHDGEs) were expected to use catalyst technology to meet the 1987 HC/CO standards, leaving manufacturers room to calibrate their engines for lower NO_x emissions. Since neither of these strategies represented substantial work to meet the NO_x standard, EPA did not offer NCPs for the 1988 petroleum-fueled HDGE NO_x standard.

The current situation with respect to control technology is the same as that described above, although thus far utilization of catalyst technology in LHDGEs has been fairly limited. Some manufacturers appear to have opted for NCPs for the LHDGE HC/CO standards in 1987 and 1988 (or in some cases to have certified as LDTs), and this may have delayed the introduction of catalyst technology for some of these engines. Delay in the implementation of the 6.0 g/BHP-hr NO_x standard to 1990 may also have postponed the advent of the new technology for some manufacturers. However, EPA believes that both of these developments have slowed, but not derailed, the eventual transition from non-catalyst to catalyst technology for LHDGEs. It should also be noted that all three HDGE manufacturers currently use catalyst technology on their LDTs.

All three HDGE manufacturers have certified at least one engine family using catalyst technology for 1988 or 1989. Two utilized oxidation catalysts and one used a three-way catalyst. Two manufacturers have combined catalyst technology with fuel injection, and have certified engines at NO_x levels comfortably below the 5.0 g/BHP-hr standard without exceeding the HC and CO standards. The third manufacturer certified an engine in 1988 using carburetor/oxidation catalyst technology at a NO_x level of 8.8 g/BHP-hr at HC and CO levels well below the respective standards.[1] For the 1989 model year, this manufacturer has dropped the catalyst version and utilized NCPs or certified under the LDT protocols (using catalyst technology in the latter instance.) This manufacturer has also utilized three-way catalyst technology in LDT versions of essentially the same vehicle/engine combinations found in its heavy-duty applications, and certified a HDG family in 1989 under the LDT option using catalyst technology and fuel injection, so a transfer of LDT technology to these heavy-duty applications is feasible.

[1] Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Federal Certification Test Results for the 1988 Model Year. U.S. EPA. 1988.

In view of the above, EPA continues to believe that fuel-injected engines with catalysts represent the most likely future LHDGE technology for meeting NO_x, as well as other applicable standards. Discussions with manufacturers have indicated that most if not all manufacturers will phase out carburetors in favor of fuel injection by 1991, and the HDGE manufacturers are either utilizing catalysts or have them in advanced stages of development. The certification results clearly show that current engines using catalyst technology combined with fuel injection have already achieved NO_x levels below the 5.0 g/BHP-hr standard. This indicates to EPA that the standard can be met using a transfer of current LDT technology, without the development of a technological laggard.

One manufacturer of LHDGEs requested during the comment period for the trading and banking proposal (54 FR 22652) that NCPs be made available for the 1991 HDGE NO_x standard, and gave two reasons why they felt NCPs were needed. First, this manufacturer was concerned that credit prices may be excessive unless capped by an NCP. Second, the manufacturer was concerned that, due to the limited number of LHDGE manufacturers, credits might not be available if needed in the event an engine or vehicle family was found in noncompliance, as after an SEA failure. However, neither of these two concerns are grounds for offering an NCP under existing regulations. EPA doubts that section 207(g) of the Act could be construed to authorize NCPs on the suggested basis, given that Congress' clear intent was to provide NCPs where needed to prevent a manufacturer from being forced out of the market and not to cap credit prices or provide an alternative to purchasing credits for a standard for which no technological laggard is likely. EPA therefore proposes not to offer NCPs for LHDGEs for NO_x in 1991.

NO_x certification levels for the heavier 1987 and 1988 model year HHDGEs are at the same levels or lower than they were in 1985 at the time of the Phase II rulemaking. For 1989, even though the current standard is 10.7 g/BHP-hr, the two manufacturers that certified separate HHDGE families achieved NO_x emissions levels as low as 2.0 and 3.8 g/BHP-hr, respectively, for certain configurations.[2] These levels lead EPA to believe that the 5.0 g/BHP-hr standard can be achieved in current technology engines without the development of a technological laggard. The Agency therefore proposes not to make NCPs available for the 1991 HDGE NO_x standard, for many of the same reasons that NCPs were not made available for the 1988 (later, the 1990) 6.0 g/BHP-hr NO_x standard.

E. Control of Diesel Fuel Sulfur

If the sulfur content of diesel fuel were controlled, engine-out particulate levels would decrease, which could affect the compliance strategies chosen by manufacturers to meet the 1991 and later model year HDDE PM standards. During the PM standards rulemaking, some manufacturers expressed concern that the sulfur in diesel fuel would plug trap-oxidizers and that sulfates from high sulfur diesel fuel would constitute a large fraction of the allowable emissions under the proposed PM standard. Some of the manufacturers accordingly recommended that EPA regulate diesel fuel sulfur content. As a result, the Agency has studied the issue, and has proposed that diesel fuel sulfur level be controlled (54 FR 35276, August 24, 1989).

Control of diesel fuel sulfur reduces engine-out particulate emissions, which could decrease the cost of the PM standards to manufacturers and consumers. This could in turn affect the dollar amount of any NCP penalties. However, even assuming diesel fuel sulfur control, EPA believes that the 1991 PM standards meet the criteria for NCP availability. The 1991 PM standards are of such stringency that EPA believes manufacturers will have to expend significant effort to achieve compliance throughout the useful life of the engine. If usage of aftertreatment devices is reduced by sulfur control, significant effort will still be needed to assure that engine-out emissions are low enough to meet the standards. As a result, EPA believes the likelihood exists that a technological laggard may develop, and proposes to offer NCPs regardless of any controls that may be placed on diesel fuel sulfur.

F. Interaction with Other Standards

As was stated above, emission standards may also become more difficult to meet due to interaction with other standards that have become more stringent. Tradeoffs between standards can occur when a control strategy that decreases emissions of one pollutant has the potential to increase emissions of another. An example of this phenomenon may be seen in the tradeoff between NO_x, HC, and PM emissions when combustion temperature, through injection timing changes, is used to control emissions. Increased timing retard decreases NO_x emissions, but tends to increase particulate and HC emissions. Similar interactions may occur for other control strategies. This section reviews a number of standards that have not themselves changed, but which may be affected by the more stringent 1991 NO_x and PM standards.

1. 1991 LHDGE HC and CO Standards (Interaction With 1991 HDGE NO_x Standard)

NCPs were offered for the more stringent 1987 LHDGE HC and CO standards of 1.1 g/BHP-hr and 14.4 g/BHP-hr, respectively, since they represented approximately 90 percent reductions from previous levels, and were thus difficult to meet. EPA expected that manufacturers would use oxidation catalysts to meet these standards, which would involve substantial work for application to HDGEs. In 1991, the HC and CO standards do not change, but the NO_x standard is tightened from the current level of 6.0 g/BHP-hr to 5.0 g/BHP-hr, which could potentially make it more difficult for manufacturers to meet the HC and CO standards.

However, EPA has examined current certification levels for HC, CO, and NO_x emissions and concludes that manufacturers should encounter little difficulty meeting all three standards in 1991. Although manufacturers generally utilized NCPs or certified under LDT protocols, the 1988 model year saw the introduction of the first fuel-injected LHDGEs equipped with three-way catalysts. As was discussed above, 1989 model year catalyst-equipped engines exhibit NO_x emissions in the 4 to 6 g/BHP-hr range at HC and CO levels substantially below the 1.1 g/BHP-hr and 14.4 g/BHP-hr standards. Based on this development and discussions with manufacturers regarding future technology plans, EPA expects that by 1991 all manufacturers will utilize fuel injection and catalyst technology to meet the HC and CO standards. Meeting the HC and CO standards at 5.0 g/BHP-hr NO_x levels will thus likely involve transfer of a well developed technology from LDTs which will not constitute substantial effort on the part of the manufacturer. EPA therefore proposes not to offer revised NCPs for the 1991 LHDGE HC and CO standards. However, those promulgated in 1985 remain available.

[2] Control of Air Pollution from New Motor Vehicles and New Motor Vehicles Engines: Federal Certification Test Results for the 1989 Model Year, U.S. EPA, 1989.

2. 1991 HHDGE HC and CO Standards (Interaction With 1991 HDGE NO_x Standard)

EPA did not offer NCPs for the 1987 HHDGE HC and CO standards, since the standards were much less stringent than the LHDGE standards, and the then current certification levels indicated that these standards could be met by most, if not all, HHDGEs without substantial effort on the part of manufacturers. Available 1989 model year HHDGE certification data indicate that manufacturers can meet the 5.0 g/BHP-hr NO_x standard at HC and CO levels that are substantially less than applicable standards require without catalysts. Catalyzed versions of the same basic engine certified as LHDGE can also be used in HHDGE applications. EPA therefore does not believe that the HHDGE HC and CO standards will be substantially more difficult for manufacturers to meet or that a technological laggard will develop because of interaction with the 1991 NO_x standard, and proposes not to offer NCPs for the HHDGE HC and CO standards.

3. 1991 HDDE HC Standards (Interaction With 1991 HDDE NO_x and PM Standards)

Although some of the possible modifications available to meet the 1991 5.0 g/BHP-hr NO_x emission standard could cause some slight upward pressure on HC emissions, it must be remembered that manufacturers will also have to meet more stringent PM standards in 1991. In general, modifications that result in reduced particulate emissions also reduce HC emissions, which led EPA to conclude during the 1985 standards rulemaking that manufacturers should be able to comply with the NO_x and PM standards with little or no increase in HC levels.

An indication that this is true is provided by 1988 and 1989 certification data. A number of families have already demonstrated compliance with 5.0 g/BHP-hr standards with PM levels of about 0.5 g/BHP-hr and HC levels less than, and in most cases substantially less than, 1.0 g/BHP-hr using only improvements in current fuel system technology and other engine modifications. Many other families show emission levels only slightly higher than those. The engine modifications and aftertreatment devices likely to be used to meet the 0.10 and/or 0.25 g/BHP-hr PM standards in 1991 should not increase HC emissions, but are likely to decrease HC levels. EPA therefore concludes that compliance with the HDDE HC standard will not become substantially more difficult as a result of the more stringent NO_x and PM standards and proposes not to offer NCPs for the HDDE HC standard in 1991.

4. 1991 HDDE Smoke Standards (Interaction With 1991 PM and NO_x Standards)

All HDDE manufacturers are currently meeting the smoke standards. No revision to these standards has been proposed. Also, better emission controls in response to the revisions to the particulate matter standard for the 1991 model year would tend to lower smoke emissions. Additional controls to lower the NO_x emissions to meet the revised 1991 model year NO_x standard may tend to increase particulates and, hence smoke emissions. However, manufacturers must maintain PM emissions to at least that of the previous standard (since the previous standard is the applicable upper limit for PM NCP purposes), they have demonstrated their ability to comply with the smoke standard at that PM level. Therefore, EPA does not believe that substantial effort will be required for compliance with the smoke standards as a result of the interaction with the NO_x standard, and therefore does not believe NCPs for the HDDE smoke standards are warranted.

5. 1991 Idle CO (Interaction With 1991 HDGE NO_x Standard)

The idle CO standard applies only to HDGEs utilizing aftertreatment devices (i.e., catalysts). During the rulemaking process that established this standard, EPA presented data to show that emissions from vehicles with properly-operated catalysts should be well below the established standard. Data from current certification engines tend to confirm this earlier conclusion. Certification levels for current engines with aftertreatment devices are all less than twenty (20) percent of the standard and most are less than ten percent of the standard, at NO_x emission levels close to the 1991 standard. This indicates to EPA that even if a tradeoff were involved, manufacturers would have sufficient margin to meet the idle CO standard without substantial effort. The Agency therefore proposes not to offer an NCP for idle CO.

III. Penalty Rates

Since this rule is a continuation of previous NCP rulemakings, the discussion of Penalty Rates in the Phase II rulemaking (50 FR 53463, December 31, 1985) as well as the Phase I rulemaking (50 FR 35374, August 30, 1985) are incorporated by reference. This section briefly reviews NCPs and discusses how EPA arrived at the penalty rates in this rule. Emphasis will be placed on procedures different from those used to derive penalty rates during Phase II.

A. Parameters

As in the Phase II rule, EPA is specifying values for the following parameters in the NCP formula for each standard: COC_{50}, COC_{90}, MC_{50}, and F. The NCP formula is the same as that promulgated in the Phase I rule.

COC_{50} is an estimate of the industrywide average incremental cost per engine (references to engines are intended to include vehicles as well) associated with meeting the standard for which an NCP is offered. COC_{50} is technically based on typical engine technology, as nearly as EPA can identify it. As in the Phase II rule, costs include additional manufacturer costs and additional owner costs. The Phase II rule did not include certification costs in the calculation of COC_{50}, and none will be allowed in this rule because both complying and noncomplying manufacturers must incur certification costs.

COC_{90} is EPA's best estimate of the 90th percentile incremental cost per-engine associated with meeting the standard for which an NCP is offered. COC_{90} is technically based on a near worst case technology, as nearly as EPA can identify it. COC_{90}, like COC_{50}, includes both manufacturer and owner costs, but not certification costs.

MC_{50} is the steepest segment of the curve describing industrywide average marginal cost of compliance with the NCP standard for engines in the NCP category. MC_{50} is measured in dollars per g/BHP-hr for HDEs and in dollars per gram per mile (g/mi) for LDTs.

F is a factor used to derive MC_{90}, the 90th percentile marginal cost of compliance with the NCP standard for engines in the NCP category. MC_{90} is defined as being the slope of the penalty rate curve near the standard and is equal to MC_{50} multiplied by F. For this rulemaking, as was the case in the Phase II rule, EPA has determined that no reasonable estimate of MC_{90} can be made based on existing marginal cost data and has thus set F at a presumptive value of 1.2. This approach was generally supported by commenters on the Phase II rulemaking.

B. Parameter Values

The derivation of each of the proposed cost parameters is described in detail in a support document entitled "Nonconformance Penalty Rates for 1991 and Later Model Year Heavy-duty Diesel Particulate Matter (PM) and

Oxides of Nitrogen (NO_X) Standards", which is available in the public docket for this rulemaking.

EPA is proposing the following NCPs based on "medium sulfur" (approximately 0.10 wt. %) certification fuel for non-urban bus engines and low sulfur (0.05 wt. %) for urban bus engines. The "medium sulfur" fuel assumption is dependent on the outcome of the proposal to control the sulfur content of diesel fuel (54 FR 35276 August 24, 1989). If another diesel fuel sulfur limit is promulgated, costs may be slightly different than those listed below. Costs may differ because the sulfur level in diesel fuel directly influences the engine-out particulate levels of a diesel engine. For particulate matter NCPs, higher sulfur fuel would result in slightly higher costs; lower sulfur fuel in slightly lower costs. For NO_X NCPs, increased particulate matter control can raise NO_X levels. Therefore, one would expect that higher sulfur fuel would result in slightly higher NO_X penalty rates; lower sulfur fuel would result in slightly lower NO_X penalty rates. EPA believes that "low sulfur" fuel will be used in urban bus engines since many transit authorities already use such a fuel to fuel their current busses and since the trap based emission control strategies that will likely be used in urban bus engines to meet the 0.10 g/BHP-hr standard will be aided by use of low sulfur fuel.

1. 1991 Petroleum-fueled HDDE Particulate Matter Standard for Urban Bus Engines

EPA proposes that the following values (in 1989 dollars) be used in the NCP formula for the 1991 0.10 g/BHP-hr PM standard for urban bus engines:

COC_{50} = $3,415
COC_{90} = $5,565
MC_{50} = $16,771 per g/BHP-hr
F = 1.2
Upper Limit = 0.60 g/BHP-hr

Both COC_{50} and COC_{90} are based on engine modifications and front-face burner type trap technology. The upper limit was set at 0.60 g/BHP-hr because, currently, that is the PM standard which bus engines in this category must meet.

2. 1991 Particulate Matter Standard for Petroleum-fueled HDDEs Other Than Urban Bus Engines

EPA proposes that the following values (in 1989 dollars) be used in the NCP formula for the 1991 0.25 g/BHP-hr HDDE PM standard for the three HDDE subclasses:

	LHDDE	MHDDE	HHDDE
COC_{50} =	$1,480	$905	$930
COC_{90} =	1,513	2,169	1,630
MC_{50} =	5,833 per g/BHP-hr	7,083 per g/BHP-hr	22,500 per g/BHP-hr
F =	1.2	1.2	1.2

For LHDDE and MHHDE values, COC_{50} is based on non-trap engine modifications while COC_{90} is based on a front-face burner type trap technology. For HHDDE values, both COC_{50} and COC_{90} are based on non-trap engine modifications.

3. 1991 Petroleum-fueled Heavy-duty Diesel NOx Standard

EPA proposes that the following values (in 1989 dollars) be used in the NCP formula for the 1991 5.0 g/BHP-hr HDDE NOx standard for the three HDDE subclasses:

	LHDDE	MHDDE	HHDDE
COC_{50} =	$830	$905	$930
COC_{90} =	946	1,453	1,590
MC_{50} =	1,167 per g/BHP-hr	1,417 per g/BHP-hr	2,250 per g/BHP-hr
F =	1.2	1.2	1.2

For all categories, COC_{50} is based on engine modifications while COC_{90} is based on a fuel economy penalty resulting from timing changes as well as engine modifications.

4. 1991 Petroleum-Fueled Heavy Light-Duty Diesel Trucks (HLDDTs) Portion of the Light-Duty Diesel Truck-2 Particulate Matter Standard

EPA proposes that the following values (in 1989 dollars) be used in the NCP formulas for the heavy light-duty diesel truck (HLDDT, or light duty-trucks in excess of 6000 pounds GVWR) portion of the LDDT2 PM standard of 0.13 grams per mile:

COC_{50} = $711
COC_{90} = $1,396
MC_{50} = $2,960 per gram/mile
F = 1.2

Both COC_{50} and COC_{90} are based on a front-face burner trap technology.

IV. Averaging/Credit Use Issues

A. Summary

In the Phase II NCP rule (50 FR 53463, December 31, 1985), EPA deferred until the Phase III rulemaking the issue of whether and how to combine the NCP program with the emissions averaging program. EPA decided, when it initiated the Phase III rulemaking, to obtain public comment early in the process concerning implementation issues. A public workshop (52 FR 9503, March 25, 1987) was held in Ann Arbor, Michigan, on May 4, 1987, at which EPA discussed the issues associated with combining the NCP program with the averaging program and presented a wide range of implementation alternatives. Some of those alternatives were considered to be unacceptable due to stringency and legal concerns. EPA received written comments from five parties: The Engine Manufacturers Association (EMA), Ford Motor Company (Ford), Chrysler Motors (Chrysler), Mack Trucks, Inc. (Mack), and the Manufacturers of Emission Controls Association (MECA). In addition, EPA received verbal comment from Mercedes-Benz (Mercedes). In general, the comments received were almost as diverse as the range of alternatives that EPA presented.

Since the workshop, EPA has proposed a banking and trading program for all HDEs (54 FR 22652, May 25, 1989). An extension of the averaging program, banking allows a manufacturer to bank emission credits earned from an engine class for one model year and use these credits in later model years. Trading allows manufacturers to sell credits to other manufacturers for use within the same class of engines. Issues dealing with the interrelationship of banking and trading with NCPs are discussed in the banking and trading proposal.

B. Issues as Presented at Workshop

The most fundamental question is whether to allow NCPs to be used simultaneously with emission credits from averaging, that is, whether to allow a manufacturer to pay NCPs for engines included in an averaging set. If the answer to this question is no, then the recommended course of action should be to maintain separate programs. If the answer is yes, then other questions relating to how NCPs and averaging should be combined must be addressed.

If it is desirable that NCPs and averaging be used simultaneously, the second basic question becomes to what engine families NCPs can be applied: (1) Only the engine family or families in the averaging set that failed to meet a standard for which NCPs are available, or (2) all the families in the averaging set, if the set fails to meet the standard on average (in which case the NCP would be calculated on the basis of the manufacturer's production-weighted average).

There are questions regarding the legality and workability of the second approach. A threshold issue is whether the Clean Air Act authorizes use of NCPs in that manner. Section 206(g) of the Act makes NCPs available for engines that fail to meet a standard. However, the second approach would entail payment of NCPs for engines that

meet the standard but are included in averaging sets that do not achieve the standard overall. A related issue is posed by the statutory requirement that the amount of the per engine penalty depends on the engine's degree of noncompliance. In the case of an averaging set, the engines that met (or exceeded) the standard would provide no statutory basis for a penalty assessment, whereas the engines that fell short of the standard would have their degree of noncompliance reduced by virtue of being averaged with complying enigines. Fulfilling the statutory penalty-setting requirement that complying manufacturers not be disadvantaged would also be problematic, since the manufacturers' ability to make use of averaging and thereby reduce costs, will vary with the makeup of their fleets.

In addition, applying NCPs to a manufacturer's production-weighted average means that the NCPs would be applied retroactively at the end of the production year, which may be contrary to the intent of the Act. NCPs would cease to be a temporary alternative to stopping production for manufacturers that are having difficulty achieving compliance with the standards, and would arguably become a remedy for noncompliance of in-use vehicles. Finally, if NCPs were applied to a manufacturer's production-weighted average, the manufacturer would cease to be held accountable for ensuring that his production-weighted average meets the applicable emission standard. The environmental effect of such noncompliance must be considered. Further, the civil penalties of up to $10,000 per vehicle authorized by section 205 of the Act would be replaced by payment of a considerably smaller NCP.

The Act requires compliance levels for NCP purposes to be established by emissions testing of production line vehicles, trucks or engines (hereafter referred to collectively as engines). Consequently, Production Compliance Audits (PCAs) would have to be run on all engine families included in the averaging set, thus greatly increasing the enforcement and administrative burden of the averaging program.

The third major issue, assuming that it is desirable that NCP and averaging be used simultaneously, is whether a manufacturer should be allowed to pay an NCP based on a family emission limit (FEL) that is either above or below the emission standard itself. Paying an NCP to an emission level that is below the standard or otherwise different from the standard may be inconsistent with the authorization provided by the Act. Further, it would require that EPA reconsider, in a new context, issues previously resolved in the Phase I NCP rulemaking. The current regulations make no provision for calculating penalties at emission levels below the standard. Paying an NCP based on the standard alone would eliminate some economic benefit from averaging, since the result in certain situations would be essentially the same as conducting separate programs. For example, NCPs would not be available for an engine family in the event of an SEA failure with respect to an FEL that is below the emission standard. Paying an NCP based on an FEL that is above the emission standard may be a viable alternative, but raises the question of how to deal with an engine family that exceeds an FEL that is below the standard, which causes the production-weighted average to exceed the standard.

The final major issue is how penalties would be calculated for an engine family under averaging. The current NCP rate structure is based on the marginal costs of bringing emissions of an NCP subclass (defined at 40 CFR 86.1102–87) from the upper limit down to the emission standard and the measured production-line compliance level with respect to the emission standard. The current NCP regulations make no provision for changing the definition of the standard (i.e., substituting an FEL for an emission standard), or defining the marginal costs of compliance of a subclass with respect to an emission level other than the emission standard, or paying an NCP to an emission level other than the emission standard. Defining marginal costs of compliance with below-standard FELs would be especially problematic, involving as it would different FELs for different manufacturers and presumably confidential business information on control strategies.

C. Discussion of Averaging Issues

EPA presented at the workshop three options for integrating the NCP and averaging programs (i.e., Separate and Exclusive Programs, Allowing payment of NCPs for exceeding FELs, and Allowing payment of NCPs for exceeding the end of year average standard). During the workshop, EPA discussed several alternative ways of implementing each of these options. The following section reviews the options and discusses the comments EPA received from the workshop participants. The discussion begins with the option EPA considers most consistent with the Clean Air Act, but which imposes the most restrictions on the manufacturers' use of averaging and then discusses other options in order of restrictions on manufacturers' use of averaging.

1. Separate and Exclusive Programs

The three alternatives for separate and exclusive programs were presented as follows:

(a) Exclude from averaging subclasses for which NCPs are available (subclass is defined at 40 CFR 86.1102–87).

(b) Exclude from averaging subclasses for which a manufacturer has elected to pay an NCP on any engine in that subclass.

(c) Exclude from averaging any engine family for which an NCP is elected.

EPA considered the option of separate and exclusive programs because it avoided the possible legal issues involved in incorporating the averaging program into the NCP program and because it was less difficult to implement and enforce. However, after analyzing the first two alternatives, EPA concluded that they are unjustifiably inflexible. Alternative (a) would effectively prohibit averaging fleetwide, since NCPs are being proposed for all standards for which averaging is also available. Alternative (b) would prohibit averaging in a number of cases, depending on the extent to which NCPs are elected. This alternative would preclude an engine family from averaging even though an NCP is not paid on that engine family. Of the parties commenting, only MECA specifically expressed support for one of these alternatives, and MECA did not give a reason for preferring alternative (a) to (b) or (c). EPA believes that alternative (c) is consistent with the Clean Air Act, enforceable and does not unduly restrict averaging. Therefore, EPA will limit further consideration of separate NCP and averaging programs to Alternative (c), which is engine family based.

EPA stated in the workshop that there could be a legal concern with this alternative. EPA arguably cannot deny NCPs if conditions are met for offering NCPs. Section 206(g) of the Act states that "a certificate of conformity shall be issued * * * and shall not be suspended or revoked * * * for such vehicles or engines manufactured by a manufacturer notwithstanding the failure of such vehicles or engines to meet such standards if such manufacturer pays a nonconformance penalty * * *." The potential problem would occur when a manufacturer certifies an otherwise noncomplying engine family under averaging and later decides to pay an NCP (e.g., as a result

of an SEA failure); averaging and NCP would apply to the same engine family, which would be inconsistent with the constraints of this alternative as presented at the workshop. Were this alternative to be adopted, EPA suggested that manufacturers might have to waive their rights to NCPs for engine families that they elect to certify under the averaging program.

Mack suggested in its proposed alternative that a manufacturer have the flexibility to apply fractions of an engine's production between the averaging program and the NCP program. Thus, if actual sales or emission levels are greater than the manufacturer's projected sales or emission levels for a particular engine family, the manufacturer would be able to remove all or a portion of that engine family's production from the averaging set, conduct a PCA and begin to pay an NCP on those engines removed from the averaging set.

This concept would work as follows: Prior to production of a model year, the manufacturer's projected "weighted-average compliance level" (ACL) would be computer as:

$$ACL = \frac{\sum_{i=1}^{n} (N_i \times FEL \times HP_i)}{\sum_{i=1}^{n} (N_i \times HP_i)}$$

Where:

i = engine family description,

n = number of engine families in the averaging set,

FEL = Family Emission Limit for engine family i as established by the manufacturer during certification,

HP_i = horsepower associated with the engine family i,

N_i = number of vehicles in engine family i (N_i is projected at the beginning of a model year and is later revised to reflect actual production).

Note: The above equation is valid under the current averaging program. Under the expanded averaging program contained in the banking and trading NPRM the equation would change but the principle, as described here, would remain the same.

If the projected ACL is less than or equal to the averaging standard, then no further action is necessary. If, however, the projected ACL is greater than the averaging standard, the manufacturer would begin to remove the higher FEL vehicles or engine families from the averaging set until the recomputed ACL becomes less than or equal to the averaging standard. The manufacturer would conduct a PCA(s) when production begins and pay NCPs for those vehicles removed from the averaging set.

The approach would be the same if during the model year the projected ACL became greater than the averaging standard due to a shift in production for an engine family as a result of a shift in market demand or due to a necessary increase in an FEL as a result of higher than expected assembly-line emission levels. The manufacturer would begin to remove the higher FEL vehicles or engine families from the averaging set for future production (retroactivity will be discussed in section E of this notice as a separate issue) until the recomputed ACL for the model year production became less than or equal to the averaging standard. The manufacturer would conduct a PCA(s) and begin to pay NCPs for those future production vehicles removed from the averaging set.

EPA endorses Mack's alternative except that EPA opposes any plan that would allow subdivision of an engine family because such a plan would be significantly more difficult to enforce. Instead, EPA proposes that when a manufacturer wishes to adjust its ACL during the model year by removing future production of a group of engines from the averaging program and paying an NCP for those engines instead, a manufacturer must certify a new engine family which would consist of the engines for which NCPs are paid. Likewise, if a manufacturer wishes to switch future production of a group of mechanically identical engines from the NCP program to the averaging program, that manufacturer must certify a new engine family which would consist of those engines produced under the averaging program. This is consistent with the requirements of the current averaging program regarding mid-year changes (the manufacturer must establish a new engine family for that future production and submit the appropriate certification application and emission data). Under this approach, a manufacturer would need to establish at most two engine families (one NCP family and one averaging family) for a group of mechanically identical engines. During the model year the manufacturer could adjust the ACL by switching production between these two engine families. Naturally, if a manufacturer were simply resuming production of an engine family, which the manufacturer already had a valid certificate, there would be no need to create a new engine family.

Requiring separate engine families would preserve the enforceability of emission standards in-use, as provided by the Act. Every manufacturer is liable for the failure of its engines to comply with the emission levels it was certified to meet during its useful life. An engine family which uses an NCP must meet the emission level on which its penalty is based (the compliance level), while a family which uses averaging must meet the FEL set by the manufacturer at any level below the upper limit and other than the emission standard promulgated by EPA. Since a single engine family cannot be required to meet differing emission levels, the averaging and NCP programs would mutually exclude each other. But this exclusivity would not prevent a manufacturer from certifying two mechanically identical engine families, an NCP family which is certified at its compliance level and an averaging family whose FEL is greater than or equal to the NCP family's compliance level. A manufacturer would then allocate production throughout the year in such a way as to maintain the proper ACL and minimize its NCP payments.

EPA is proposing this alternative because it offers manufacturers an opportunity to take advantage of the flexibility of the averaging program with a minimum increase in the certification burden over the current program. This proposal also maintains the incentives provided by NCPs to develop the emission control technologies necessary to comply with emission standards as quickly as possible. The NCP penalty rate accounts for the degree of noncompliance and is set at a level which EPA believes is at least as expensive as the cost of manufacturing vehicles which comply with emission standards. The Act requires that the NCP not put a complying manufacturer at a competitive disadvantage. In addition, the NCP rate increases with each year of availability (yearly inflation factor) and with the extent of use in the vehicle subclass by all manufacturers (yearly usage factor). Consequently, paying an NCP should not be economically beneficial except where the alternative is stopping production of the noncomplying engine. Thus, EPA presumes that paying NCPs would not be a preferred option and that NCPs would be used only as a last resort to achieve compliance with the applicable emission requirements.

The NCP program, including administration, enforcement and the NCP formula, would not change from the current program because NCPs would be used independently of averaging. The current arrangement in which, by default, the NCP and averaging programs are separate and exclusive, would not be changed. Any vehicles of

an engine family could not be included in an averaging set if the manufacturer is paying an NCP for any pollutant on any vehicle of that same engine family.

In their comments at the workshop, Chrysler and MECA indicated support for separate NCP and averaging programs. EPA believes that the proposal will satisfy their concerns, even though MECA prefers alternative (a), which would prohibit including in the averaging set subclasses for which NCPs are available. Mack proposed, and Mercedes indicated support for, the type of program EPA is proposing here. The EMA was silent on the issue. Ford supported a combined program that permits maximum flexibility. EPA believes, however, that the proposed program is as flexible as and less burdensome than a combined program (the alternative to be discussed in the next section) in which NCPs would be permitted along with averaging for each engine family. In addition, EPA has legal concerns with a combined program.

Ford objected to the premise that manufacturers may have to waive use of NCPs for subclasses or engine families for which averaging is elected in order to preserve the integrity of the separate and exclusive program options. Ford desired an approach that permits complementary utilization of NCPs and averaging and that does not restrict the averaging program by conditioning manufacturers' participation on voluntary waiver of their NCP rights under the Act. EPA believes its proposed program offers the flexibility sought by Ford, but removes the legal concerns that gave rise to the Agency's suggestion that a waiver of NCPs might be necessary.

2. NCPs For FELs

The five alternatives that EPA presented at the workshop for integrating NCPs with FELs consist of variations of one primary alternative—to allow NCPs to be used for an engine family included in an averaging set such that NCPs are paid for the difference between the engine family's FEL as declared under averaging and its compliance level as measured during a PCA. The five variations of this alternative derive from options for addressing two independent issues related to the timing of NCP availability and whether NCPs should be offered for FELs below the emission standard. The following discussion will be limited to addressing the primary alternative of allowing NCPs to be used for an engine family included in an averaging set.

Prior to the start of production for a model year, a manufacturer would calculate its projected weighted average compliance level (ACL) in the same way as discussed earlier in this proposal.

$$ACL = \frac{\sum_{i=1}^{n}(N_i \times FEL \times HP_i)}{\sum_{i=1}^{n}(N_i \times HP_i)}$$

No further action would be necessary if the projected ACL is less than or equal to the averaging standard. If, however, the projected ACL is greater than the averaging standard, the manufacturer would redesignate a lower FEL for one or more engine families until the recomputed ACL would be less than or equal to the averaging standard. The redesignated lower FELs would allow compliance with the averaging standard. However, the actual engine family emissions levels would exceed the lowered FELs, so the manufacturer would be forced to pay an NCP. For each engine family impacted by a redesignated lower FEL, the manufacturer would certify the engine family under averaging to the lower FEL and at the same time request a PCA to pay an NCP for the amount that the actual compliance level exceeds the FEL.

If a manufacturer can achieve compliance with averaging alone, there is no practical difference between this alternative and the proposed plan. If, however, the projected ACL is greater than the averaging standard, this plan may be more flexibile in one respect. Rather than removing engines with a high compliance level from the averaging set and paying a separate NCP, as would be required by the proposed plan, the manufacturer could leave that engine family in the averaging set and pay an NCP for those same vehicles. However, a new engine family would have to be certified for every change of the FEL.

Allowing an NCP to be paid for non-compliance with an FEL may be at odds with section 206(g) of the Act, which provides that NCPs be made available to engines which fail to meet standards promulgated under section 202 and that NCPs "take into account the extent to which actual emissions of any air pollutant exceed allowable emissions under the standards promulgated under section 202." Morever, the legislative history refers to NCPs being applicable to "revised standards" prescribed by the Administrator. It states in footnote 18 (H.R. Rep. No. 294, 95th Congress, 1st Sess. 275–76 (1977) that "the Committee intends to make clear that revised standards are to be based on the emission control capability of the best technology projected to be available for production."

EPA did not prescribe specific FELs under section 202, and does not consider FELs to be revised emissions standards promulgated under section 202. Further, FELs are not set by EPA based on emission controls projected to be available for production, but are established by manufacturers voluntarily participating in the averaging program. In the preamble to the averaging final rule (51 FR 10606, March 15, 1985), EPA stated "a manufacturer will establish * * * an emission limit (as distinguished from an emission standard) against which the emissions of each of the engine family would be compared." EPA expressly declared that FELs, as used in the averaging program, are not emissions standards.

Support for allowing NCPs to be paid for failing FELs came primarily from Ford, which indicated that manufacturers should have as much flexibility as possible "so that manufacturers can utilize options most favorable to their specific situations while simultaneously achieving clean air objectives." Ford also stated that it "believes that EPA has authority under the Clean Air Act to promulgate such a program" and that such a program "should have negligible or zero effect on air quality." Ford argued that the DC Circuit Court of Appeals in *NRDC* v. *Thomas* (805 F.2d 410, 1986) "held that there was nothing in either the statutory language or legislative history of the Act that would prohibit coexistence of averaging and NCP programs" and that "NCPs would continue to serve an important 'safety net' role for manufacturers whose entire fleet would not comply with emission standards, even after invoking the averaging program." Ford also indicated that the NCP and averaging programs "are neither mutually exclusive nor duplicative in purpose or effect."

EPA agrees that the Act permits some combination of averaging and NCP programs. However, Ford has not addressed the Agency's point that the statute makes NCPs available only for failing section 202 standards, not manufacturer-set FELs. EPA believes that its proposed program is more consistent with the Clean Air Act, because it combines NCPs and averaging by permitting payment of NCPs for engines which exceed the standard (as opposed to the FEL) as needed to bring the averaging set into compliance with the standard.

MECA opposed a combined NCP and averaging program because it would:

* * * create an incredibly complex compliance program that will be difficult, if not impossible, to implement and enforce effectively, and that will significantly drain limited EPA staff and financial resources that could and should be used more productively to insure that other provisions of title II are effectively enforced. In addition [it] could undermine the objectives Congress sought in creating the NCP program * * * Congress sought to balance the need to permit the technological laggards to remain in the marketplace while developing technologies to achieve technology-forcing standards, and at the same time to insure that the necessary incentives remained to develop those technologies as quickly as possible. Phase I and Phase II of the NCP program, which have been implemented by EPA, were the result of a long and arduous cooperative industry/government effort to develop a program that would achieve the balance sought by Congress. Introducing averaging to the NCP process could destroy [that] delicate balance * * *.

EPA believes that the proposed program addresses MECA's concerns. The proposed program separates NCPs from averaging on an engine family basis. As in the current program, each engine family would be certified to an FEL upon which compliance would be determined. The proposed program would be implemented in the same manner that the averaging and NCP programs are currently implemented and no new enforcement programs would be required. NCPs would continue to be paid on a per engine basis and the NCP penalty rate would be computed using the same methodology as was used in Phase I and Phase II of the NCP rule. Thus, the proposed program should be relatively straightforward to implement and should preserve the balance struck by the NCP Phase I rule.

Chrysler opposed a combined NCP and averaging program. It stated that it has been opposed to the averaging program, and that the NCP and averaging programs "should remain separate since there have been serious legal questions regarding the averaging program. It is our opinion that the time consuming development of a complicated combination program * * * will delay the issuance of an NPRM and expend EPA resources that can be spent on more meaningful programs." In response, EPA notes that the D.C. Circuit upheld the HDE averaging program as promulgated in 1985. EPA shares, however, the concern regarding the expenditure of EPA resources.

Mack noted that any program be consistent with the intent and language of section 206(g) of the Act, and suggested the alternative upon which the proposal is based.

3. NCPs for an Averaging Set Which Fails to Meet the Standard at Year's End

The two alternatives were presented at the workshop for allowing payment of NCPs in the event the averaging set fails to meet the standard at the end of the model year. These alternatives were:

a. Permit manufacturers to pay NCPs for engines which exceed the FEL during the model year and also allow NCP payment at the end of the model year for exceeding the average standard; and

b. Only allow manufacturers to pay NCPs at the end of the model year for exceeding the averge standard.

The following discussion explains EPA's reasons for rejecting the concept of applying NCPs to the standard at the end of the model year. Since both alternatives permit payment of NCPs for failure to meet the standard at the end of the model year, the two alternatives will be addressed together.

In the event an end-of-year ACL exceeded the standard, an end-of-year NCP would in practice take the place of the civil penalty for which the noncomplying manufacturer would otherwise be liable under section 205 of the Act. The NCP would most likely be significantly less than the maximum penalty of $10,000 per vehicle available under section 205. EPA believes that an end-of-year NCP is not necessary to achieve "flexibility", may be contrary to the intent of section 206(g) of the Act, could cause total fleet emissions to increase, and may not be practical.

An end-of-year NCP is not necessary to achieve compliance with the applicable standard. Under the proposal, a manufacturer would need only to track its production during the year to determine its progress. If the projected ACL indicates that the averaging standard may be exceeded if current trends continue, the manufacturer could adjust its production mix between the averaging and the NCP versions of its vehicles.

EPA rejects the argument that an end-of-year NCP might be necessary in the event of some unforeseen circumstance adversely impacting the ACL. The proposal provides all the necessary flexibility for a manufacturer to track and adjust its usage of averaging and NCPs with minimal burden. An end-of-year NCP would be needed only in situations created by inadequate tracking and control over production.

In addition, an end-of-year NCP appears to be at odds with the intent and language of the Act. Two points are relevant to this discussion. First is the issue of retroactivity. The only practical purpose of an end-of-year NCP is to allow a manufacturer to avoid a section 205 civil penalty for not meeting the averaging standard, or avoiding a recall after production ends. Congress did not intend and EPA is not authorized to provide NCPs as a remedy for an in-use nonconformity or to replace the section 205 civil penalty. (See section V. of this notice for discussion of NCP retroactivity.)

In addition, NCPs were designed as an incentive to achieve compliance. The legislative history of section 206(g) (H.R. Rep. No. 294, 95th Congress, 1st Session, 275, 276 (1977)) characterizes the NCP program as a relief mechanism to enable the technological laggard to remain in the market while attempting to meet emission standards. It further states that "[t]he committee does not intend to encourage noncompliance with the standards." The language of section 206(g) itself requires that the NCP program provide incentive over time for the technological laggard to develop vehicles which achieve the required degree of emission reduction.

End-of-year NCPs would diminish the incentive to comply with the applicable standard. The NCP would likely be significantly less than the section 205 penalty of up to $10,000 for each vehicle. (Otherwise, there would be little advantage in paying the NCP.) This reduced liability for nonconformance would decrease the manfacturers' incentive to comply with the standard.

Furthermore, the concept of applying an NCP to an averaging set as a whole presents practical problems of specifying the penalty rate. Currently, the penalty rate is based on the projected per vehicle manufacturer and owner costs in meeting the emission standard and the extent of nonconformance determined by conducting a PCA to measure emissions from production vehicles. A penalty rate is specified for each emission standard and each vehicle subclass for which an NCP has been made available. Emission standards and useful lives may be different for the same pollutant across vehicle subclasses, and the associated costs of conformance with an emission standard may be substantially different across vehicle subclasses. If an NCP were made available for the failure to meet a standard on average, the applicable costs of conforming to the standard would depend on the ratio of vehicles from each subclass included in the averaging set, and would vary among the manufacturers. Details on how this matter might be considered have not been proposed and would

likely add an unnecessary degree of complication to the NCP regulations.

Offering an NCP for failure to meet a standard on the average also presents practical problems with implementing the program. PCA testing may have to be conducted on the entire averaging set. Not only would this be extremely burdensome but it would be impossible once production ceases for any engine family in the averaging set. Consequently, all PCA testing would have to be conducted prior to the end of production, and thus, prior to the final calculation of the production-weighted average (ACL).

Ford commented that a manufacturer should have the option of paying NCPs on individual engine families or on the production-weighted average of all engine families involved in the averaging program. It argued that the same incentive to comply with the emission standard for an individual engine family would also exist for the production-weighted average, and that EPA could establish upper limits for which the production-weighted average would not be permitted to exceed.

Ford also contended that to be equitable and consistent with the averaging program, penalties based on engine family emission levels above the FEL should not be assessed, or should be refunded, if the year-end production-weighted average is at or below the standard.

Ford suggested a possible solution to the practical problem of PCA burden and some of the legal issues associated with retroactivity. NCPs could be assessed quarterly, but only on those engine families exceeding the FEL. The NCP could be adjusted at the end of the year to some value above or below the penalties collected based on the year-end production-weighted average. In this way, PCAs would be run on those engine families exceeding their FELs, and NCPs would be collected on a timely basis.

Ford's suggested solution still poses the legal issues regarding payment of NCPs for failure to meet FELs instead of standards and the NCP payment replacing the section 205 penalty for end of year noncompliance. It also does not solve the practical problems, and it creates additional problems. For example, it does not address the situation in which every engine family meets its respective FEL but, because high emitting engines are produced in greater numbers (or low emitters are produced in lesser numbers) than expected, the applicable standard is exceeded. This constitutes a serious problem since the Ford program only considers conducting PCAs on engine families that are exceeding the FEL, but in the situation described above a manufacturer could exceed the applicable emission standard and none of the engine families would have exceeded their FEL. In that situation, a PCA would not have been conducted and could not be conducted after the violation of the applicable emission standard was discovered because the engine families in question are no longer in production. Thus, EPA would not have conducted the statutorily required production line tests on which NCP amounts are to be based.

Ford suggested that all engine families involved in a manufacturer's averaging program be included in the year-end production-weighted average. However, such a "super" averaging set would effectively undo the limitations EPA placed on the averaging program to address equity, environmental, geographical, and useful life concerns. Ford's suggestion also ignores the legal concern that certain conditions be met before NCPs are made available (e.g., a technological laggard may not exist for all vehicle subclasses within an averaging set).

Ford's suggested solution does not specify or suggest how the final NCP accounting should be made. It also does not address the labeling issue. Currently, all vehicles in the averaging or NCP programs have the FEL or CL printed on the emission label. The FEL or CL on the emission label is used in compliance determinations. If the FEL or CL is revised at the end of the model year because NCPs are assessed for exceeding an FEL, or are refunded if the year-end average is below the standard, the vehicle emissions labels would not reflect the final compliance status of those engine families (presumably, compliance with the standard as part of an averaging set). For example, if NCPs were assessed on an engine family at the end of the model year for exceeding an FEL, the compliance level based on PCA testing would be higher than the FEL indicated on the emission label. If the FEL indicated on the emission label were then used to make an in-use compliance determination, EPA could erroneously determine that these engines are in noncompliance.

V. Retroactivity of NCPs

Allowing NCPs to be paid retroactively (i.e., after an SEA failure or an in-use noncompliance determination) was addressed and rejected in the Phase I negotiated rulemaking, but was again raised as an issue by some manufacturers during the workshop and in the comments submitted to EPA in response to the workshop. These manufacturers advocated that NCPs be applied retroactively to the production of an engine family which has failed an SEA. They also requested that payments replace field fixes as a remedy in the event of an in-use noncompliance determination pursuant to section 207(c) of the Act.

The manufacturers made two points in support of their requests. Any manufacturer that attemps to comply with the emissions standards, but fails an SEA, might be put at a disadvantage with respect to a competitor that decides not to comply and certifies by paying an NCP. The first manufacturer would have expended effort and resources in attempting to comply with a stringent emission standard, and after an SEA failure, would be required by a noncompliance determination under section 207(c) to expend additional effort and resources. In addition, the manufacturers argued that they could have difficulty complying with a recall order if the manufacturer has already designed and built its vehicles to the limit of its capability to reduce emissions. The second manufacturer would have expended neither the effort nor the resources to comply with the stringent emission standard and may have less risk of in-use noncompliance. This is especially true if additional or more sophisticated hardware is required to achieve the stringent emission standard and durability has not been proven. While the NCP rate may remove the competitive disadvantage for complying manufacturers, it may also, for some manufacturers, reduce the incentive to comply with the emission requirements.

Two manufacturers believed engines within a class would be treated inequitably if retroactive NCPs were not available. To illustrate, if an engine family fails an SEA, the manufacturer could begin to pay an NCP for future production. However, the manufacturer is required to develop a fix for the past production.

In the NCP Phase I final rule, EPA rejected offering NCPs as a remedy for in-use nonconformance because the statute only makes NCPs available for problems with obtaining or retaining certificates of conformity. Section 206(g)(1) states that "a certificate of conformity * * * shall not be suspended or revoked" if a manufacturer pays NCPs. Similarly, the legislative history of section 206(g) describes NCPs as a means of avoiding denial, suspension, or revocation of a certificate of conformity. (See H.R. Rep. No. 294, 95th Congress, 1st Session. 275–76 (1977) (Conference Report).) Obtaining a certificate that an

engine conforms to emission standards is a prerequisite to putting the engine into the stream of commerce (see section 203(a)(1)) and is normally not affected by in-use problems. (Where in-use problems are discovered while an engine family, or that part of an engine family in question, is still being produced, the certificate may be revoked for future production but not for past production unless the original certificate was obtained through fraud). In addition, the D.C. Circuit held in *Center for Auto Safety* v. *Ruckelshaus*, 747 F.2d 1, (1984), that Congress intended in-use noncompliance to be remedied by recall and repair of malfunctioning vehicles/engines. EPA, therefore, concluded that there is no authority under section 206(g) to offer NCPs as a remedy for in-use engines. For similar reasons, EPA did not provide NCPs for non-complying engines produced prior to an SEA failure.

While the Agency understands the manufacturers' concerns, it is not clear how retroactive NCPs can be made consistent with the Act. In addition, the current arguments are not different from those EPA rejected in the Phase I (50 FR 35374, August 31, 1985) and Phase II (50 FR 53465, December 31, 1985) rulemakings. EPA continues to believe that NCPs are not authorized by the statute for use as a remedy for in-use noncompliance.

VI. Other Issues

A. Usage Factor (FRAC)

Another issue that needs to be addressed is clarification of the NCP usage factor, which has the effect of increasing the NCP payment each year depending on the extent of NCP usage the previous year. The purpose of this factor is to provide an incentive for conformance. The usage factor is defined in 40 CFR 86.1113–87(a)(4) as:

$frac_{i-1}$ = Fraction of engines or vehicles using NCPs in previous year ($year_{i-1}$).

This calculation was intended to be a simple matter of dividing the number of vehicles, industrywide, of a subclass using NCPs in the previous year by the total number of vehicles of that subclass produced the previous year. However, when EPA began to calculate this factor for the light HDGE subclass for the 1988 model year, an issue arose as to how to treat the 1987 model year HDEs that are optionally certified as light-duty trucks (LDTs) in accordance with 40 CFR 86.085–1(b). Similarly, the question arose as to how to treat light HDGEs that are optionally certified as heavy HDGEs under the five percent allowance provision of 40 CFR 86.087–10(a)(3)(i).

The Agency initially decided that optionally certified vehicles should be included in the subclass in which they were certified. In response to EPA's request for 1987 model year production and NCP usage data from HDGE manufacturers, Ford and GM indicated that the Agency's approach was inconsistent with a prior Agency interpretation of the five percent allowance provision specified in 40 CFR 86.087–10(a)(3)(i).

GM further claimed that in the NCP provisions, the definition of subclass in 40 CFR 86.1102–87(b), which is referenced by the definition of the NCP usage factor, is based largely on the GVWR (e.g., 8,501–14,000 pounds GVWR for light HDGEs), and not on the subclass chosen for certification purposes.

The two possible approaches to counting optionally certified engines toward the total production of a subclass are as follows:

1. EPA initial interpretation (Option A): Count an optionally certified engine toward production of the subclass in which it was certified (certified subclass).

In this case, a LHDGE optionally certified as a LDT would count toward production in the LDT subclass and each LHDGE optionally certified as a HHDGE would count toward the production of the HHDGE subclass.

2. GM and Ford interpretation (Option B): Count an optionally certified engine toward production of the subclass in which it was intended to be used based on GVWR (base subclass).

In this case, a LHDGE optionally certified as a LDT or HHDGE would count toward production in the LHDGE subclass.

At the time this issue arose, the Agency determined that the NCP regulations did not address this issue. EPA also believed that manufacturers may have based NCP decisions on their assumption that EPA policy regarding the treatment of optionally certified vehicles for the FRAC would be similar to that for the five percent allowance specified in 40 CFR 86.087–10(a)(3)(i). Thus, EPA decided to temporarily agree to the GM and Ford interpretation (option B), but to address this issue without prejudice and obtain public comment in the NCP Phase III rulemaking.

In deciding which approach to adopt, one aspect to consider is whether the intent of the five percent allowance provision is similar to that of the NCP usage factor and so determine whether the approaches used should also be similar. As previously stated, the intent of the NCP usage factor is to provide an increasing economic incentive to comply with the emission standards as NCP usage increases. On the other hand, the intent of the five percent allowance provision for light HDGEs is to allow certification to the less stringent emission standards of the heavy HDGEs in the limited situations where it may be technically too difficult to certify to the more stringent standards, which typically would require catalyst control. In other words, it is designed to provide relief for certification of up to five percent of the light HDGE applications (i.e., HDGEs in the 8,501–14,000 pounds GVWR). It is apparent that the intent of these two provisions are dissimilar.

Another aspect to consider is the impact on the NCP usage factor, and thus the penalty rate, of the different interpretations. As stated earlier, the industrywide production of a subclass is the denominator of the NCP usage factor for the subclass, and that portion of production of the subclass which uses NCPs is the numerator. If the NCP usage within a subclass remains the same, the usage factor, and thus the NCP penalty rate, is inversely proportional to the total production of the subclass.

Again, under option A, optionally certified engines would be counted as production in the certified subclass. For light HDGEs and light HDDEs, some production would be counted as LDTs (for those engines certified as LDTs under 40 CFR 86.085–1(b)), and for light HDGEs only, some production would be counted as heavy HDGEs (for those engines certified under the five percent allowance provision of 40 CFR 86.087–10(a)(3)(i)).

The effect of this split, assuming NCP usage within each subclass remains the same, is a decrease in the usage factor for the optionally certified subclasses (i.e., the LDT subclass and the heavy HDGE subclass) due to a larger production baseline. Similarly, the usage factor would increase for the base subclasses (i.e., the light HDGE and light HDDE subclasses) due to a smaller production baseline.

For example, in the 1987 model year for CO, NCPs were used for 74,295 of the 312,912 total industry production of light HDGEs. If option B were used to calculate the NCP usage factor for the 1988 model year production of HDGEs, the usage factor would be:

$$74{,}295/312{,}912 = 0.24$$

However, 137,229 were certified as LDTs and 8,330 were certified as heavy HDGEs under the five percent allowance. Under option A, the NCP usage factor to be applied in the 1988 model year production of HDGEs would be:

$$74{,}295/(312{,}912 - 137{,}229 - 8{,}330) = 0.44$$

Thus, implementation of Option A would have the effect of changing the NCP rate for a vehicle or engine subclass, even if the NCP usage within that subclass remains the same. This effect is consistent with the certification classification of the engines. The production baseline used in the denominator of the NCP usage factor increases or decreases according to the number of production vehicles or engines certified for a particular subclass. As a result, the optional certification of engines by one manufacturer would have the effect of changing the NCP penalty for all manufacturers for both the base subclass and the optionally certified subclass. In addition, if actual NCP usage increases within the optionally certified subclass because of NCP usage by the optionally certified engines, the usage factor for the optionally certified subclass would increase.

These effects are not inequitable. Nor are they inconsistent with the intent of the certification regulations or of the NCP regulations. With respect to the five percent allowance, the certification regulations have a different intent and are not affected by the NCP regulations. In addition, a valid and logical definition of a subclass could include all vehicles and engines that were certified in that subclass, irrespective of the intended use by GVWR.

Option A is also supported by the fact that the engine is subject to all other provisions applicable to that subclass and is a *de facto* member of that subclass.

Under option B, all engines are counted in the subclass in which they were intended to be used, based on the GVWR, irrespective of the subclass in which they were certified. The NCP usage factor is not changed by optional certification (e.g., in the previous example, the 1988 usage factor for CO HDGEs would be 0.24). Implementation of option B is consistent with the current definition of subclass at 40 CFR 86.1102.87(b) and the Agency's guidance on of the five percent allowance provision in 40 CFR 86.087–10(a)(3)(i) with respect to calculating the number of vehicles/engines which may be reclassified under the five percent rule. Since implementation of this option would not affect the NCP rate for a vehicle or engine subclass, the optional certification of engines by one manufacturer would not affect the NCP penalty for other manufacturers.

An inconsistency does arise, however, with option B. A situation could arise in which NCPs are paid in one subclass for production which is counted in another subclass for the NCP yearly usage factor. For example, consider the diesel particulate standards of the 1991 model year. A manufacturer may certify a HDDE in the 8,501–10,000 pound GVWR range as a diesel LDT (LDDT) and pay an NCP for that engine at the rate specified for the 0.13 LDDT particulate standard. That engine would be certified, tested, and have an NCP paid under Subparts B and L for the LDDT subclass, but be counted toward total production (denominator of the NCP usage factor) for the light HDDE subclass for the purpose of calculating the 1992 NCP usage factor.

In addition, as with the example above, it is not clear in this example whether the NCP usage for the optionally certified engine should be counted toward NCP usage (numerator of the NCP usage factor) for the LDDT subclass of the light HDDE subclass.

If the optionally certified engine is to be counted toward the NCP usage in the LDDT subclass, it would consistently be counted toward the subclass in which it was certified and in which the NCP was paid, but it would inconsistently be counted toward the total production of the light HDDE subclass. Under this scenario, if a substantial number of light HDDEs were to be optionally certified as LDDTs and were subject to NCP payment, the NCP usage in the LDDT subclass could exceed 100 percent. This would occur because the NCP usage, but not the baseline production, would be significantly increased in the LDDT subclass. In any event, the usage factor under this option would not reflect actual NCP usage within either subclass.

On the other hand, if the optionally certified engine is counted toward the usage in the light HDDE subclass, it would consistently be counted toward the same (base) subclass with respect to total production and NCP usage, but it would have an NCP paid for the LDDT (optionally certified) subclass. This inconsistency is compounded if NCPs are offered in one subclass but not the other. In the future, NCPs could be made available for the optionally certified subclass but not for the base subclass (for example, if a standard were to be made significantly more stringent for LDTs but not for HDEs). In this case, optionally certified engines would have NCPs available, but the NCP usage could not be counted toward any NCP usage factor. NCPs would be unavailable for the base subclass in which the usage would be counted under this option. In any event, the usage factor under this option would not reflect actual NCP usage within either subclass, and in possible future situations, may not reflect some actual NCP usage at all.

Option A has no such inherent inconsistencies, other than with the definition of subclass in 40 CFR 86.1102–87(b) which can easily be clarified by rulemaking. This option also has a logical rationale. It seems appropriate that the NCP usage factor should reflect actual NCP usage and actual total production within the subclass in which the engines or vehicles were certified. Consequently, the Agency is proposing option A, but invites comments to adequately address the inherent inconsistencies of option B.

B. Submission of Production Data for Calculating FRAC

An additional issue that needs to be addressed is the reporting of production data to EPA for use in calculating the FRAC.

In the NCP Phase II final rule, EPA indicated that the FRAC used in calculating the penalty for model year "n" would be based upon actual NCP usage through March 31 of model year n-1 combined with EPA's estimate for the remainder of the model year n-1. However, EPA has encountered two difficulties in calculating the FRAC: (1) In addition to NCP production, EPA needs non-NCP production from all manufacturers producing in a subclass for which NCP's are available; and (2) EPA needs input from manufacturers to estimate NCP and non-NCP production for the remainder of the model year. Consequently, EPA has had to request production data by letter in order to make the FRAC available to industry.

In this rulemaking, EPA is proposing to require that all manufacturers using NCPs report their production by April 30 of each model year. For those manufacturers not using NCPs but producing in a subclass where NCPs are available, EPA is proposing the voluntary reporting of production by April 30 of each model year. Voluntary reporting of production would only be applicable to § 86.1113–87(a)(3)(iv). All applicable production reporting requirements, including §§ 86.085–37 and 86.415–78 would still be mandatory. For those manufacturers who do not submit voluntary reports, EPA proposes to make a production estimate based upon the projected sales for that model year as listed in the manufacturers' applications for certification. EPA requests comments on the use of projected sales or other sources of production information for this purpose.

The mandatory report will include actual NCP and non-NCP production through March 31 of the model year, the manufacturer's estimate of NCP and non-NCP production for the remainder

of the model year, and actual year-end NCP and non-NCP production from the previous model year. The reports would be due in time for the Agency to compile the data received, arrive at the corrected FRAC for the previous model year, as well as the new model year FRAC, and return the information to manufacturers using NCPs in time for their first NCP payment of the next model year.

C. Overpayment of the Penalty

During implementation of the NCP Phase I and II rulemakings, EPA encountered an issue that was not expected: overpayments. During the 1987 model year, one manufacturer discovered that it had made a tracking error on NCP usage. Consequently, the manufacturer determined that NCP usage had in reality been lower than reported, and therefore, it had overpaid. The manufacturer requested a refund of the overpayment, including interest. However, while the Agency may refund an overpayment or the manufacturer may withhold a future payment due as an offset of the overpayment; EPA lacks the legal authority to pay interest on an overpayment. The Agency is proposing the addition of § 86.1113(g)(6) that an NCP overpayment may be refunded, or offset by withholding of a future payment, if approved in advance by the Administrator. However, no interest will be paid by EPA.

D. Rounding of Values Used in NCP Calculations

Another issue that needs to be addressed pertains to rounding of numbers used in the NCP calculation. During the 1987 and 1988 model years, manufacturers needed guidance regarding when to round the various values used in the NCP calculation.

For consistency, the Agency has decided that the adjusted values of COC_{50}, COC_{90}, MC_{50} should be rounded to the nearest whole dollar in accordance with American Society of Testing and Materials rounding procedures contained in (ASTM) E29–67. For all other terms, except the predefined terms CL, S, UL, F, and Ai, unrounded values of at least five figures beyond the decimal point should be used. The Agency believes that the highest accuracy will be reached with the most decimal places. The Agency requests comments on the number of figures to be used in the NCP calculation.

E. Selection of Configuration for PCA Testing

As currently written, § 86.1106–87(2) states that PCA testing must be conducted on the same configuration tested in certification. The Agency is proposing to add the statement, "* * * unless an alternate configuration is approved by the Administrator." The Agency's intent is to allow an alternate engine or vehicle configuration to be chosen for PCA testing, should the need arise. Such a need might be a change in production scheduling which would make the appropriate engine or vehicle configuration unavailable for PCA testing in sufficient numbers.

The Agency is also proposing that, for purposes of PCA testing, the engine or vehicle configuration selected as an alternate to the certification emission data engine or vehicle (as defined in § 86.085–24) be the configuration in production that is expected to have the highest level of emissions of the pollutant(s) for which the NCP is desired. Such a "worst case" requirement for alternate engine or vehicle configuration is consistent with the certification regulations and ensures that the configuration does not underrepresent the engines or vehicles within the family.

F. Interest payments

EPA became aware of two additional NCP payment issues during the implementation of the NCP program. First, there is no specific provision for manufacturers to pay interest resulting from an approved alternate payment schedule (§ 86.1113–87(g)(1)), and second, the interest rate specified in § 86.1115–87(z)(4) for use in calculating payments withheld pending a hearing (§ 86.1113–87(g)(2)) is not consistent with the interest rate published annually under the Debt Collection Act of 1982 for use in assessing interest charges for outstanding debts owed the Government.

Therefore, EPA is proposing to insert paragraph (z) of § 86.1115 under § 86.1113 as paragraph (g)(5) and to revise it to indicate that it applies to interest on delayed payments from both an approved alternate payment schedule (paragraph (g)(1)) and a request for a hearing (paragraph (g)(2)). Further, the interest rate for NCP payments withheld beyond the quarterly due dates would be that rate published annually by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982. The interest rate would be applied to the number of quarterly NCP payment due dates which have elapsed throughout the duration of a hearing request of an alternate payment schedule.

G. Quarterly Reporting Requirements

Additional proposed changes to the NCP rule are that the quarterly report include the interest payment calculation, if applicable, and be submitted even if the manufacturer has no NCP production in a given quarter. By adding these requirements, the Agency can confirm that the interest payments made are accurate and can verify whether an NCP payment was due.

H. Special Labeling Requirement for Model Years 1991 to 1993 Heavy-duty Diesel Engines

EPA is also including in this NPRM a proposed labeling provision to require engine manufacturers to specifically identify heavy-duty diesel engines as to whether or not they are certified to comply with the urban bus diesel engine particulate regulations.

This labeling requirement would apply only during model years 1991–1993 when the urban bus engine particulate standard is more stringent than the standard for other heavy-duty diesel engine applications. EPA has recently had inquiries from transit operators and bus builders that has led the Agency to believe that it would be useful to distinguish, by way of a label, those engines that are certified for urban buses from those engines that are not.

Existing regulations of 40 CFR 86.084–5(a)(2) prohibit heavy-duty vehicle manufacturers from using heavy-duty engines not certified to applicable standards. This labeling requirement will assist urban bus manufacturers by identifying engines which are certified to the urban bus particulate standard during the 1991 to 1993 time period.

This requirement will pose little or no additional cost to the engine manufacturers and should help avoid confusion among engine distributors, truck and bus builders, transit authorities and fleet operators concerning the applications in which a particular engine can be used. EPA anticipates that manufacturers may be able to include or substitute the required language on existing engine labels in many cases.

The labeling language being proposed reflects language that EPA intends to include on heavy-duty diesel engine certificates of conformity that EPA issues during the 1991–1993 model years.

It should be noted that several legislative proposals currently before congress would relax the 1991 urban bus particulate matter standard to 0.25 g/BHP-hr. If such legislation were enacted, this labeling requirement will no longer be needed.

VII. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is

"major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, or result in a major price increase. This rule is not a "major" regulation, according to the established criteria. Also, this regulation is intended to assist manufacturers that are having difficulty developing and marketing the vehicles involved. Therefore the Administrator has determined that this proposal does not constitute a "major" regulation.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the Public Docket (EN–87–02).

VIII. Economic Impact

Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. If no HDE manufacturer elects to use NCPs, these manufacturers and the users of their products will not incur any additional costs related to NCPs.

NCPs remedy the potential problem of having a manufacturer forced out of the marketplace due to that manufacturer's inability to immediately conform to new, strict emission standards. Without NCPs, a manufacturer which has difficulty certifying HDEs in conformance with emission standards or whose engines fail an SEA has only two alternatives: fix the nonconforming engines, perhaps at a prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative: Continue production and introduce into commerce upon payment of a penalty an engine that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be a manufacturer's only way to continue to introduce HDEs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

IX. Environmental Impact

When evaluating the environmental impact of this rule, one must keep in mind that, under the Act, NCPs are a consequence of enacting new, more stringent emissions requirements for heavy duty engines. Emission standards are set at a level that most manufacturers can achieve by the model year in which the standard becomes effective. Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (U.S. Circuit Court, DC District, 1973), Congress realized the dilemma that technology-forcing standards were likely to cause, and allowed manufacturers of heavy-duty engines to certify nonconforming vehicles/engines upon the payment of an NCP. This mechanism would allow manufacturer(s) who cannot meet technology-forcing standards immediately to continue to manufacture these nonconforming engines while they tackle the technological problems associated with meeting new emission standard(s). Thus, as part of the congressional scheme to force technological improvements without driving any manufacturer out of the market, NCPs will not adversely affect the environment.

X. Compliance with Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the Administrator is required to certify that this regulation will not have a significant impact on a significant economic impact on a substantial number of small business entities. None of the affected manufacturers could be classified as small. Even if some were small, there would not be a substantial number of those. Moreover, as already discussed, the NCP program can be expected to benefit manufacturers.

Some small entities do exist as manufacturers' contractors for the testing of engines for PCAs. It is EPA's practice to conduct PCA scheduling (namely, tests per day limitations) in such a way as to consider the staff and manpower capabilities of such contractors and work around any problems. The result is that these entities are not adversely affected. Thus, I certify that this rule will not have any adverse economic impact on a substantial number of small entities.

XI. Information Collection Requirements

This rule requires that manufacturers perform certain recordkeeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 USC 3501, et seq., provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this proposed rule have been addressed in previous rulemaking and approved by OMB (OMB control no. 2060–0132). However, any person wishing to comment on these requirements is invited to do so. Comments on these requirements should be submitted to OMB, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

XII. List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: April 11, 1990.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 86 is proposed to be amended as follows.

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

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

Authority: Sections 202, 203, 206, 207, 208, 215, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

2. Paragraph (a)(16) of § 86.090–24 of subpart A is proposed to be added to read as follows:

§ 86.090–24 Test vehicles and engines.

(a) * * *

(16) Vehicles or engines identical in all respects listed in paragraph (a)(2) of this section shall be further divided into different engine families on the basis of NCP usage.

* * * * *

3. Paragraphs (a)(1)(iii)(C) and (a)(1)(iv)(C) of § 86.091–9 of subpart A are proposed to be revised to read as follows:

§ 86.091–9 Emission standards for 1991 and later model year light-duty trucks.

(a)(1) * * *

(iii) * * *

(C) A manufacturer may elect to include some or all of its light-duty truck engine families in the NO_x averaging program, provided that it does not elect to pay for noncompliance with any emission standard applicable to that light-duty truck family. Trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. Petroleum-fueled and methanol-fueled engine families may not be averaged

together. Otto-cycle and diesel engine families may not be averaged together. If the manufacturer elects to participate in the NO_x averaging program, individual family NO_x emission limits may not exceed 2.3 grams per mile. If the manufacturer elects to average together NO_x emissions of light-duty trucks subject to the standards of paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(B) of this section, its composite NO_x standard applies to the combined fleets of light-duty trucks up to and including, and over, 3750 lbs loaded vehicle weight included in the average, and is calculated as defined in § 86.088–2.

(iv) * * *

(C) A manufacturer may elect to include some or all of its diesel light-duty truck engine families in the appropriate particulate averaging program (petroleum or methanol), provided that it does not elect to pay an NCP for noncompliance with any emission standard applicable to that light-duty truck family. Trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas, and light-duty trucks subject to the standard of paragraph (a)(1)(iv)(B) of this section may be averaged only with other light-duty trucks subject to the standard of paragraph (a)(1)(iv)(B) of this section. Averaging is not permitted between fuel types. If the manufacturer elects to average both light-duty trucks subject to the standards of paragraphs (a)(1)(iv)(A) of this section and light-duty vehicles together in the appropriate averaging program, its composite particulate standard applies to the combined set of light-duty vehicles and light-duty trucks that are included in the average and is calculated as defined in § 86.088–2.

* * * * *

4. Paragraph (a)(1)(i)(C)(*2*) of § 86.091–10 of subpart A is proposed to be revised to read as follows:

§ 86.091–10 Emission standards for 1991 and later model year gasoline-fueled heavy-duty engines and vehicles.

(a)(1) * * *
(i) * * *
(C) * * *

(*2*) A manufacturer may elect to include some or all of its gasoline-fueled Otto-cycle heavy-duty engine families in the heavy-duty engine NO_x averaging program, provided that it does not elect to pay an NCP for noncompliance with any emission standard applicable to that engine family. Engines produced for sale in California or in 49-state areas may be averaged only within each of those areas. Averaging is limited to within fuel types (gasoline and methanol). If the manufacturer elects to participate in the NO_x averaging program, individual family NO_x emission limits may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

* * * * *

5. Paragraph (a)(1)(iii)(B) of § 86.091–11 of subpart A is proposed to be revised to read as follows:

§ 86.091–11 Emission standards for 1991 and later model year diesel heavy-duty engines.

(a)(1) * * *
(iii) * * *

(B) A manufacturer may elect to include some or all of its diesel heavy-duty engine families in the heavy-duty NO_x averaging program, provided that it does not elect to pay an NCP for noncompliance with any emission standard applicable to that engine family. Engines produced for sale in California or in 49-state areas may be averaged only within each of those areas. Averaging is limited to within fuel types (petroleum or methanol). Averaging is limited to engines within a given primary service classes as defined in § 86.085–2. Averaging across primary service classes is not permitted. If the manufacturer elects to participate in the NO_x averaging program, individual family NO_X emission limits may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule).

* * * * *

§ 86.091–35 [Amended]

6. Section 86.091–35 of subpart A is proposed to be amended by adding paragraph (a)(3)(iii)(N) to read as follows:

(a) * * *
(3) * * *
(iii) * * *

(N) For diesel engines which have been certified to comply with the urban bus particulate standard of 40 CFR 86.091–11(a)(1)(iv), the statement "This engine is certified for use in an urban bus as defined at 40 CFR 86.091–2." For diesel engines not certified to comply with the urban bus particulate standard, the statement "This engine is not certified for use in an urban bus as defined at 40 CFR 86.091–2. Sale of this engine for use in an urban bus is a violation of Federal law under the Clean Air Act."

* * * * *

7. Paragraph (b) of § 86.1102–87 of subpart L is proposed to be revised to read as follows:

§ 86.1102–87 Definitions.

* * * * *

(b) As used in this subpart, all terms not defined herein have the meaning given them in the Act.

Compliance level means the deteriorated pollutant emissions level at the 60th percentile point for a population of heavy-duty engines or heavy-duty vehicles subject to Production Compliance Audit testing pursuant to the requirements of this subpart. A compliance level for a population can only be determined for a pollutant for which an upper limit has been established in this subpart.

Configuration means a subdivision, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, or other parameters which may be designated by the Administrator, or a subclassification of light-duty truck engine family emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, rear axle ratio, or other parameters which may be designated by the Administrator.

NCP means a nonconformance penalty as described in section 206(g) of the Clean Air Act and in this subpart.

PCA means Production Compliance Audit as described in § 86.1106–87 of this subpart.

Subclass means a classification of heavy-duty engines or heavy-duty vehicles based on such factors as gross vehicle rating, fuel usage (gasoline-, diesel-, and methanol-fueled), vehicle usage, engine horsepower or additional criteria that the Administrator shall apply. Subclasses include, but are not limited to:

(a) Light-duty gasoline-fueled Otto cycle trucks (6,001–8,500 lb. GVW)
(b) Light-duty methanol-fueled Otto cycle trucks (6,001–8,500 lb. GVW)
(c) Light-duty petroleum-fueled diesel trucks (6,001–8,500 lb. GVW)
(d) Light-duty methanol-fueled diesel trucks (6,001–8,500 lb. GVW)
(e) Light heavy-duty gasoline-fueled Otto cycle engines (for use in vehicles of 8,501–14,000 lb. GVW)
(f) Light heavy-duty methanol-fueled Otto cycle engines (for use in vehicles of 8,501–14,000 lb. GVW)
(g) Heavy heavy-duty gasoline-fueled Otto cycle engines (for use in vehicles of 14,001 lb. and above GVW)
(h) Heavy heavy-duty methanol-fueled Otto cycle engines (for use in vehicles of 14,001 lb. and above GVW)
(i) Light heavy-duty petroleum-fueled diesel engines (see § 86.085–2(a)(1))
(j) Light heavy-duty methanol-fueled diesel engines (see § 86.085–2(a)(1))
(k) Medium heavy-duty petroleum-fueled diesel engines (see § 86.085–2(a)(2))

(l) Medium heavy-duty methanol-fueled diesel engines (see § 86.085–2(a)(2))
(m) Heavy heavy-duty petroleum-fueled diesel engines (see § 86.085–2(a)(3))
(n) Heavy heavy-duty methanol-fueled diesel engines (see § 86.085–2(a)(3))
(o) Petroleum-fueled Urban Bus engines (see § 86.091–2)
(p) Methanol-fueled Urban Bus engines (see § 86.091–2)

For NCP purposes, all optionally certified engines and/or vehicles (engines certified in accordance with § 86.087–10(a)(3) and vehicles certified in accordance with § 86.085–1(b)) shall be considered part of, and included in the FRAC calculation of, the subclass for which they are optionally certified.

Test Sample means a group of heavy-duty engines or heavy-duty vehicles of the same configuration which have been selected to receive emission testing.

Upper limit means the emission level for a specific pollutant above which a certificate of conformity may not be issued or may be suspended or revoked.

* * * * *

8. Section 86.1105–87 of subpart L is proposed to be amended by revising paragraphs (c) and (d) to read as follows:

§ 86.1105–87 Emissions standards for which nonconformance penalties are available.

* * * * *

(c) Effective in the 1991 model year, NCPs will be available for the following emission standards:

(1) Petroleum-fueled urban bus engine (as defined in § 86.091–2) particulate matter emission standard of 0.10 grams per brake horsepower-hour.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.091–11(a)(1)(iv)(A) in accordance with § 86.1113–87(a):

(A) COC_{50}: $3,415.

(B) COC_{90}: $5,565.

(C) MC_{50}: $16,771 per gram per brake horsepower-hour.

(D) F: 1.2.

(E) UL: 0.60 grams per brake horsepower-hour.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.091–11(a)(1)(iv)(A) in accordance with § 86.1113–87(h): 0.05.

(2) Petroleum-fueled diesel heavy-duty engine particulate matter emission standard of 0.25 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $1,480

(*2*) COC_{90}: $1,513

(*3*) MC_{50}: $5,833 per gram per brake horsepower-hour.

(*4*) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.07.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $905

(*2*) COC_{90}: $2,169

(*3*) MC_{50}: $7,083 per gram per brake horsepower-hour.

(*4*) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(iii) For petroleum-fueled heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $930

(*2*) COC_{90}: $1,630

(*3*) MC_{50}: $22,500 per gram per brake horsepower-hour.

(*4*) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(3) Petroleum-fueled diesel heavy-duty oxides of nitrogen standard of 5.0 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $830

(*2*) COC_{90}: $946

(*3*) MC_{50}: $1,167 per gram per brake horsepower-hour.

(*4*) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.12.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $905

(*2*) COC_{90}: $1,453

(*3*) MC_{50}: $1,417 per gram per brake horsepower-hour.

(*4*) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(iii) For petroleum-fueled heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $930

(*2*) COC_{90}: $1,590

(*3*) MC_{50}: $2,250 per gram per brake horsepower-hour.

(*4*) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(4) Petroleum-fueled diesel light-duty trucks (between 6,001 and 14,000 lbs GVW) particulate matter emission standard of 0.13 grams per vehicle mile.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(A) COC_{50}: $711

(B) COC_{90}: $1,396

(C) MC_{50}: $2,960 per gram per vehicle mile.

(D) F: 1.2

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.01.

(d) The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (c) of this section are expressed in December 1989 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67.

9. Section 86.1106–87 is amended by revising paragraph (a)(2) to read as follows:

§ 86.1106–87 Production compliance auditing.

* * * * *

(a) * * *

(2) PCA testing must be conducted on the same configuration tested during Certification, unless an alternate configuration is approved by the Administrator.

* * * * *

10. Section 86.1113–87 is amended by revising paragraphs (a)(3)(iv), (a)(6), (g)(3), (g)(3)(i), and adding paragraphs (g)(5) and (g)(6) to read as follows:

§ 86.1113–87 Calculation and payment of penalty.

(a) * * *

(3) * * *

(iv) In calculating the NCP for year n, the value $frac_{i-1}$ for i=n will include actual NCP usage through March 31 of model year n–1 and EPA's estimate of additional usage for the remainder of model year n–1 using manufacturer input. All manufacturers using NCPs must report by subclass actual NCP and non-NCP production numbers through March 31, an estimate of NCP and non-NCP production for the remainder of the model year, and the previous year's actual NCP and non-NCP production to EPA no later than April 30 of the model year. If EPA is unable to obtain similar information from manufacturers not using NCPs, EPA will use projected sales data from the manufacturer's applications for certification in computing the total production of the subclass and the $frac_{i-1}$. The value of $frac_{i-1}$ will be corrected to reflect actual year-end usage of NCPs and a corrected AAF will be used to establish NCPs in future years. The correction of previous year's AAF will not affect the previous year's penalty.

* * * * *

(6) In calculating the NCP, appropriate values of the following predefined terms should be used: CL, S, UL, F, and A_i. For all other terms, unrounded values of at least five figures beyond the decimal point should be used in calculations leading up to the penalty amount. Any NCP calculated under paragraph (a) of this section will be rounded to the nearest dollar in accordance with ASTM E29–67.

* * * * *

(g) * * *

(3) A manufacturer making payment under paragraph (g)(1) or (g)(2) of this section shall submit the following information by each quarterly due date to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. This information shall be submitted even if a manufacturer has no NCP production in a given quarter.

(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, certificate identification (number and date), NCP payment calculations and interest payment calculations, if applicable.

* * * * *

(5)(i) Interest shall be assessed on any nonconformance penalty for which payment has been withheld under § 86.1113–87(g) (1) or (2). Interest shall be calculated from the due date for the first quarterly NCP payment, as determined under § 86.1113–87(g)(1), until either the date on which the Presiding Officer or the Administrator renders the final decision of the Agency under § 86.1115–87 or the date when an alternate payment schedule (approved pursuant to § 86.1113–87(g)(1)) ends.

(ii) The combined principal plus interest on each quarterly NCP payment withheld pursuant to § 86.1113–87(g) (1) or (2) shall be calculated according to the formula:

$$QNCP(1+R).25n$$

where:

QNCP = the quarterly NCP payment
R = the interest rate applicable to that quarter
n = the number of quarters for which the quarterly NCP payment is outstanding.

(iii) The number of quarters for which payment is outstanding for purposes of this paragraph shall be the number of quarterly NCP payment due dates, as determined under § 86.1113–87(g)(1), which have elapsed throughout the duration of a hearing request, or alternate payment schedule.

(iv) The interest rate applicable to a quarter for purposes of this paragraph shall be the rate published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982 and effective on the date on which the NCP payment was originally due.

(6) A manufacturer will be refunded an overpayment, or be permitted to offset an overpayment by withholding a future payment, if approved in advance by the Administrator. The government shall pay no interest on overpayments.

* * * * *

§ 86.1115–87 [Amended]

11. In § 86.1115–87, paragraphs (z)(1)–(z)(4) are removed, and (aa) is redesignated as (z).

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April 25, 1990

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Lyrate Bladder-pod and Dusky Seaside Sparrow; Proposed Rules

DEPARTMENT OF THE INTERIOR

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Lesquerella lyrata (Lyrate Bladder-pod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Lesquerella lyrata* (lyrate bladder-pod), to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. This species is currently known from only two populations in cedar glade areas of northwest Alabama (Colbert and Franklin Counties). This species is extremely vulnerable due to its limited range, the loss of much suitable habitat from urbanization and agricultural practices and apparent need for active management to sustain current populations. This proposal, if made final, would implement Federal protection provided by the Act for *Lesquerella lyrata*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 25, 1990. Public hearing requests must be received by June 11, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to Complex Field Supervisor, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Cary Norquist, at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella lyrata, a member of the mustard family (Brassicaceae), is an annual that ranges from 1 to 3 decimeters (4 to 12 inches) in height. Plants are shortly pubescent and usually branched near the base. The stem leaves are alternate, ovate to elliptic in shape, smooth or toothed on the margins, with prominent ear-like projections at the bases. The flowers are ascending, on stalks 10 to 15 millimeters (mm) (0.4 to 0.6 inches) long, with yellow petals 5 to 7 mm (0.2 to 0.3 inch) in length. The fruits are silques, globose in shape, 2.5 to 3.5 mm (0.1 inch) long and 3 to 4 mm wide (0.1 to 0.2 inch) (Rollins and Shaw 1973, McDaniel 1987). This species is dormant in the summer, surviving as seeds; germinates in the fall; and overwinters as a rosette (J. Baskin, University of Kentucky, pers. comm. 1989). Plants flower from March to April and fruit and disperse seeds in late April and May.

Lesquerella lyrata, is most closely related to *L. densipila*, which occurs disjunctly in Alabama (Rollins 1955). The morphologically similar *L. densipila* has fruits and styles that are pubescent as opposed to those of *L. lyrata*, which are glabrous (Rollins 1955, Rollins and Shaw 1973, McDaniel 1987). Although no one questions the distinctiveness of *L. lyrata*, some suggest that a more appropriate separation of these two taxa would be at the varietal level (McDaniel 1987).

Lesquerella lyrata, was discovered and described by R.C. Rollins (1955) from specimens he collected at three sites in Franklin County, Alabama. This species was thought to be extinct until it was rediscovered near the type locality in 1984 (Webb and Kral 1986). Extensive field surveys have been conducted for this species repeatedly (Webb pers. comm. 1989, Webb and Kral 1986, McDaniel 1987). However, only one additional population has been located, which is in Colbert County, Alabama (Webb and Kral 1986). In addition, no plants have been located at two of the original localities in Franklin County cited by Rollins (1955), despite repeated attempts (Webb and Kral 1986, McDaniel 1987). Currently, only two populations of *L. lyrata* are known to exist with one each in Franklin and Colbert Counties, Alabama.

Lesquerella lyrata is a component of glade flora and occurs in association with limestone outcroppings. The terms "glade" and "cedar glade" refer to these shallow-soiled, open areas that are sometimes surrounded by cedar (*Juniperus virginiana*) woods. *Lesquerella lyrata* often occurs essentially without associates; however, at times it may occur with *Leavenworthia alabamica, Arenaria patula, Sedum puchellum* and weedy species such as *Ceratium glomeratum* and *Krigia oppositifolia*. Current populations are located primarily on glade-like areas that exhibit various degrees of disturbance, including unimproved pastures, cultivated/plowed fields and roadside rights-of-way. Most of the cedar glade endemics exhibit such weedy tendencies; however, none appear to spread far from their original glade habitat (Baskin and Baskin 1986, Webb and Kral 1986). Each population of *L. lyrata* consists of several sites located within a 0.4 to 0.8 kilometer (0.25 to 0.5 mile) radius of one another. Population size varies, as with all annuals; however, at times, sites are reported to support hundreds to thousands of individuals (Webb and Kral 1986, McDaniel 1987).

Both populations are located on privately owned lands. No sites are protected and current populations have been declining over the last few years due to succession from the lack of regular disturbance/management that is needed to maintain populations (Webb pers. comm. 1989, McDaniel 1987).

Federal actions involving *Lesquerella lyrata* began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2), now section 4(b)(3)(a), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Lesquerella lyrata* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978 publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In December 1979, the Service published a notice of withdrawal of the June 16, 1976 proposal (44 FR 70796), along with four other proposals that had expired. *Lesquerella lyrata* was included as a category 1* species in a revised list of plants under review for threatened or endangered classification published December 15, 1980 (45 FR 82480). Category 1* comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species, but they may have already become extinct. On November 28, 1983, the Service published a supplement to the Notice of Review for Native Plants (48 FR 53640); the plant notice was again

revised September 27, 1985 (50 FR 39526). *Lesquerella lyrata* was included as a category 2 species in the 1983 supplement and the 1985 revised notice. Category 2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule. Data obtained over the last few years now supports the plant's reelevation to category 1 and listing as threatened. The data demonstrate a limited distribution and continuing threats to the species.

Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982 be treated as having been newly submitted on that data. This was the case for *Lesquerella lyrata* because of the acceptance of the 1975 Smithsonian report as a petition. In October of 1983, 1984, 1985, 1987, 1988, and 1989, the Service found that the petitioned listing of *Lesquerella lyrata* was warranted, but that listing this species was precluded due to other higher priority listing actions and additional data were being gathered. Publication of the present proposal constitutes the final 1-year finding that is required.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella lyrata* Rollins (lyrate bladder-pod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Lesquerella lyrata* is endemic to cedar glade areas in northwestern Alabama. It is thought that this species evolved on glade systems that are now highly disturbed and exist as isolated pockets surrounded by agricultural lands (Webb and Kral 1986). Some cedar glade systems continue to be adversely modified as they are utilized for agricultural purposes, while others have been destroyed by housing development or garbage dumping (Kral 1983). Baskin and Baskin (1985) state that few glades in the Southeast have been left completely undisturbed. As noted previously in this document, *L. lyrata* now occurs primarily in disturbed glade areas including cultivated fields and unimproved pastures. Thus, agricultural use and the survival of this species are not necessarily incompatible (Webb and Kral 1986). However, periodic disturbance is needed to arrest succession and maintain populations of *Lesquerella lyrata* in this type of habitat. Such is accomplished by the plowing associated with row crop farming. While the plant may survive under these conditions, populations may be impacted if plowing or herbicide treatment occurs in the spring prior to seed set and dispersal (mid-May). Populations located in pastures are enhanced by disturbance created from light grazing; however, if sites are heavily grazed, such could negatively impact plants by excessive soil compaction. Improvement of pastures with the introduction of forage grasses would eventually decimate populations due to competition (Kral 1983). Mowing along the roadside rights-of-way aids the species in seed dispersal; however, herbicide application poses a threat if applied before seed set (Webb and Lyons 1984).

No site where *Lesquerella lyrata* occurs is protected. Thus, individual sites could be destroyed for developmental purposes as has been the case with other glade areas.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* This species is collected for scientific purposes; however, such does not pose a significant threat to this species at this time.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms. Lesquerella lyrata* is unofficially considered endangered in the State of Alabama; however, such designation does not afford this species any legal protection.

E. *Other natural or manmade factors affecting its continued existence.* The greatest threat to this species is its extreme vulnerability due to its limited range and small number of populations. Disturbance (natural or artificial) appears to be a key factor in the maintenance of *L. lyrata* (McDaniel 1987); thus, active management of sites will be required to perpetuate this species. Under natural conditions, *Lesquerella lyrata* is an early sucessional species that colonizes shallow cedar glade soils and then slowly disappears as the soil layer becomes further developed (E. Lyons, Amherst College, pers. comm. 1989). This species is a poor competitor and is eliminated by shade and competition from the invading perennials (Kral 1983, McDaniel 1987). Due to the continuing loss of cedar glades, presently available habitat for *L. lyrata* is limited primarily to areas modified by human activity. Current populations have declined in recent years due to succession from a lack of management/disturbance (Webb, pers. comm. 1989, McDaniel 1987). Periodic disturbance of habitat arrests succession and brings seeds to the surface, which facilitates germination (Baskin, pers. comm. 1989, Webb and Lyons 1984). As with all annuals, this species' long-term survival is dependent upon its ability to reproduce and reseed an area every year. Thus, populations decline and move toward extinction if conditions remain unsuitable for reproduction for many years.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Lesquerella lyrata* as threatened. Threatened status seems appropriate since this species is not in imminent danger of extinction. However, this species is highly vulnerable due to its restricted range and is likely to become endangered in the foreseeable future if protective measures are not taken. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Publication of critical habitat maps will increase public interest and possibly lead to additional threats to this species from collecting and vandalism. This species occurs at a limited number of sites and all are easily accessible. Taking is an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce and publication of critical habitat

descriptions and maps would make *Lesquerella lyrata* more vulnerable and increase enforcement problems. All involved State agencies and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Lesquerella lyrata*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All known populations are under private ownership. The Environmental Protection Agency would consider this species relative to pesticide use.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. The 1988 amendments do not reflect this protection for plants classified as threatened. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Post Office Box 3507, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Complex Field Supervisor (See **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Cary Norquist (see **ADDRESSES** Section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
BRASSICACEAE						
*	*	*	*	*	*	*
Lesquerella lyrata	Lyrate bladder-pod	U.S.A. (AL)	T		NA	NA
*	*	*	*	*	*	*

Dated: March 30, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–9459 Filed 4–24–90; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB38

Endangered and Threatened Wildlife and Plants: Proposed Rule to Delist the Dusky Seaside Sparrow and to Remove its Critical Habitat Designation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to remove the dusky seaside sparrow (*Ammodramus maritimus nigrescens*) from the List of Endangered and Threatened Wildlife, and to remove its critical habitat designation. All available information indicates that this bird is extinct. The dusky seaside sparrow is known to have occurred only on Merritt Island and the upper St. Johns River marshes of Brevard County, Florida. It has been extirpated by the conversion of salt marshes to mosquito impoundments, and by drainage, land use changes, and unsuitable fire regimes. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 25, 1990. Public hearing requests must be received by June 11, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and material received will be available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above address (904/791–2580; FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The dusky seaside sparrow was described by Ridgway in 1873, as *Fringilla nigrescens* (Baird and Ridgway 1873). The bird had been discovered by Charles Maynard in 1872, and described by him in 1875, but Ridgway's description preceded Maynard's. The species was subsequently transferred to the genus *Ammospiza*. It was retained as a full species until 1973, when it was reduced to subspecific status under the seaside sparrow, *Ammospiza maritima* (American Ornithologists' Union 1973). In 1982, seaside sparrows were placed in the genus *Ammodramus* (American Ornithologists' Union 1982).

The dusky seaside sparrow is distinguished from other subspecies of the seaside sparrow by its dark coloration and by characteristics of its song (McDonald 1988). Avise and Nelson (1989) found that the mitochondrial DNA of the dusky seaside sparrow was virtually indistinguishable from other Atlantic coast populations of *Ammodramus maritimus*, and implied that the subspecific status of the subspecies was not merited. McDonald (1988), however supported the validity of the taxon and the dusky seaside sparrow is expected to continue to be recognized as a valid subspecies in the American Ornithologists' Union Checklist.

The subspecies has never been found outside its limited range in cordgrass (*Spartina bakeri*) marshes on Merritt Island and the adjacent St. Johns River basin in Brevard County, Florida. Historically, the dusky seaside sparrow occurred in marshes along the Indian River on the northwest coast of Merritt Island, from the Moore Creek-Banana Creek area to Dimmit Creek; and on the mainland in marshes on the east side of the St. Johns River from just south of Salt Lake south to the vicinity of Cocoa. The mainland range was entirely confined to areas between State Routes 46 and 520, within a 10-mile radius of Titusville.

Howell (1932) considered dusky seaside sparrows to be common throughout their range on Merritt Island, but less common in the St. Johns River Basin. Trost (1968) reported that the construction of mosquito control impoundments, beginning in 1956, caused the salt marsh vegetation to change to fresh water species. He believed that these alterations had resulted in a marked population decline in the dusky seaside sparrow. He also stated that the field notes of D.J. Nicholson reported an estimated 70 percent decline in populations from 1942 to 1953, following widespread use of DDT for mosquito control on Merritt Island.

Service actions concerning the dusky seaside sparrow began with its listing as an endangered species, pursuant to the Endangered Species Preservation Act of

1966, on March 11, 1967 (32 FR 4001). This listing was maintained under the Endangered Species Act of 1973, as amended.

Merritt Island National Wildlife Refuge was established in 1963, and efforts were made to restore one of the mosquito impoundments to salt marsh (Sykes 1980). A notice of intent to determine critical habitat for the dusky seaside sparrow was published May 16, 1975 (40 FR 21499). Critical habitat was proposed for the bird on December 3, 1976 (41 FR 53074) and was designated on September 22, 1977 (42 FR 47840). Subsequently, much of the critical habitat in the St. Johns River marshes was acquired as the St. Johns National Wildlife Refuge. Despite these conservation efforts, dusky seaside sparrow populations continued to decline as salt marsh vegetation deteriorated.

Sharp (1970a) estimated that 2,000 pairs had originally occurred on Merritt Island, but if Nicholson's (in Trost 1968) estimate of a 70 percent reduction was accurate, only about 600 pairs were left by 1957. Sharp also quotes an estimate by Trost of 70 pairs in 1961–1963. Sharp's (1970a) 1968 spring survey found only 33–34 singing males remaining on Merritt Island. Subsequent surveys (Sykes 1980) found the following numbers of singing males on Merritt Island: 1969, 30; 1970, 18; 1971, 8; 1972, 11; 1973–1975, 2 each year; 1976, none; 1977, 2. No dusky seaside sparrows were found on Merritt Island after 1977.

The earliest available population estimate of the dusky seaside sparrow for the St. Johns River marshes is Sharp's (1970a) 1968 figure of 894 singing males. Sharp subsequently (1970b) found 143 singing dusky seaside sparrows on the proposed St. Johns National Wildlife Refuge lands in 1970. Baker (1978) reported a continuing decline in singing male surveys in the St. Johns River marshes: 1972, 110; 1973, 54; 1974, 37; 1975, 47; 1976, 11; 1977, 28; 1978, 24; 1979, 13. An extensive survey effort in 1980 (Delany et al. 1981) found only four singing males; no dusky seaside sparrows were found in 1981 (Delany et al. 1981). Following the death of the last captive dusky seaside sparrow in 1987, representatives of the Service, the Florida Game and Fresh Water Fish Commission, and the Florida Audubon Society agreed that it would be appropriate to carry out another survey for the dusky seaside sparrow prior to a proposal to delist the bird. Accordingly, participants from the above organizations carried out a survey in the spring of 1989 (Bentzien 1989). Suitable habitat for the bird appeared to have decreased greatly since the 1980–1981 surveys, and no dusky seaside sparrows were seen.

The decline of the birds in the St. Johns National Wildlife Refuge and in adjacent marshes was due to drainage, highway construction, burning of marshes to improve pasture, and wildfire. Wildfires were particularly severe in 1973 and in 1975–1976. Although fire is a natural feature in the St. Johns marshes, the lowered water tables and deliberate man-caused burns in the already fragmented habitat meant that the dusky seaside sparrow had very little available habitat following extensive burning.

Three male birds were taken into captivity in 1979, and three more in 1980, to begin a captive breeding program. The Service, the Florida Game and Fresh Water Fish Commission, the Florida State Museum (now the Florida Museum of Natural History), the Florida Audubon Society, the Santa Fe Community College Teaching Zoo, and the Walt Disney World Discovery Island were involved in the project at various points. When it became apparent that no female dusky seaside sparrows were likely to be found, some work was done crossing the dusky males with females of Scott's seaside sparrow (*Ammodramus maritimus peninsulae*); several birds were produced as the result of crosses and subsequent backcrosses. In 1982, however, the Service decided that because such hybrid offspring were not listed under the Endangered Species Act, such progeny should not be released on the refuge. However, the Service agreed to give custody of the birds to another party. The ultimate custodian of the male duskies and their offspring was Discovery World, assisted by the Florida Audubon Society. The advanced age of the captive dusky males resulted in difficulties with the cross breeding program, and the last dusky male died of natural causes on June 16, 1987. All offspring also died or were lost by accident by the summer of 1989.

Summary of Factors Affecting the Species

Regulations (50 CFR part 424) promulgated to implement the listing provisions of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) require that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to the dusky seaside sparrow (*Ammodramus maritimus nigrescens*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The dusky seaside sparrow was known to occur only in a small area near Titusville, Brevard County, Florida. The marsh habitat to which this bird was restricted has been destroyed or modified by flooding marshes for mosquito control; and by drainage, development, and fire. The dusky seaside sparrow is believed to be extirpated throughout this range.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* Not applicable.

E. *Other natural or manmade factors affecting its existence.* The last captive dusky seaside sparrow died on June 16, 1987.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) It becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that enough evidence exists to declare the dusky seaside sparrow extinct.

Effect of Rules

The proposed action would result in the removal of this species from the List of Endangered and Threatened Wildlife, and in the removal of its critical habitat designation. Federal agencies would no longer be required to consult with the Secretary to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the dusky seaside sparrow or adversely modify its critical habitat. Federal restrictions on taking of this species would no longer apply. The Service's Division of Wildlife Resources would reevaluate management options for the St. John National Wildlife Refuge.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions regarding any aspect of the proposal are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties. The Service particularly requests any evidence that the dusky seaside sparrow is not extinct.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authoriity of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted

pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983, (49 FR 49244).

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Author

The primary author of this proposed rule is Dr. Michael M. Bentzien (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by removing the entry for the "Sparrow, dusky seaside * * * *Ammodramus (=Ammospiza) maritimus nigrescens*" under BIRDS from the List of Endangered and Threatened Wildlife.

§ 17.95 [Amended]

3. It is further proposed to amend § 17.95(b) for animals by removing the critical habitat entry for the dusky seaside sparrow (*Ammospiza maritima nigrescens).*

Dated: March 23, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–9460 Filed 4–24–90; 8:45 am]

BILLING CODE 4310–55–M

federal register

Wednesday
April 25, 1990

Part IV

Environmental Protection Agency

Section 409 Tolerances; Response to Petition Requesting Revocation of Food Additive Regulations; Notice

ENVIRONMENTAL PROTECTION AGENCY

[PF-528, FRL 3668-1]

Section 409 Tolerances; Response to Petition Requesting Revocation of Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of EPA response to petition.

SUMMARY: This Notice sets forth EPA's response to the petition filed by the State of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO, and several individuals on May 23, 1989, to revoke certain food additive regulations. The petition requested that EPA revoke 11 food additive regulations for seven chemicals: benomyl (raisins, tomato products), chlordimeform (dried prunes), dichlorvos [DDVP] (dried figs; packaged or bagged nonperishable processed food), dicofol (dried tea), mancozeb (raisins; bran of barley, oats, rye, and wheat), phosmet (cottonseed oil) and trifluralin (spearmint and peppermint oil).

EPA denies the petitioners' requested revocation of the food additive regulations (section 409 tolerances) for trifluralin (spearmint and peppermint oil) based on EPA's assessment that the estimated risk from dietary exposure to residues of trifluralin on these commodities is negligible and therefore the 409 tolerance is allowable under the *de minimis* exception to the Delaney Clause. EPA denies the petitioners' request for the revocation of food additive regulations for benomyl (raisins, tomato products), DDVP (packaged or bagged nonperishable processed food), dicofol (dried tea), and mancozeb (raisins and bran of wheat), since additional data which will be submitted is needed to allow EPA to conduct a more refined risk assessment and to determine the need, if any, for regulatory action. EPA has already revoked the food additive regulation for chlordimeform on dried prunes on October 25, 1989. EPA will be proposing revocation of the food additive regulations for residues of DDVP on dried figs because there are no remaining registrations for DDVP on dried figs, and phosmet in cottonseed oil because the sole registrant of phosmet has requested voluntary cancellation of the use of phosmet on cotton. EPA will also be proposing to revoke the food additive regulations for mancozeb on bran of barley, oats, and rye based on EPA's proposed decision published on December 20, 1989, to cancel, among other uses of the ethylene bisdithiocarbamates (EBDCs), the use of mancozeb on all small grain crops except wheat.

FOR FURTHER INFORMATION CONTACT: Sepehr Haddad, Special Review Branch (H7508C), Special Review and Reregistration Division, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1006 CM # 2 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 557-0276.

SUPPLEMENTARY INFORMATION: This Notice sets forth EPA's response to a petition filed under section 409(h), 21 U.S.C. 348(h), of the Federal Food, Drug and Cosmetic Act (FFDCA) to revoke certain food additive regulations for seven pesticides, namely benomyl, chlordimeform, dichlorvos (DDVP), dicofol, mancozeb, phosmet, and trifluralin. The petition, filed by the State of California, the Natural Resources Defense Council (NRDC), Public Citizen, the AFL-CIO, and several individuals, was published in its entirety on Friday, June 30, 1989, in the **Federal Register** (Ref. 2).

EPA received nine public comments in response to the petition. These comments are available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, at the following location: Public Docket and Freedom of Information Section, Field Operations Division (H7506C),Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: 703-557-2805.

This Notice is organized into six units. Unit I summarizes the petition and EPA's response to the petitioners' request for revocation of the food additive regulations (section 409 tolerances) for the seven named chemicals. Unit II gives background information on EPA's legal authority to regulate pesticides, including the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and sections 402, 408 and 409 of the Federal Food, Drug and Cosmetic Act (FFDCA), and describes EPA's tolerance-setting process. This unit also includes a brief summary of relevant aspects of the National Academy of Sciences (NAS) report on the Delaney Clause and EPA's subsequent policy statement on the Delaney Paradox. Unit III gives EPA's response to the petitioners' request for revocation of the food additive regulations cited in the petition and summarizes information on each of the seven named chemicals. Unit IV summarizes the public comments received in response to the petition and gives EPA's response to the comments. Unit V describes the administrative and legal procedures available to the petitioners and parties adversely affected by EPA's response to the petition. Unit VI lists references mentioned in the Notice.

I. The Petition

On May 23, 1989, EPA received a petition submitted under section 409(h) of the FFDCA, 21 U.S.C. 348(h), to revoke certain food additive regulations for the pesticides benomyl, chlordimeform, DDVP, dicofol, mancozeb, phosmet, and trifluralin. The petition was filed by the Attorney General of California on behalf of the state, NRDC, Public Citizen, the AFL-CIO, and several individuals. It was published in its entirety on June 30, 1989, in the **Federal Register** (54 FR 27700). In summary, the petition seeks revocation of the food additive regulations based on a "zero risk" interpretation of section 409(c) of the FFDCA, known as the Delaney Clause. Under the FFDCA if a pesticide concentrates in processed food above the tolerance for raw agricultural commodities, or is applied directly in food processing, the residue must be at or below a section 409 food additive regulation or the food is considered adulterated. The Delaney Clause of the FFDCA, when read literally, appears to bar absolutely the issuance of a food additive regulation for a food additive (including pesticide residues) that has been found to induce cancer. The petitioners contend that after food additive regulations were initially adopted for these seven pesticides (in the absence of data showing that the pesticides cause cancer), EPA subsequently determined that these seven chemicals are indeed animal carcinogens. The petitioners further contend, therefore, that the food additive regulations should now be revoked.

EPA's policy statement on food additive regulations, published in the **Federal Register** in October 1988 (Ref. 3), stated EPA's belief that the Delaney Clause is subject to a *de minimis* exception. The *de minimis* exception to Delaney derives from case law holding that an administrative agency ordinarily has the inherent authority to avoid applying the terms of a statute literally when to do so would yield pointless results. EPA has determined that, based on the Agency's *de minimis* interpretation of Delaney, revocation of the food additive regulations for the use of trifluralin on peppermint and

spearmint oil is not warranted under the Delaney Clause. EPA has already revoked the food additive regulation for chlordimeform on dried prunes, and will revoke the section 409 tolerances for DDVP on dried figs and phosmet on cottonseed oil because there are no longer registrations (DDVP) or voluntary cancellation has been requested (phosmet) for the related uses. EPA will also be proposing the revocation of the section 409 tolerances for mancozeb uses on bran of barley, oats and rye in accordance with the proposed decision to cancel these uses. For the remaining tolerance revocations requested in the petition, EPA is denying the request for revocation because the information currently available does not indicate a risk that would justify EPA acting prior to obtaining additional data. EPA believes that information which is currently being generated and/or reviewed will likely show a *de minimis* risk for these remaining tolerances.

Unit III describes the pesticides cited in the petition and the reasons for EPA's response to the petition for each of the individual food additive regulations (409 tolerances) for these seven chemicals. First, Unit II summarizes EPA's legal authority for regulating pesticides and the basis for EPA's *de minimis* interpretation of the Delaney Clause.

II. Background

A. Legal Authority

1. *The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).* Under FIFRA, pesticides must be registered with EPA before they can be sold, distributed, or used in the U.S. All food use pesticides are also required to have tolerances established by the FFDCA to regulate residue levels in commerce. FIFRA requires that all pesticides which are sold or distributed in the United States be registered in accordance with the statutory standard for registration set forth in FIFRA. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." (FIFRA section 3(c)(5).) The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide." (FIFRA section 2(bb)). Under FIFRA section 6, EPA may cancel the registration of a use of a pesticide (or require modifications in the terms and conditions of the registration in lieu of cancellation) if EPA determines that the risks of use of the pesticide outweigh the benefits of the use. The decision to cancel a pesticide can result from a Special Review, an intensive review of the risks and benefits of a pesticide which meets or exceeds risk criteria set forth in 40 CFR 154.7. EPA also can take action to cancel (and, if necessary, to suspend during the cancellation proceedings) the registration of a pesticide without first going through the Special Review process.

2. *Sections 402, 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA)* . Under FFDCA section 402, a food which is a raw agricultural commodity is adulterated if it contains a pesticide chemical residue that is not authorized by either a FFDCA section 408 tolerance (maximum permissible level) or an exemption from the requirement of a tolerance. An adulterated commodity sold or distributed in interstate commerce is subject to seizure by the Food and Drug Administration (FDA), and the United States Department of Agriculture (USDA).

To establish a tolerance or exemption regulation under section 408, EPA must find that the regulation would "protect the public health." (FFDCA section 408(b)). In reaching this determination, EPA is directed to consider, among "other relevant factors," the necessity for the production of an adequate, wholesome, and economical food supply, and the other ways in which the consumer may be affected by the pesticide. Thus, in EPA's view, section 408 of the FFDCA expressly gives EPA the authority to balance risks against benefits in determining appropriate tolerance levels.

Under FFDCA section 402, a processed food is adulterated (and hence subject to seizure) if it contains any food additive (including any pesticide residue) not authorized by a section 409 food additive regulation. An important exception to this provision is that a processed food containing pesticide residues resulting from the carryover from treatment at the raw agricultural commodity stage is not regarded as adulterated if the residue level in such a food is no greater than that allowed by the section 408 tolerance established for the raw agricultural commodity.

The establishment of a food additive regulation under section 409 requires a finding under the "general safety clause" in section 409(c)(3) that the use of a pesticide "will be safe." The only direct guidance given by the Act as to the meaning of the term "safe" is that the term "has reference to the health of man or animal." (FFDCA section 201(u)). Factors to be considered in making this determination are (1) the probable consumption of the pesticide or its metabolites; (2) the cumulative effect of the pesticide in the diet of man or animals, taking into account any related substances in the diet; (3) appropriate uncertainty factors to relate the animal data to the human risk evaluation, and (4) "other relevant factors." (FFDCA section 409(c)(3).) (See Unit II.A.3 of this notice for a summary of EPA's tolerance-setting process.) EPA has interpreted the general safety clause in section 409 as allowing the balancing of risks and benefits.

The one clear exception to EPA's latitude to balance risks and benefits for food additives under section 409 of the FFDCA is section 409(c)(3), known as the "Delaney Clause". This provision states that a food additive shall not be deemed safe "if it is found to induce cancer when ingested by man or animal or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal." The Delaney Clause if read literally, is a zero-risk, risk-only standard that applies to the specific subset of pesticide residues which require food additive regulations under section 409: Pesticide residues which concentrate above the section 408 tolerance level during processing, and pesticide residues which result from use of a pesticide during or after processing. The Delaney Clause contains an express exception, referred to as the "DES proviso", that applies to section 409 tolerances on feed additives only. This proviso allows a carcinogenic ingredient of animal feed to be considered "safe" if such ingredient will not adversely affect the animal and if "no residue" of the substance will be found, by an EPA-approved method, in any edible food yielded or derived from the treated animal, i.e., in milk, eggs, meat or poultry.

Another exception to the Delaney Clause, the "constituents policy", relies on the fact that the prohibitory language of the Delaney Clause only pertains to food additives that have been shown to induce cancer in animals, rather than a constituent of the food additive. Under this approach, approval of the food additive is appropriate where a food additive as a whole does not induce cancer, even though an impurity (a "constituent") of the additive, tested by itself, is found to induce cancer. EPA has taken the position that the constituents policy applies to impurities resulting from the manufacture of a pesticide and not to intentionally added active or inert ingredients.

Under EPA's regulations, all necessary tolerances must be in place before a pesticide can be registered under FIFRA. EPA regulations (40 CFR 162.7(d)(2)(iii)(E) and 162.167(a)(4), redesignated as 40 CFR 152.112, 152.113, and 152.114, see 53 FR 15952 May 4, 1988) provide that a registration may not be granted if "the intended use of the pesticide results or may reasonably be expected to result, directly or indirectly, in residues of the pesticide becoming a component of food or feed," unless the necessary section 408 and 409 clearances have been issued. This provision assures that the use of a legally registered pesticide in accordance with label instructions will not result in adulterated food which is subject to seizure under the FFDCA by federal authorities. This regulatory approach in some circumstances makes the Delaney Clause controlling for a FIFRA regulatory determination. In dealing with a pesticide which concentrates in processed food, EPA would be unable to set a section 409 tolerance for a carcinogenic pesticide which poses a *de minimis* risk under a literal approach to the Delaney Clause. There is often no practical way to assure that the raw agricultural commodity at issue will not be processed. Thus, granting a section 408 tolerance would be inappropriate because the pesticide residue could concentrate in the processed food to a level higher than that approved for the raw agricultural commodity and result in adulterated food subject to seizure under the FFDCA. The end result would be that the registration would be denied because EPA could not grant the appropriate tolerances even though the pesticide met the risk/benefit standard of FIFRA. In many cases, the pesticide which was denied registration might pose less hazard than pesticides already on the market.

Following a literal approach to the Delaney Clause will have a similar effect on currently-registered products. It is generally EPA's policy to revoke section 408 tolerances and cancel FIFRA registrations for uses which have, or require, section 409 tolerances where the section 409 tolerance is inconsistent with the Delaney Clause. This policy is based on the consideration that revoking section 409 tolerances (or not granting such tolerances where needed) while at the same time leaving the section 408 tolerances and FIFRA registrations for the same uses in effect could cause considerable disruption and uncertainty in the marketplace. If the legality of use of a pesticide depended, in part, upon whether the treated crop is to be processed, uncertainty in the marketplace would increase because the ultimate destination of a crop is often not known prior to harvest. Thus, growers will be unsure which pesticide to use and processors will be unsure which raw agricultural commodities they should purchase. Inevitably, there would also be greater disruption in the marketplace as FDA sampling disclosed an increasing amount of food rendered adulterated because of violation of section 409. Further, the public might become unduly alarmed by such frequent FDA discoveries of food in violation of section 409.

In order to achieve consistency with the statutory directives of FIFRA and section 409 of FFDCA, and sections 408 and 409 of FFDCA, and to avoid adverse consequences to the food supply, EPA has decided to apply the *de minimis* approach when establishing section 409 food additive regulations for new as well as currently registered pesticides. This policy was set forth in detail in the Federal Register Notice of October 19, 1988 (53 FR 41104).

3. *EPA's tolerance-setting process.* In setting tolerances, EPA reviews residue chemistry data and toxicology data. The required data are essentially the same as those necessary to support the registration of a pesticide product used on food. To be acceptable, a tolerance level must be both high enough to cover residues likely to be left when the pesticide is used in accordance with its labeling, and low enough to protect public health.

EPA estimates the level of daily exposure which is not expected to result in appreciable risks over a human lifetime. With regard to effects other than cancer, this level is called the Reference Dose (formerly, the Acceptable Daily Intake (ADI)). The Reference Dose (RfD) typically is calculated by dividing the no observed adverse effect level (NOAEL) (the dosage level at which any adverse effects observed at higher dose levels are absent) from the most appropriate test data showing adverse effects by an appropriate uncertainty factor. This calculation is based on the concept that the risks of concern other than cancer and heritable gene mutations are threshold effects— i.e., at or below the RfD, there will be minimal possibility of an adverse effect occurring.

EPA also calculates the theoretical maximum residue contribution (TMRC), which represents the maximum amount of residue of a pesticide which a typical human could ingest in food that bears the maximum level of the residue allowable under all existing and proposed tolerances. The TMRC is calculated by multiplying the tolerance level for each food by the amount of that food in a typical American diet for the population group of interest (according to available statistics on food consumption patterns) and totalling the values of all foods which may bear residues of that pesticide.

The TMRC is then compared with the RfD, and the tolerance is established (assuming no other concerns such as cancer) if the TMRC is less than the RfD. A tolerance may be established in certain situations where the TMRC is higher than the RfD if residue data establish that the actual human exposure is not likely to exceed the RfD. For pesticides which may induce cancer, in addition to performing the RfD calculations discussed above for the effects of concern other than cancer, EPA may perform a quantitative risk assessment for the estimation of excess cancer risk. Cancer ordinarily is treated as a non-threshold effect. Thus, under this approach, there is an assumption that some excess risk might result even at very low levels of exposure.

EPA's current carcinogenicity testing scheme requires the use of several test doses (up to a level at or near the maximum tolerated dose) in at least two animal species, in order to enhance the likelihood of detection of a carcinogenic response in an economical, practically-sized animal test population (50 animals per sex per dose level). At the present time, there is no better practical way to assess the potential for carcinogenicity of a pesticide to which the entire U.S. population may be exposed. The animal data, and any available human epidemiology data, are assessed in accordance with EPA's "Cancer Assessment Guidelines", designed for use by all EPA programs in implementing a number of statutes designed to protect the public health. These guidelines provide a qualitative classification scheme regarding human carcinogenicity based on weight-of-evidence analysis of the available data. Chemicals are classified into five groups, as follows:

a. *Group A— Human carcinogen.* Sufficient evidence of cancer causality from human epidemiologic studies.

b. *Group B— Probable human carcinogen.* B_1—Limited evidence of carcinogenicity from human epidemiologic studies; B_2— inadequate evidence or no data from epidemiologic studies and sufficient evidence from animal studies.

c. *Group C—Possible human carcinogen.* Limited evidence of carcinogenicity in animals in the

absence of human data, including malignant tumor response in a single well-conducted experiment not meeting conditions for sufficient evidence, tumor responses of marginal statistical significance in studies having inadequate design or reporting, benign tumors where short-term mutagenicity tests are negative, and responses of marginal statistical significance in a tissue with high background rate.

d. *Group D—Not Classifiable as to Human Carcinogenicity.* Either inadequate evidence of carcinogenicity in humans or animals or absence of data.

e. *Group E—Evidence of Non-Carcinogenicity for Humans.* No evidence of carcinogenicity in at least two adequate animal tests in different species or in both adequate epidemiologic and animal studies.

A weight-of-evidence determination may involve consideration of, among other things, (1) the particular bioassay test system(s) used, (2) the evaluation of the histopathological and other results of the test(s), (3) the weight to be given to benign tumors, (4) mechanistic considerations, e.g., a situation where the chemical itself does not cause the tumor, but rather the effect the chemical causes at high doses of administration is the tumor-causing agent, and this effect would not occur at the lower doses of human exposure, and (5) the extent to which the overall quality and conduct of the tests accord with good laboratory practices.

Quantitative risk assessments are routinely performed for Group A and B carcinogens. In the case of pesticides classified as Group C, EPA decides on a case-by-case basis whether the qualitative evidence is sufficient to warrant a quantitative risk assessment. If EPA determines that the data do not support a chemical as being a carcinogen, (chemicals classified in Group D or Group E), EPA will not treat the chemical as being governed by the Delaney Clause.

To estimate the excess cancer risk posed by a pesticide, EPA typically uses the linearized multistage model to extrapolate from the results seen at the doses determined in the appropriate study to predict plausible upper bound case risks at the (lower) levels of estimated or actual human exposure. Using this model, a potency factor [Q_1^*, called the "Q-star"] is determined and reflects the upper 95 percent confidence limit of the slope of the linearized portion of the dose-response curve. This potency factor represents a plausible, statistically-derived upper limit to the carcinogenic potency of the potential carcinogen at doses relevant to human exposure, and when multiplied by human exposure, yields an upper bound estimate of the risk. Such an estimate does not represent the actual risk, which may, in fact, be considerably lower or even as low as zero. Generally, estimates of the upper limit on average lifetime dietary risk from consumption of residues of a carcinogenic pesticide are calculated by multiplying the Q_1^* by the average human dietary exposure, using data derived from the 1977–78 USDA study on food consumption patterns. Unless data are available on more realistic levels of residues in particular food commodities, a worst case risk will be calculated based on the assumption that all treated food bears residues at the tolerance level and that 100 percent of the crops are treated.

B. EPA's Policy on Delaney

1. *The National Academy of Sciences Report.* In 1985, EPA asked the National Academy of Sciences' National Research Council to study EPA's methods for setting tolerances for pesticide residues in food. Specifically, EPA asked for an examination of the current and likely future impacts of the Delaney Clause on the tolerance-setting process. The NAS report "Regulating Pesticides in Food: The Delaney Paradox" was published in 1987 (Ref. 1). The report examined the legal basis for setting tolerances, the administrative procedures involved in EPA's tolerance-setting process and the implications for public health and the agricultural economy of implementing different risk standards in setting tolerances.

One of the major issues discussed in the NAS report concerns inconsistencies in EPA's regulation of carcinogenic pesticides relating to the different treatment of processed versus nonprocessed foods, and old versus new pesticides. EPA's regulation of carcinogenic pesticides, is made inconsistent by the current statutory authority in that, for no sound scientific reason, the statute requires that raw agricultural commodities and certain processed foods are regulated on a different basis. This is because the Delaney Clause only applies to carcinogenic pesticides that are found to concentrate in processed food or feed, and to the direct use of carcinogenic pesticides in the processing of raw agricultural commodities. The Delaney Clause does not apply to carcinogenic chemicals when residues of the chemical in processed food or feed are no higher than in the raw commodity, nor does Delaney apply if the crop has no recognized processed form.

"Old" pesticides, especially those registered before EPA was established in 1970, were approved on the basis of more limited toxicological and residue chemistry data, particularly concerning metabolites, than are now required for new pesticides. Pesticides that have been registered more recently have been subjected to more rigorous testing standards and are more likely to have sufficient residue chemistry data available. With new chemicals, there are sufficient data to allow EPA to recognize the need for section 409 tolerances, which, if a pesticide proves to be even weakly carcinogenic, cannot be granted under a literal interpretation of the Delaney Clause. Meanwhile, older chemicals that may pose similar concerns have remained on the market in the absence of a complete toxicological and residue chemistry data base. In noting this inconsistency in regulating old and new chemicals, the NAS report concluded that there was no clear basis in the FFDCA or FIFRA for treating residues of new pesticides differently from those of old pesticides. NAS also concluded that a negligible risk standard for carcinogens in food, applied consistently to all pesticides and to all forms of food, could dramatically reduce total dietary exposure to carcinogenic pesticides with modest reductions in benefits.

2. *EPA's Response to the NAS report.* EPA's response to the NAS report and policy position on the Delaney Clause is presented in detail in the October 19, 1988, **Federal Register** Notice (53 FR 41104). In summary, EPA's position is that, ideally, EPA would apply a uniform set of criteria based on risk/benefit balancing to all FIFRA registration decisions and all FFDCA section 408 and 409 tolerance decisions. Implementation of this ideal policy, however, is subject to the constraints of the Delaney Clause. Nonetheless, the *de minimis* exception to the Delaney Clause allows EPA to implement a portion of its policy. Thus, for pesticides posing at most a *de minimis* risk, EPA has determined to allow registration/reregistration and to issue the appropriate 408 and 409 tolerances.

III. EPA's Response to the Petition

A. Background

EPA's policy statement on food additive regulations, published in the **Federal Register** of October 19, 1988, set forth the EPA's view that the Delaney Clause is subject to a *de minimis* exception. The *de minimis* exception to the Delaney Clause derives from case law holding that an administrative agency ordinarily has the inherent authority to avoid applying the terms of

a statute literally when to do so would yield pointless results. Two conditions must be satisfied to invoke the *de minimis* exception, namely that:

(1) The problem that would be addressed by regulation must be trivial in fact, such that no real benefit would result from regulation.

(2) The application of the approach must be consistent with the legislative intent and design.

It is unnecessary in this document to define fully those risks which would qualify as trivial because the trivial in fact requirement is certainly met for the two tolerances for which EPA has sufficient data to apply the *de minimis* exception (trifluralin on spearmint oil and peppermint oil). As discussed later in Unit III.B.7, the risks for these tolerances are estimated as 7×10^{-9} for spearmint oil and 4×10^{-9} for peppermint oil. These risks are trivial additions to the small risk posed by exposure to trifluralin from all food uses (5×10^{-7}). Moreover, quantitative risk estimates such as those for trifluralin are risks based on conservative assumptions regarding interpretation of the data. For example, risk estimates are generally based on the linear low dose-response extrapolation model using a 95 percent confidence interval. Such assumptions are designed to avoid underestimating the risk. Thus, the risks calculated represent plausible upper bounds on the average national risk of developing cancer. In fact, the actual risks may be considerably lower than the upper bound estimate or even zero.

More generally, the *de minimis* exception to the Delaney Clause is consistent with the legislative intent and design of the FFDCA, as well as with that of FIFRA, which has intertwining authority for regulating pesticides on food. In order to achieve the goal of food safety mandated by the FFDCA, the Delaney Clause must be read in a contemporary context which is consistent with modern technology and scientific understanding. A possible result of a literal application of the Delaney Clause may not be decreased risk, but an increased risk of non-carcinogenic adverse health consequences to consumers from substitute pesticides. Under the risk-benefit balancing of FIFRA, the lack of a low-risk carcinogen may actually result in the retention of another pesticide posing relatively greater reproductive, developmental, or other toxic effects. Such results would be inconsistent with the clearly expressed goals of the FFDCA to assure a safe food supply that will "protect the public health", taking into account the necessity for the production of an adequate, wholesome, and economical food supply. Moreover, without the *de minimis* exception, the EPA would be unable to administer sections 408 and 409 of the FFDCA and the provisions of FIFRA in a coherent, rational manner that satisfies the standards of both statutes. Rather, a literal reading of the Delaney Clause without the *de minimis* exception would likely result in the loss of many valuable pesticide chemicals which meet the standard of registration under FIFRA, with potentially far reaching consequences to food production and availability, while achieving little or no risk reduction.

Congressional intent regarding the meaning of the term "induces cancer" in the Delaney Clause must be interpreted in terms of modern technology and scientific understanding. The limited legislative history addressing the section 409 Delaney Clause shows that Congress did not directly address the issue of a *de minimis* exception. Moreover, there is no relevant guidance in the legislative history as to congressional intent on the application of the *de minimis* exception to the Delaney Clause because the circumstances necessitating a *de minimis* exception were not foreseeable based on the set of assumptions relied upon at the time.

The term "induces cancer" has a radically different meaning today than it did at the time the Delaney Clause was enacted in 1958. At that time, Congress and the scientific and regulatory community had very limited knowledge regarding the cancer process and methods by which to assess the potential of a chemical to induce cancer, the number of chemicals which induce cancer, and the power of analytical methodology. In 1958, the science of molecular biology was barely in its infancy with the very recent discovery of DNA; scientists had not yet begun to probe into the molecular process underlying the development of cancer and had very limited tools to measure chemical residues in food and other substances. The drafters of the Delaney Clause gave no consideration whatsoever, because the methodology had not yet been developed, to estimating the quantitative risk posed by different carcinogens. Lacking the ability to make distinctions among carcinogens based on magnitude of risk, Congress took the view that section 409 should prohibit all carcinogenic food additives. The scientific community now understands that many chemicals may have some carcinogenic potential, that carcinogens vary dramatically in terms of potency, and that low levels of certain carcinogens probably pose a *de minimis* risk. These concepts are reflected in the Agency's cancer guidelines, first developed in 1976, then updated in 1984, which group potentially cancer-causing substances into different categories based on the weight of the scientific evidence. In determining the weight of the evidence, EPA considers the number, type, and strength of all relevant studies, including both positive and negative studies. The cancer guidelines also support the use of quantitative risk assessments to estimate the risks posed by potential carcinogens. Such quantitative assessments serve the purpose of differentiating carcinogens on the basis of the potency of their cancer causing potential. The concept of a continuum of cancer causing potential from very strong to very weak has its basis in current scientific understanding that there are a multiplicity of mechanisms leading to cancer. Thus, the term "induces cancer" does not have the simplistic "all-or-nothing" meaning that it did in 1958, but can only be understood in terms of the complexity of the mechanistic considerations and the varied potency of potential cancer-causing substances.

Moreover, the concept of "residues" remaining in or on processed food under section 402(a)(2)(A) has a very different meaning today than it did in 1958 when the Delaney Clause was enacted. As analytical methodology continues to improve, residues can be detected at levels far lower than in 1958. Based on the available measurement techniques for chemical residues in 1958, there would have been no reasonable expectation that many pesticide substances would become components of food and hence fall under the definition of "food additive" in section 201(s) of the FFDCA. Thus, low levels of pesticide residues which fell below the limit of detection would not have been considered "food additives" requiring a section 409 tolerance. This would result from the inability to measure (below the limit of detection) residues directly added during processing or residues in a raw agricultural commodity which concentrated below the limit of detection, e.g., where the limit of detection was 1 ppm, the residues in the raw agricultural commodity could have been 0.1 ppm, while the residues which concentrated five-fold in processed foods would have been 0.5— both these levels would have been below the limit of detection and hence the concentration effect would not have been apparent. Inability to detect concentration of residues could also have resulted from problems of the

accuracy of analytical methods, i.e., where the variability in the method was great.

The Delaney Clause should not be read as freezing the scientific views of 1958. Rather, the recent developments in scientific knowledge and analytical methodologies must be brought to bear in interpreting the Delaney Clause. In the context of modern science, the term "induces cancer" in the section 409 Delaney Clause can only be understood rationally in terms of the degree of risk posed by a potentially carcinogenic substance. Further, the Delaney Clause must be administered in light of the practical reality of routinely finding some level of residue using current analytical methodologies. It is clearly reasonable in light of the changes in scientific understanding and the statutory mandate to protect the public health to bar from food only those residues which equate to a non-trivial risk of human cancer. Where the presence of pesticide residues in food only results in a *de minimis*, or legally trivial risk, the Delaney Clause should not apply.

Furthermore, a *de minimis* exception to the Delaney Clause best serves the larger purposes of the FFDCA to protect the nation's food supply. A number of potentially adverse health consequences may ensue from a literal application of the Delaney Clause. The elimination of potentially carcinogenic pesticides might result in an increase in the level of natural toxins, such as aflatoxin, which may be carcinogenic or cause other toxic effects. There is some evidence that the use of pesticides permits the cultivation of crop varieties which contain lower levels of natural toxins. Thus, the net result of a literal application of the Delaney Clause may be an increase in the level of toxins in the diet, with a possible rise in the number of deaths and serious illnesses from food poisoning and/or cancer.

In addition, the removal from the market of all potentially carcinogenic pesticides which pose a *de minimis* risk could result in an increase in the use of pesticides which pose significant acute and chronic risks (other than cancer), e.g., chronic risks of liver and kidney damage, acute poisoning, risks of birth defects. The loss of valuable pesticides which pose a *de minimis* risk may also result in significant increases in the cost of many foods which are essential to a healthy diet, or the possible loss of certain foods entirely. The cost of production of certain crops without the *de minimis* risk pesticides may be prohibitive; other crops may be impossible to grow without effective pesticides for the pest of concern. To the extent that potential replacement chemicals have not yet been developed, there may be voids in pest control for many significant crops for many years into the future. Increased pest resistance to certain pesticides may also result from the increased use of the remaining registered pesticides, with the result that greater quantities of pesticide will have to be used to control the pests of concern. Resistance problems would be likely to lead to adverse consequences on food production in this country because of impacts on the quality and quantity of the crops.

In sum, the result of denying tolerances for the *de minimis* risk pesticides may be that many crops can no longer be grown economically in this country or major regions of the country and/or that many of the crops which are grown will be prohibitively expensive for the consumer. As a consequence, a significant percentage of the population may not be able to afford food which is necessary to a healthy diet. The variety of food available to consumers at affordable prices may also decline to a significant degree without the pesticides essential to the production of certain food. Clearly these consequences would contravene the explicitly stated goal of section 408 of the FFDCA to regulate pesticide residues in food to assure that the public health will be protected, taking into account the necessity for the production of an adequate, wholesome, and economical food supply.

In addition, a *de minimis* exception helps achieve internal consistency among the specific FFDCA provisions addressing pesticides in food. It is clear from the statutory scheme expressed in the FFDCA that Congress did not intend that the risk from use of pesticides in food would be zero. For raw agricultural commodities and for resulting processed foods bearing pesticide residues no higher than the tolerance established for the raw agricultural commodity, there is no requirement that risk be at the zero level. Rather, Congress specified that in determining the level which would protect the public health for a section 408 tolerance, the Agency should take into account benefits considerations such as the availability of an adequate, wholesome, and economical food supply. The section 408 tolerance provision was enacted in 1954. Congress did not make any change to the section 408 directive in enacting the section 409 Delaney Clause in 1958. The Delaney Clause only applies to that class of processed food where pesticide residues concentrate during the processing of the raw agricultural commodity (or where the pesticide is directly added during processing). A large amount of the food which the public eats is not processed food, e.g., meat, poultry, fish, milk, eggs, fresh fruit and vegetables, or is processed food bearing pesticide residues within the section 408 tolerance limits. There is no rational basis for treating one category of food differently with regard to safety concerns— this clearly could not be the intent of Congress. In fact, there is evidence within the FFDCA that the *de minimis* exception is applicable to harmonize the treatment of food, namely the DES proviso in section 409(c)(3)(A), which explicitly recognizes a *de minimis* exception for food derived from animal sources. Unless administered with a *de minimis* exception, the FFDCA by its own terms would, without a rational basis, be applying a different standard to those types of food where residues concentrate during processing, as opposed to essentially all other food, both processed and unprocessed. The application of the *de minimis* exception would, on the other hand, allow for a more consistent and logical approach to the food safety provisions of the FFDCA.

By following the *de minimis* exception, EPA is also able to achieve a more consistent regulatory approach which helps to reconcile the apparently inconsistent mandates of FIFRA and FFDCA section 409 and takes into account all relevant statutory provisions. FIFRA directs EPA to register a pesticide if the benefits of use exceed the risks of use. If the section 409 Delaney Clause is interpreted literally, a pesticide which poses a *de minimis* risk would be barred from food even though the use of the pesticide would meet the statutory requirements of the FIFRA risk/benefit standard. Congress has amended FIFRA several times since the Delaney Clause was enacted in section 409 of the FFDCA. In doing so, Congress has reaffirmed FIFRA's basic risk/benefit approach to pesticide regulation. Thus, it is reasonable to assume that Congress intended that pesticide risks should be evaluated in a manner which balances those risks against the benefits of use. As a general matter, the appropriate method of statutory construction for an agency charged with administering a number of statutes is to construe those statutes in a manner that gives practical meaning to all the statutes. This is the outcome that EPA's *de minimis* policy is designed to achieve. The *de minimis* exception simply recognizes that the Delaney Clause should not be a bar to the use of a pesticide that satisfies the statutory

standard of FIFRA for a carcinogenic pesticide which presents a trivial risk.

In conclusion, the application of the *de minimis* exception to the section 409 Delaney Clause will allow the interpretation of the food safety statutes in a forward-looking manner that gives meaning to all statutory provisions, and comports with the regulatory goal of assuring a food supply which is safe, adequate, wholesome, and economical. Without the application of the *de minimis* exception to Delaney, there will likely be a loss of many valuable pesticides, with possible adverse consequences to the availability of food at affordable prices, without any decrease in actual cancer risk to consumers.

In addition, EPA contends that it has discretion to conduct its administrative activity in a manner which fulfills the overall objective of protecting public health. EPA is actively reevaluating tolerances in a systematic way in accordance with deadlines provided by Congress in the 1988 FIFRA amendments. It is EPA's policy to propose the revocation of tolerances related to uses that are believed to pose an unacceptable risk after their evaluation through EPA's reregistration or Special Review process. The Special Review and Reregistration processes provide an efficient means for resolving regulatory decisions. If piece-meal decisions are made, EPA will be required to continually reevaluate each of these decisions as new data is submitted. The end result will be less timely protection of the public health because each separate decision will require not only a re-analysis of earlier data, but also will have to proceed independently through the administrative process.

Through the reregistration process, EPA reviews each chemical's data base to determine whether data are adequate to support the continued registration of the pesticide. In instances where EPA determines that additional data are needed, registrants are required to develop these data; the failure to generate required data subjects their pesticide registrations to possible suspension under FIFRA section 3(c)(2)(B). When the available information on a chemical indicates a potentially unacceptable risk from dietary or non-dietary exposure, the pesticide is placed in Special Review for an intensive analysis of the pesticide's risks and benefits. If the result of the Special Review is to cancel some or all uses, EPA would then revoke the accompanying tolerances. EPA believes these are appropriate means for resolving questions of safety for "old" pesticides that were registered before the current more stringent standards for testing were in place.

The petition states that:

> Since the EPA has already determined that these pesticides are animal carcinogens, 53 FR 41104, October 19, 1988, there are no disputed facts that are material to this petition. Therefore, it is unnecessary for the EPA to hold a hearing or any other prolonged proceeding prior to acting on this petition. Instead the only issue for EPA to decide is whether the Delaney clause requires that the current section 409 regulations that permit these pesticides to be used in processed foods be revoked.

With regard to the retrospective applicability of the Delaney Clause, the petition mischaracterizes EPA's position. According to the petition, EPA's position in the Delaney Paradox notice is that the Delaney Clause does not apply retrospectively. EPA has not made such a statement. While EPA discussed such an interpretation as an option in the Delaney Paradox notice, it did not adopt such an interpretation as EPA policy. Since issuance of the October 1988 notice, EPA has given additional consideration to the retrospective application issue and has decided not to adopt the option of arguing that the Delaney Clause does not apply to currently-registered pesticides. Therefore, EPA intends to apply the Delaney Clause in all section 409 tolerance decisions where the Delaney Clause is implicated (i.e., the pesticide is found to induce cancer when ingested by man or animal), subject to all appropriate exceptions, including the *de minimis* approach.

EPA agrees that the pesticides named in the petition are animal carcinogens and that section 409 tolerances are required for those uses that have not been cancelled. None of the pesticides cited in the petition for which adequate residue data have been received falls into the category of chemicals with estimated risks greater than *de minimis*. As described, however, EPA believes that there is a *de minimis* exception to the Delaney Clause and that EPA is not required to revoke food additive regulations that are related to at most a *de minimis* estimated excess cancer risk.

Unit III.B. of this notice describes the estimated dietary risk from exposure to each of the seven chemicals listed in the petition, the available toxicological and residue chemistry data on which this assessment is based, and EPA's rationale for denying or granting the petitioners' request to revoke the section 409 tolerances for these pesticides. Unit III.B of this notice also provides a brief summary of EPA's response to the petition for each of the seven named pesticides.

B. Individual Chemicals Named in the Petition

1. *Benomyl*—a. *Summary*. The petition requests the revocation of the food additive regulations for benomyl on raisins (50 ppm) and tomato products (50 ppm) (40 CFR 185.350).

In 1982, EPA received studies which showed benomyl and its major metabolite, methyl 2-benzimidazole carbamate (MBC), to be carcinogenic in the mouse and rat.

The Registration Standard for benomyl was issued in June 1987. Although a quantified risk assessment was performed for the Registration Standard, EPA later agreed with the decision by the Scientific Advisory Panel (SAP) that quantification of risk was inappropriate and concluded that the risk numbers should be used for comparative purposes only. Using tolerances as estimates of dietary exposure and assuming that 100 percent of each crop for which benomyl is registered is actually treated with benomyl, the cumulative risk from registered food uses of this fungicide was estimated to be 2×10^{-4}. When a more realistic estimate of the percent of each crop that is treated with benomyl was included in the risk estimate, the estimate of cumulative risk was 4×10^{-5}. A revised estimate of cumulative risk will be calculated once residue data required by the Registration Standard are reviewed.

The toxicological data base for benomyl now includes six carcinogenicity studies for benomyl and its major metabolite MBC: three positive mouse studies, one negative mouse study and two negative rat studies. Both benomyl and MBC are associated with liver tumors in SPF Swiss and Swiss-derived (CD–1) mice. However, both these strains of mice tend to have a high background incidence of liver tumors. In the negative mouse study, MBC was not associated with liver tumors in the NMRKf strain of mouse, which has a low background incidence of liver tumors. Only one type of liver tumor (hepatocellular carcinoma) occurred in both sexes in the CD–1 mouse. Studies show that neither benomyl nor MBC is carcinogenic in ChR-CD rats; in addition, neither is genotoxic.

Recently, EPA's Office of Pesticide Programs (OPP) changed the carcinogenic classification of benomyl: from a Group C (unquantified) to a Group C (quantified) carcinogen. In May 1989, EPA revised the cancer potency

estimate (or Q_1^*) for this chemical, from 3.9×10^{-3} $(mg/kg/day)^{-1}$ to 4.2×10^{-3} $(mg/kg/day)^{-1}$.

The new Q_1^* is not expected to affect the estimated cumulative risk substantially; however, EPA expects that the upper-bound estimate of the cumulative dietary risk will be lowered by one or more orders of magnitude when calculations are based on the field trial residue data required by the Registration Standard and monitoring data rather than on tolerance levels.

Current estimates of average lifetime risks from dietary exposure to benomyl from uses associated with existing section 409 tolerances are: raisins: 9×10^{-7} and tomato products: 6×10^{-6}. These risk estimates, which are derived using a Q_1^* of 4.2×10^{-3} $(mg/kg/day)^{-1}$, assume residues at tolerance levels, and are adjusted for percent of crop treated. EPA anticipates that the estimates of risks associated with these section 409 tolerances will be reduced further, based on actual residue data.

b. *Tolerance action.* EPA denies the petitioners' request to revoke the section 409 food additive regulations for benomyl. EPA is currently waiting for a review and evaluation of residue data required in the Registration Standard before making a decision regarding what, if any, regulatory action is necessary. EPA anticipates that the estimate of the cumulative and individual risk from all uses of benomyl is likely to be reduced once outstanding residue data are evaluated. Given that the risk estimate may decline substantially, EPA believes that it would be premature to revoke tolerances for benomyl at this time.

2. *Chlordimeform*—a. *Summary.* The petition requests the revocation of the food additive regulation for chlordimeform for dried prunes (15 ppm) (40 CFR 185.750).

Currently there are no U.S. registered uses of chlordimeform. Although previously registered for use on apples, plums and other fruit, these uses were voluntarily removed from product labels in the 1970s. On February 19, 1989, the last remaining use, on cotton, was cancelled.

EPA classified chlordimeform as a Group B_2 (probable human) carcinogen. This classification was based on the finding that chlordimeform and two of its metabolites, *N*-formyl-4-chlorotoluidine and 4-chloro-o-toluidine (4–COT), cause carcinogenic effects (malignant tumors of the blood vessels) in the mouse. Carcinogenicity studies in the rat with chlordimeform and its major metabolites are negative or equivocal. The cancer potency factor (Q_1^*) for chlordimeform was derived from the geometric mean of the individual Q_1^*s for chlordimeform and its two metabolites. There is also some epidemiological evidence of the carcinogenicity of the metabolite 4–COT in humans.

b. *Tolerance action.* EPA has already revoked the food additive regulation for dried prunes. The revocation was proposed in September 1988 and promulgated in a **Federal Register** Notice issued on October 25, 1989 (54 FR 43424). EPA initiated this tolerance revocation after the use of chlordimeform on prunes was cancelled. Therefore the request in the tolerance petition has already been granted.

3. *DDVP*—a. *Summary.* The petition requests the revocation of the food additive regulations for DDVP for dried figs (0.5 ppm) and packaged or bagged nonperishable processed food (0.5 ppm) (40 CFR 185.1900).

DDVP is an organophosphate insecticide registered for use in areas where flies, mosquitoes, gnats, cockroaches, and other insect pests may be a problem. During preparation of the Registration Standard for DDVP, issued in September 1987, EPA reviewed all the available toxicological data for this chemical including a (1986) National Cancer Institute/National Toxicology Program (NTP) carcinogenicity study for DDVP. The animal studies conducted by NTP show that exposure to dichlorvos is associated with a statistically significant increase in pancreatic acinar adenomas and mononuclear cell leukemia in the male (Fischer 344) rat and a statistically significant, dose-related increase in squamous cell forestomach papillomas in the female (B6C3F1) mouse.

As a result of this review, the Q_1^* was calculated to be 2.9×10^{-1} $(mg/kg/day)^{-1}$, and EPA classified DDVP as a Group B_2 (probable human) carcinogen. EPA's classification was then referred to the SAP for review. The panel concluded that the appropriate classification for DDVP was as a Group C carcinogen.

As part of EPA's Special Review process, begun in February 1988, a further review of the toxicological data for DDVP was completed in July 1989 upon receipt and review of new oncogenicity studies with DDVP administered by inhalation and drinking water, and reexamination of previously submitted studies. The OPP Peer Review of DDVP revised the classification of this chemical from a Group B_2 (probable human) carcinogen to an (unquantified) Group C (possible human) carcinogen for the inhalation route of exposure, and a (quantified) Group C (possible human) carcinogen for the oral and dermal route. This revised classification of DDVP was again referred to SAP for evaluation in September 1989, and the panel agreed that EPA's revised classification of this chemical as a Group C carcinogen was appropriate.

At the time the Registration Standard was issued, the cumulative dietary risk from exposure to DDVP was estimated at 1×10^{-4}. This risk estimate was based on field trial data adjusted for percent of crop treated and on cooking data for small grains. The contribution to the diet from meat and milk accounts for more than 50 percent of the estimated dietary risk. In the Special Review process, EPA will determine whether regulatory action is warranted for the DDVP food uses.

The average individual risk from DDVP on dried figs had been estimated as 8×10^{-8} based on the tolerance and adjustment for percent of crop treated. However, because there are no current registrations for the use of DDVP on figs, EPA will propose revocation of this tolerance. The section 409 tolerance for DDVP for packaged or bagged nonperishable processed foods includes the use of DDVP on packaged grains, nuts, chocolate, coffee, sugar and cooking oils. The risk from uses associated with the section 409 tolerance for DDVP for packaged or bagged nonperishable processed foods is estimated to be 5×10^{-5}. This risk estimate is based on tolerance levels and a Food Processor Survey estimate (1984 to 1986) that approximately 7.5 percent of food processors use DDVP in food areas. This figure is likely to overestimate risk because of the difficulty in estimating what is meant by packaged or bagged nonperishable processed food in OPP's Dietary Risk Evaluation System (DRES, formerly "TAS") food consumption data base. Residue data required by the Registration Standard to evaluate risks from the use of DDVP on bulk-stored, packaged or bagged nonperishable processed food will be used to reevaluate the exposure estimate for the 409 tolerance for DDVP on packaged or bagged nonperishable processed food.

b. *Tolerance action.* EPA denies the petitioners' request for revocation of the food additive regulations for DDVP, except for figs, for which a tolerance revocation action will be proposed for the section 408 and 409 tolerances due to the voluntary cancellation of this use. EPA believes that the immediate revocation of the food additive tolerances for DDVP for packaged or bagged nonperishable processed foods, requested by the petition, would be premature. DDVP is in EPA's Special

Review process, and a revised risk assessment will be completed using the new Q_1^* [2.0×10^{-1} (mg/kg/day)$^{-1}$] and residue data required by the Registration Standard once these data are submitted. Since tolerance residue levels generally overestimate likely dietary exposure, EPA expects that the new residue data are likely to result in a *de minimis* risk estimate for DDVP on packaged or bagged nonperishable processed foods. When this assessment is completed, a decision will be made regarding the need for further regulatory action. If the estimated risk from this section 409 tolerance is found to be greater than *de minimis*, EPA will take regulatory action to revoke the tolerance.

4. *Dicofol*—a. *Summary*. The petition requests revocation of the food additive regulation for dicofol on dried tea (45 ppm) (40 CFR 185.410).

In 1986, EPA's Carcinogen Assessment Group (CAG) classified dicofol as ranging from a Group C to a Group B_2 carcinogen. CAG estimated the potency (Q_1^*) of dicofol to be 0.34 (mg/kg/day)$^{-1}$. Using the CAG Q_1^*, the individual risk from dried tea using the tolerance and 100 percent crop treated is currently estimated at 5×10^{-4}. This is a worst-case estimate and will be revised using average residue data from field trials as well as processing data on tea (a brewing study). Additional residue data for dicofol were required in a Data Call-In issued to the registrant, Rohm and Haas, in February 1988. However, since there are no U.S. registrations for the use of dicofol on tea, EPA has no authority under FIFRA section 3(c)(2)(B) to require residue and processing data for this use. Nonetheless, in order to support the current section 409 tolerance (45ppm) on imported dried tea, EPA has requested field trial and processing data from the U.S. manufacturer of dicofol. EPA will propose the revocation of the section 409 tolerance for dicofol on dried tea if the manufacturers, or other interested parties, do not provide these data.

b. *Tolerance action*. EPA denies the petitioners' request to revoke the food additive regulation for dicofol on dried tea. The current risk estimate for dried tea, 5×10^{-4}, is based on tolerance level residue and 100 percent of the crop treated. This risk estimate is likely to overestimate actual dietary exposure to dicofol and will be revised using field trial residue and processing data requested from the U.S. manufacturers of dicofol. EPA will propose to revoke the section 409 tolerance for dried tea if the manufacturers of dicofol, or other interested parties, do not submit the necessary data.

5. *Mancozeb*—a. *Summary*. The petition seeks the revocation of the food additive regulations for mancozeb for raisins (28 ppm) and for bran of barley, oats, rye and wheat (20 ppm) (40 CFR 185.6300).

EPA initiated a Special Review of all the EBDCs, including mancozeb, in 1987. Mancozeb is classified as a B_2 (probable human) carcinogen based on data available on ethylene thiourea (ETU), a metabolite, degradate and contaminant of all the EBDC chemicals.

Based on a recent NTP study of ETU, EPA has classified ETU, the common metabolite of all the EBDCs, as a B_2 (probable human) carcinogen. The new preliminary Q_1^* for ETU was calculated to be 0.6 (mg/kg/day)$^{-1}$. A preliminary review of a chronic rat study on mancozeb indicates a dose-related increase in thyroid follicular carcinomas in males and adenomas in females. When the review of this study is complete, EPA will re-classify the carcinogenic potential of mancozeb and reassess the dietary risk posed by this chemical.

In 1989 the total potential carcinogenic dietary risk from exposure to ETU from use of mancozeb on food crops was estimated to be 1×10^{-4}. This risk estimate used exposure estimates based on consumption of average field residues for ETU (obtained from data submitted in support of established tolerances) reduced by the percent of crop treated with mancozeb. EPA also considered exposure to ETU from the conversion of mancozeb to ETU in the human body after eating foods containing mancozeb residues. Estimated risks from dietary exposure to the individual uses of mancozeb which have section 409 tolerances and were included in the petition are: raisins (1×10^{-6}) and bran of wheat (9×10^{-11}).

On December 20, 1989, EPA published a Proposed Decision and Draft Notice of Intent to Cancel (PD 2/3) based on its assessment of the risks and benefits related to all the registered uses of the EBDCs. The document proposes to cancel certain food use registrations for EBDCs (mancozeb, maneb, metiram, zineb) including registrations for use on small grains, except wheat. This proposal would also retain the current registration of mancozeb on grapes.

b. *Tolerance action*. EPA grants the petitioners' request to revoke the section 409 tolerances on mancozeb for bran of barley, oats, and rye for the above stated reasons. EPA will shortly propose revocation of tolerances for all uses which are being proposed for cancellation, including the small grains, except wheat. This revocation action will not be promulgated until after the affected registrations are voluntarily cancelled, or cancellation becomes effective pursuant to EPA's Final Determination, whichever is earlier. The schedule of tolerance revocation will allow for clearance of legally treated commodities from the channels of trade. EPA denies the petitioners' request to revoke the section 409 tolerances for mancozeb on bran of wheat and on raisins on the basis that EPA does not have adequate data to reach a final regulatory decision on these uses and will be reviewing these uses as part of the final determination and conclusion of the Special Review of all the EBDCs. EPA expects that the estimated risk of these mancozeb uses will be *de minimis* as the current estimates indicate a risk of 9×10^{-11} for bran of wheat and 1×10^{-8} for raisins. A final decision on these uses is, however, premature until the receipt of all necessary data and the completion of the Special Review.

6. *Phosmet*—a. *Summary*. The petition proposed the revocation of the food additive regulation for phosmet for cottonseed oil (0.2 ppm) (40 CFR 185.3950).

In June 1986, EPA's Office of Pesticide Program's (OPP) Peer Review Committee classified phosmet as a Group C (possible human) carcinogen (unquantified). EPA's classification is based on a significantly increased incidence of liver tumors (adenomas and carcinomas) in B6C3F1 male mice, and a lower time-to-tumor incidence than in control animals. Exposure to phosmet is associated with a trend towards increased adenomas and carcinomas in female mice but the difference between dosed and control mice is not statistically significant. A negative rat study was considered (1967) in evaluating the weight of the evidence. Another 2-year rat study required by the Registration Standard will be completed in March 1990 and the final report will be submitted by January 31, 1991. Once the rat study has been received and reviewed, EPA will reassess the carcinogenic classification of this chemical and conduct a quantitative risk assessment for all remaining uses of phosmet, if appropriate.

b. *Tolerance action*. EPA grants the petitioners' request. EPA will propose the revocation of the 409 tolerance for phosmet in cottonseed oil (and the related section 408 tolerance on cotton) based on the fact that the sole registrant for the use of phosmet on cotton has requested the voluntary cancellation of this use.

7. *Trifluralin*—a. *Summary.* The petition seeks the revocation of the food additive regulations for trifluralin for spearmint and peppermint oil (2 ppm) (40 CFR 185.5900).

In August 1979, EPA raised concerns about trifluralin regarding its carcinogenic potential. At that time there was concern because trifluralin products contained potentially significant levels of carcinogenic *N*-nitrosamine contaminants. In June 1980, EPA published a proposed policy concerning regulation of pesticides contaminated with *N*-nitroso compounds (45 FR 42854) which indicated that contamination with *N*-nitroso compounds at levels of one ppm or greater would be cause for concern. The total nitrosamine contaminant level for trifluralin products has since been reduced to levels no greater than 0.5 ppm.

In April 1986, EPA's OPP Peer Review Committee classified trifluralin per se as a Group C (quantified) carcinogen. OPP noted that the classification of trifluralin as a Group C (quantified) rather than a Group B_2 carcinogen was "a borderline judgment decision." Evidence of carcinogenicity included the induction of urinary tract tumors (renal pelvis carcinomas and urinary bladder papillomas) and thyroid tumors (adenomas/carcinomas combined) in one animal species (F344 rats) in one study. Trifluralin did not produce statistically significant increases in tumors in four other rodent chronic bioassays of trifluralin and there is no evidence of mutagenicity. EPA's review also took into consideration the fact that trifluralin is structurally related to ethalfluralin, which produces mammary gland fibroadenomas in female F344 rats. In addition both trifluralin and ethalfluralin produce a common urinary metabolite in rats that produces non-neoplastic renal pathology, including bladder calculi. The cancer potency factor (Q_1^*) for trifluralin is calculated to be 7.7×10^{-3} (mg/kg/day)$^{-1}$.

In July 1987, two additional carcinogenicity studies for trifluralin were reviewed. There was no evidence of carcinogenicity in a 28-month study of the effects of trifluralin on Wistar rats and a study in the (NMRI) mouse was also negative. The cumulative lifetime dietary risk associated with exposure to trifluralin was estimated in 1982 to be 5×10^{-7}. This estimate represents the combined risk of trifluralin and its *N*-nitrosamine contaminants. Dietary exposure was calculated based on the percent of crop treated, residue data, food factors and estimated trifluralin-to-nitrosamine ratios.

Dietary exposure to trifluralin could also occur from consumption of drinking water obtained from ground water that has been contaminated with trifluralin. The Drinking Water Lifetime Health Advisory (HA) for this chemical is 2 parts per billion (ppb). The Drinking Water Lifetime HA represents that portion of an individual's total exposure that is attributed to drinking water (20 percent) and is considered protective of noncarcinogenic adverse health effects over a lifetime exposure (70-year lifespan) for a 70 kilogram adult consuming 2 liters of water per day. The estimate of excess risk from trifluralin in drinking water at the Health Advisory level is in the 10^{-5} to 10^{-6} range for the population potentially exposed (the local population consuming drinking water obtained from ground water contaminated with trifluralin). However, trifluralin is in a class of immobile chemicals which are unlikely to leach to groundwater. Although the available data show that some detections of trifluralin have occurred, contamination is not regarded as a widespread or serious concern. The estimated individual risks from commodities with section 409 tolerances using tolerance levels not adjusted for percent of crop treated are: spearmint oil (7×10^{-9}) and peppermint oil (4×10^{-9}).

In April 1987 a Registration Standard for trifluralin was issued requiring additional residue chemistry data. These data include storage stability data that are required for risk assessment and evaluation of established and pending tolerances. It is anticipated that these new data will more accurately reflect actual dietary exposure to trifluralin. It is also expected that additional data on dietary exposure to trifluralin in spearmint and peppermint oils (due May 1992) will show that likely residue levels are even lower than currently estimated. EPA will reevaluate the risks from all established and pending tolerances for trifluralin once additional residue data are received.

b. *Tolerance action.* EPA denies the petitioners' request to revoke the section 409 tolerances for trifluralin for peppermint and spearmint oils on the basis that the estimated risks for spearmint oil (7×10^{-9}) and peppermint oil (4×10^{-9}) are trivial additions to the small cumulative risk estimate for all uses of trifluralin (5×10^{-7}). EPA expects that the new residue data will demonstrate even lower residues and consequently lower risks. Although all data on trifluralin have not been received, EPA believes that there is sufficient data to demonstrate that these tolerances qualify for the *de minimis* exception.

C. Summary Table of EPA's Response to the Request for Revocation of Section 409 Tolerances

The following table is a summary of EPA's response to the request for revocation of section 409 tolerances for the chemicals named in the petition.

Pesticide	Response	Rationale
1. Benomyl		
a. Raisins	Deny	Residue data gap
b. Tomato products	-Do-	-Do-
2. Chlordimeform		
Dried prunes	Grant	EPA revoked tolerance, no remaining registrations for this use
3. DDVP		
a. Dried figs	-do-	EPA will revoke, no remaining registrations for this use
b. Packaged etc., nonperishables	Deny	Residue data gap
4. Dicofol		
Dried tea	-do-	-do-
5. Mancozeb		
a. Bran of barley, oats and rye	Grant	EPA will propose revocation based on (PD2/3) proposed cancellation of use
b. Bran of wheat	Deny	Residue data gap, Special Review not concluded
c. Raisins	-do-	-do-
6. Phosmet	Grant	EPA will revoke: registrant has requested voluntary cancellation
7. Trifluralin	Deny	*De minimis*

IV. Public comments

EPA received nine comments in response to the Notice of Receipt of a Petition Proposing Revocation of Food Additive Tolerances (54 FR 27700, June 30, 1989). These comments were all in opposition to the petition and supported the *de minimis* approach advocated by the Agency. The substantive issues raised in the comments and EPA's response are summarized in the remainder of this unit (see the SUPPLEMENTARY INFORMATION section at the beginning of this notice for information regarding public access to these comments).

1. *National Food Processors Association.* Comments were submitted on behalf of the National Food

Processors Association (NFPA), a national trade association that represents processed/prepared food companies and suppliers to the industry. NFPA contends that the petition is factually inaccurate, procedurally defective, and substantively flawed. First, NFPA claims that EPA has not determined that any of the seven pesticides listed by the petition "induce cancer" within the meaning of the Delaney Clause. According to NFPA, an "induce cancer" finding under section 409 must be supported by sufficient evidence of animal or human carcinogenicity; in the view of the commentor, limited evidence of animal carcinogenicity is not necessarily sufficient to support such a finding. Moreover, NFPA contends that the characterization of pesticides as probable or possible carcinogens does not constitute a finding under the Delaney Clause. To determine whether any of the seven chemicals listed in the petition "induce cancer" within the meaning of the Delaney Clause would, in the view of NFPA, involve complex and disputed factual issues that cannot be appropriately resolved in the context of the petition.

NFPA also contends that the petitioners have cited no evidence showing that the pesticides actually concentrate in the processed food items at levels above the raw product tolerance, and hence fails to acknowledge the importance of section 402(a)(2)(C) of the FFDCA. That section provides that a processed food is not adulterated if it contains pesticide residues at or below the tolerance prescribed for the raw agricultural commodity if the residue has been removed to the extent possible in good manufacturing practice. In support of this contention, NFPA claims that in congressional testimony and public statements following the 1987 publication of the National Academy of Sciences' (NAS) report on the "Delaney Paradox" (Ref. 1), NFPA demonstrated that the vast majority of pesticide residues in processed food remain below the section 408 tolerance levels for the raw agricultural commodities from which such foods are derived. NFPA contends that, in the absence of evidence that there is actually concentration above section 408 tolerance levels, there is no persuasive reason for EPA to divert its resources to review these food additive regulations outside of EPA's ongoing pesticide reregistration process.

In addition, NFPA notes that the petition ignores EPA's *de minimis* interpretation of the Delaney Clause, and that the petition incorrectly assumes that EPA is required to revoke a food additive regulation for a pesticide identified as an animal carcinogen without regard for the actual dietary risk posed by that pesticide. The commentor argues in support of EPA's *de minimis* policy, which it endorses as "good law, sound science and prudent public policy." The reasons given by NFPA in support of the *de minimis* policy include:

(1) The negligible risk standard for carcinogenic pesticide residues in processed food is consistent with the legal standard for registration of pesticides under FIFRA and with the standard for tolerances on raw agricultural commodities under section 408 of the FFDCA.

(2) The *de minimis* policy will permit EPA to concentrate its limited resources on regulating pesticide residues that pose the highest carcinogenic risk.

(3) A zero-risk standard for pesticides is unrealistic and unduly costly and a negligible risk standard based on the multiple conservative assumptions employed by EPA assures protection of the public health.

Finally, NFPA argues that granting the petition would disrupt the rational and orderly review of pesticide registration mandated by the 1988 FIFRA amendments, and frustrate the purpose of those amendments. NFPA also opposes summary revocation of the section 409 tolerances listed in the petition without an evidentiary hearing, and points out that section 409 of the FFDCA requires a formal evidentiary hearing at the request of an adversely affected party. According to NFPA, there are numerous factual issues raised by the petition, including whether the pesticides at issue "induce cancer" within the meaning of the Delaney Clause, and whether such pesticides pose a *de minimis* risk. NFPA points out that under EPA's proposed procedural regulations (53 FR 41141), the petitioners would bear the burden of proving the basis for the revocation action.

EPA Response. NFPA raises many of the issues discussed in detail by EPA in its October 19, 1988 **Federal Register** Notice describing EPA's *de minimis* approach to the Delaney Clause. EPA's position, as stated in the Notice, is that the difference in the standards of FIFRA and the FFDCA presents EPA with a policy dilemma in regulating certain pesticide residues which have been found to induce cancer in test animals.

NFPA also points out that granting the petition to revoke would disrupt the rational and orderly review of pesticide registrations mandated by the 1988 FIFRA amendments. EPA agrees with NFPA's position for some of the pesticides cited in the petition (see Unit III of this notice for individual chemical summaries) and is deferring tolerance action until the required data submission and review have been completed.

EPA has taken a different position than that espoused by NFPA on the carcinogenicity of the chemicals named in the petition. As discussed above, the available data provide at least limited evidence that the seven pesticides included in the petition induce cancer in test animals. This conclusion was reached by a weight-of-the-evidence approach in evaluating the potential carcinogenicity of a chemical which takes into account all available data for the chemical (see Unit II of this notice).

If objections and requests for hearing are submitted, the Administrator will determine whether there are factual issues appropriate for resolution at an evidentiary hearing. The issues of whether the chemicals listed by the petition induce cancer and whether the risks attributable to the uses identified in the petition are *de minimis* could be potential factual matters for resolution at an administrative hearing.

EPA agrees with NFPA that in many instances the processing of food does not result in concentration of the pesticide residues above the section 408 tolerance level.

2. *The National Agricultural Chemicals Association.* The National Agricultural Chemicals Association (NACA), an organization which represents the major manufacturers of pesticide chemicals, also filed comments urging EPA to deny the petition. NACA commented that it strongly supports EPA's negligible risk policy because the policy, which is based on a conservative risk approach, is protective of the public health, reconciles the otherwise conflicting mandates of FIFRA and the FFDCA, and is well-grounded in the long-established *de minimis* principle of statutory construction. NACA contends that the petition "completely overlooks the complicated legal and administrative context affecting any food regulatory action, including the ongoing reregistration process, and ignores the EPA Administrator's dual responsibilities under FIFRA and the FFDC Act." NACA points out that revocation of a food additive regulation for residues resulting from the lawful use of a registered pesticide imposes a de facto restriction on a lawfully issued license. Such an action, in NACA's view, is unlawful under section 558 of the Administrative Procedure Act unless taken pursuant to proceedings

authorized by law in which the licensee has been given an opportunity to demonstrate or achieve compliance with all lawful requirements. NACA claims that such proceedings must be in accordance with the process spelled out by section 6(b) of FIFRA; in their view, a hearing held pursuant to the FFDCA which excludes consideration of an element essential to a FIFRA determination would violate due process. NACA accordingly urges that any proposed action by EPA under the FFDCA should proceed in parallel with a corresponding action under FIFRA.

In their response to the petition, NACA also notes that several of the chemicals named in the petition are already undergoing Special Review under FIFRA. NACA urges EPA not to abandon its established, orderly process by granting the petition to immediately revoke section 409 tolerances for these chemicals.

In NACA's view, moreover, the petition does not provide any factual basis for revoking the particular food additive regulations cited by the petition. Specifically, NACA claims that the petition is erroneous in assuming that EPA has made a finding that the seven pesticides "induce cancer" within the meaning of the Delaney Clause based on the fact that these chemicals have been classified in terms of their carcinogenic potential. In this regard, NACA points out that EPA's October 19, 1988 Notice (53 FR 41104) expressly states that, at least for Group C carcinogens, the classification does not necessarily equate to a finding that the chemical induces cancer for Delaney Clause purposes. NACA also notes that EPA's classification of a chemical does not necessarily reflect recent data submissions and review which might change EPA's assessment of a chemical's carcinogenic potential. Thus, in NACA's view, the petition is clearly wrong in asserting that there are no material issues of fact. NACA claims that the FFDCA requires EPA to develop a complete factual record justifying a decision to revoke a section 409 tolerance through comment and a formal administrative hearing.

EPA response. The comments submitted by NACA support EPA's *de minimis* approach to the Delaney Clause as a rational and reasonable approach to coordinating two statutory authorities with apparently conflicting mandates. EPA appreciates that in an ideal situation, it would be desirable to coordinate regulatory action on a particular pesticide under both FIFRA and the FFDCA. In fact, as discussed in EPA's policy statement on the Delaney Paradox (53 FR 41104), EPA has had a long-standing policy that the lawful application of a pesticide should not result in illegal pesticide residues on food. However, given the practicalities of dealing with review priorities set under FIFRA, and the timing of a particular action, such as this petition, such coordination may not always be possible. In the event that an administrative hearing is held on the issues raised by this petition, that hearing would be under the FFDCA, and the applicable substantive law and procedures would be those of the FFDCA.

The procedural argument made by NACA is that a registrant would be denied due process rights and procedural rights pursuant to section 558 of the APA because the FFDCA hearing on the tolerance revocation would be decided on the basis of the procedural and substantive standards of the FFDCA rather than FIFRA. Section 558 of the APA provides that an agency cannot revoke a license without giving the licensee notice and an opportunity to "demonstrate or achieve compliance with all lawful requirements", unless "public health, interest, or safety requires otherwise". While EPA believes it is rational policy to link action under the FFDCA with regulatory decisions under FIFRA, EPA does not believe that it is a violation of section 558 of the APA or a denial of Constitutional due process for EPA to take action to revoke a tolerance under the standards and procedures of the FFDCA for a pesticide which meets the criteria for registration under FIFRA. Congress has charged EPA with administering two statutes with different procedural schemes. As discussed elsewhere in this Notice and in detail in EPA's October 19, 1988, policy statement, EPA has taken an approach which harmonizes the two statutory standards to the extent possible. Such an effort does not necessarily bind EPA, as a matter of law, to precede actions on tolerances with final action on FIFRA registrations.

NACA contends that the prior classification by EPA of the seven chemicals listed in the petition as Group B_2 or Group C carcinogens does not necessarily equate to a finding that these chemicals induce cancer for Delaney Clause purposes. As discussed earlier (see EPA's response to the NFPA's comment on the petition), EPA uses a weight-of-the-evidence approach in establishing a pesticide's carcinogenic classification and for some of the chemicals named in the petition, this assessment will be completed when required data have been received and/or reviewed. EPA's assessment is, in turn, reviewed by the FIFRA Scientific Advisory Panel. It is EPA's position that it is premature to initiate regulatory action on section 409 tolerances for chemicals for which this review process is incomplete.

Finally, in response to the NACA comments regarding the necessity for a formal administrative hearing, the Agency notes that an adversely affected party has the right under section 409 of the FFDCA to file objections and/or a hearing request within 30 days after publication of the notice of EPA's denial of the petition or final rule granting the petition. EPA's Administrator will then rule on the objections and determine if an evidentiary hearing is warranted. An evidentiary hearing will not be granted on issues of policy or law. Rather, an evidentiary hearing will only be held where:

(1) There is a genuine and substantial issue of fact for resolution at a hearing.

(2) There is a reasonable possibility that available evidence identified by the person requesting the hearing would, if established, resolve one or more issues in favor of the requestor, taking into account uncontested evidence to the contrary.

(3) The factual issues in question would be determinative with respect to the action requested (53 FR 41135–41136).

The Administrator's determination on any objections and/or hearing requests will be published in an order or a notice of hearing, as appropriate. A final order denying a petition in response to objections is then subject to review in the Court of Appeals.

3. *The American Industrial Health Council.* Comments on the petition were submitted by the American Industrial Health Council (AIHC), an industrial organization. AIHC supports EPA's *de minimis* interpretation of the Delaney Clause in light of modern scientific knowledge about carcinogenicity. In describing its rationale for supporting a *de minimis* interpretation of Delaney, AIHC states its position that not all carcinogenic responses in test animals are predictive of a human response, and that some exposures to carcinogens will pose a negligible risk for humans. In support of its position, AIHC discusses in detail the mechanism involved in urinary-tract tumors in male rats and anatomical differences, for example, the presence of a "forestomach" in certain animals, which can affect extrapolation of human risk from animal data. AIHC also argues, based on theoretical considerations of cancer mechanism, that some exposures to a carcinogen

will increase the risk of cancer so little, i.e., approaching zero, that they are of no health consequence. AIHC further states that there is now broad acceptance for the theory that chemicals which affect the thyroid gland in specific ways may exhibit a threshold response. Based on these considerations, AIHC finds it scientifically appropriate for EPA to use the weight-of-evidence approach in assessing both the qualitative and quantitative aspects of all available data on the carcinogenicity of a chemical.

With reference to the fact that the 1958 Delaney Clause applies to the establishment, under the FFDCA, of section 409 tolerances for food and feed additives and not to section 408 tolerances for raw agricultural commodities, AIHC argues that the strikingly different treatment of carcinogenic residues depending on whether or not such residues concentrate during processing has no policy or scientific basis and is apparently simply an artifact of hasty legislative drafting. AIHC notes that the National Academy of Sciences (NAS) report was unable to identify any sound scientific or policy reason for regulating pesticides on raw agricultural commodities differently than those present on processed food (Ref. 1). AIHC also contends that the failure to recognize a *de minimis* principle in interpreting the Delaney Clause will result in the potential loss of pesticides and jeopardy to the continued availability of large portions of the American diet. Finally, AIHC claims that the petition's assertion that there are no factual issues involved is incorrect, and urges that any reevaluation of a pesticide's safety should include a weight-ofevidence assessment of all available data and the application of the *de minimis* exclusion in appropriate situations.

EPA response. EPA is, of course, dedicated to the use of scientific information and good professional practices in regulating pesticides. The weight-of-evidence approach which EPA uses in evaluating carcinogens is consistent with the type of analysis advocated by AIHC. As discussed elsewhere in this Notice, in the event a hearing is requested in response to EPA's denial (in part) of this petition, the Administrator will make a determination whether there are factual issues which warrant holding an evidentiary hearing (see Unit IV of this notice).

4. *Cooperative Extension, University of California.* Comments were submitted by Harold M. Kempen, Farm Advisor, Weed Management and Environmental Protection, Cooperative Extension, University of California. Mr. Kempen expresses concern that EPA's classification scheme for carcinogens is misleading since Group C chemicals cannot be considered to be "carcinogens" in humans. He also comments that the NAS report was misleading in utilizing tolerance levels and an assumption that all crops are treated at maximum rates in estimating residue levels. Mr. Kempen supports EPA's use of the *de minimis* approach to the Delaney Clause.

EPA response. As discussed in detail in EPA's October 19, 1988, **Federal Register** Notice, EPA's Cancer Assessment Guidelines classifies a Group C chemical as a possible human carcinogen. Under the EPA Guidelines for Carcinogen Risk Assessment, (51 FR 33992, September 24, 1986), a chemical is placed in Group C if there is some evidence of potential carcinogenicity from animal studies, but that evidence is so limited that the chemical cannot be assigned to a higher category. With regard to the comment on the NAS report, EPA agrees that the use of tolerance levels and the assumption that all crops are treated at maximum rates may overestimate actual dietary exposure.

5. *Butte County Mosquito Abatement District, California.* William Hazeltine, Ph.D., the manager of the Butte County Mosquito Abatement District in Oroville, California, contends that granting the petition filed under section 409(h) of the FFDCA would be unreasonable in that such action would be in violation of the requirements of FIFRA. Mr. Hazeltine supports the *de minimis* approach set forth by EPA in its October 19, 1988, **Federal Register** Notice on Delaney.

EPA response. As discussed in EPA's response to comments submitted by the NACA (Unit IV.2 of this notice), EPA believes that the *de minimis* approach to Delaney set forth by EPA is a rational and reasonable approach to coordinating two statutory authorities (FIFRA and FFDCA) with apparently conflicting mandates.

6. *Chemical manufacturers and registrants*—a. *Scientific Research Associates, Inc.* Scientific Research Associates, Inc. submitted comments pertaining to DDVP on behalf of Fermenta Animal Health Company, a manufacturer of this chemical. The commentor notes that EPA's classification of DDVP as a Group B_2 carcinogen is an interim classification which is currently undergoing reassessment. The commentor claims that the weight of scientific evidence fails to support the contention that DDVP is an animal carcinogen and that the available animal studies have yielded, at most, only equivocal evidence of carcinogenic potential. It is also noted in the comments that there is no evidence that DDVP has the potential to produce mutagenic responses in *in vivo* mammalian systems and that there is no evidence that exposure of humans to DDVP is associated with an elevated risk of cancer. Based on their evaluation of the test data, Scientific Research Associates, Inc. presents a detailed argument that DDVP should be classified as a Group D carcinogen. The commentor urges EPA to deny the petition with regard to DDVP.

EPA response. As discussed in Unit III of this notice, EPA has recently changed the classification of DDVP to a Group C carcinogen. In September 1989, this revised classification of DDVP was again referred to the Scientific Advisory Panel and the panel agreed with EPA's classification of DDVP as a Group C carcinogen.

b. *Rohm and Haas Company.* Comments were also filed on behalf of Rohm and Haas Company, the manufacturer of mancozeb and dicofol. Rohm and Haas notes that it fully supports the comments submitted by NACA. In addition, the company raises specific concerns about procedural defects in the petition pertaining to Rohm and Haas' products. First, Rohm and Haas asserts that the petition is incorrect in asserting that the only issue for EPA to decide is whether the Delaney Clause required revocation of the section 409 tolerances listed in the petition. Rather, according to Rohm and Haas, no determinations have been made under section 409 of the FFDCA that the seven pesticides "induce cancer" within the meaning of the Delaney Clause. Rohm and Haas also contends that the petition ignores the procedural requirements for review of pesticide tolerances under FIFRA and the FFDCA by failing to take into account EPA's mandate to administer concurrently the provisions of FIFRA and the FFDCA. Specifically, Rohm and Haas claims that the petition requests EPA to ignore the development of a full record through an administrative review of the pesticides under FIFRA, provides no consideration of product benefits or the impact on the U.S. food supply, overlooks impacts on consumers and growers, and denies property rights to manufacturers without due process. For EPA to revoke the section 409 tolerances as requested by the petition would, in the view of Rohm and Haas, violate

EPA's duty to administer FIFRA and the FFDCA consistently, and to regulate pesticides in a rational, orderly manner. Accordingly, Rohm and Haas urges EPA to deny the petition.

EPA response. The data base for both mancozeb and dicofol is not sufficiently complete to allow EPA to finalize its assessment for these chemicals. Therefore, except for the proposed revocation of the tolerance for mancozeb on small grains (excluding wheat), consistent with the recently issued risk/benefit assessment and preliminary determination on the cancellation of certain mancozeb uses, EPA is denying the petition with regard to mancozeb and dicofol. EPA has addressed the specific points made by Rohm and Haas in its response to other comments.

c. *Makhteshim-Agan (America) Inc.* The chemical manufacturer, Makhteshim-Agan (America) Inc., submitted a comment supporting the detailed comments opposing the petition submitted by the National Agricultural Chemicals Association (NACA). Makhteshim-Agan (America) Inc. supports EPA's *de minimis* interpretation of the Delaney Clause as a "reasonable and lawful exercise of the Agency's discretionary implementation of established law policies and procedures."

EPA response. See EPA's response to the NACA comments (Unit IV.2 of this notice).

d. *Industria Prodotti Chimici, S.p.A. (I.Pi.Ci.).* Comments were submitted on behalf of Industria Prodotti Chimici, S.p.A. (I.Pi.Ci.), an Italian company which holds an EPA registration for technical trifluralin. The commentor notes that although the trifluralin which is currently marketed is contaminated with nitrosamines, which are known to have carcinogenic potential, the company has recently developed a method for producing nitrosamine-free trifluralin (i.e., to a limit of detection of 7 ppb), and intends to apply to EPA to amend its confidential statement of formula to market the nitrosamine-free product. I.Pi.Ci. contends that the data currently available do not support a finding under the Delaney Clause that trifluralin "induces" cancer. In particular, I.Pi.Ci. notes that there is only one study showing an increase in the incidence of tumors in the test animal (rats) at the highest dose, whereas there are two recent negative trifluralin carcinogenicity studies submitted by I.Pi.Ci., as well as two earlier negative studies. In the event that EPA should determine to revoke the section 409 tolerances for trifluralin, I.Pi.Ci. requests that EPA first hold a hearing to determine if revocation is warranted in light of all the available data. I.Pi.Ci. also expresses support for the positions set forth by EPA in the October 19, 1988, **Federal Register** Notice on Delaney. Finally, I.Pi.Ci. suggests that EPA consider raising the current section 408 tolerances for trifluralin residues in raw agricultural products to obviate the necessity for any section 409 tolerances for trifluralin.

EPA Response. EPA does not believe that I.Pi.Ci. has set forth any basis for conducting a formal re-evaluation of the carcinogenic classification of trifluralin. As discussed in Unit III.A.7 of this notice, EPA has classified trifluralin as a Group C (quantified) carcinogen based on a weight-of-the-evidence determination of the carcinogenic potential of this chemical. With regard to the suggestion that EPA consider raising the tolerance levels for trifluralin on raw agricultural commodities, as I.Pi.Ci. correctly pointed out, EPA does not ordinarily approve tolerance levels under section 408 that exceed the amount of residue that is likely to result from the use of the pesticide in accordance with the label directions (40 CFR 180.4). EPA believes that this policy represents a sound and protective approach to assure that pesticides are not used in excess of the amounts specified on the label, or in other ways that are not in accordance with label directions. Moreover, EPA's approach is clearly contemplated by the statutory scheme set forth in the FFDCA—if section 408 tolerances were set high enough to cover residues in section 409 processed commodities, section 409 would be superfluous to cover residues which concentrate in processed foods. In fact, section 402(a)(2)(C) clearly provides that a section 409 tolerance must be set to avoid food containing residues higher than those sanctioned by a section 408 tolerance from being considered adulterated under the FFDCA. Finally, if a section 408 tolerance were set high enough to cover residues which could still concentrate in food processed from a raw agricultural commodity, in those situations where the residues in the raw agricultural commodity were at the high end of the tolerance level, the residues would concentrate to above tolerance levels in the processed commodity. This could pose a particular problem for imported commodities which might have higher residues in the raw agricultural commodity as a result of label directions that are different from those on the U.S. product. As well, this policy could be seen as an implied sanction for misuse of pesticides in the United States.

V. Procedural Matters

Pursuant to section 409(f)(1), 21 U.S.C. 348(f)(1), any party adversely affected by the denial (in part) of a petition may, within 30 days of publication of the denial, file objections with the Agency, specifying with particularity the provisions of the denial deemed objectionable, stating reasonable grounds therefor, and request a public hearing on such objections. The Administrator will by order rule on the objections and the requests for hearing. An adversely affected party who submits objections which are purely legal or of a policy nature need not request a hearing; if the objections are of a purely legal or policy nature, a hearing request would be inappropriate. As a matter of discretion, the Administrator may order a hearing on an objection even though no person has requested a hearing.

A request for an evidentiary hearing will be granted if the Administrator determines that the following criteria are met:

1. There is a genuine and substantial issue of fact for resolution at a hearing.

2. There is a reasonable possibility that available evidence identified by the hearing requestor would, if established, resolve one or more of the issues in favor of such requestor, taking into account uncontested evidence to the contrary.

3. The factual issues would be determinative with respect to the action requested.

The Administrator may make preliminary rulings on any issues raised by an objection which are necessary for resolution prior to determining whether a request for an evidentiary hearing should be granted. As the Court of Appeals recently held in *Nader* v. *U.S. E.P.A.*, 859 F.2d 747, 751 (9th Cir. 1988), filing an objection with the Administrator and/or seeking an Agency hearing is a prerequisite to judicial review in the Court of Appeals of the Agency's denial of a petition to revoke section 409 tolerances. Even if the issues for resolution are of a purely legal or policy nature, the Administrator must first by order published in the **Federal Register** deny the objections before the Agency's decision is ripe for judicial review.

To be considered by the Administrator, an objection must:

(1) Be in writing.

(2) Specify with particularity the provision(s) of the denial objected to, the basis for the objection(s), and the relief sought.

(3) Be signed by the person bringing the objection.

(4) State the objector's name and mailing address.

(5) Be submitted to the hearing clerk.

(6) Be received by the hearing clerk not later than the close of business of the 30th day following the date of publication of this denial in the **Federal Register** (if the 30th day is a Saturday, Sunday, or Federal holiday, not later than the close of business of the next government business day after such 30th day).

Mailed submissions should be addressed to: Office of the Hearing Clerk (A–110), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. For personal delivery, the Office of the Hearing Clerk is located at: Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC.

To be considered by the Administrator, a request for an evidentiary hearing must:

1. Be submitted as a part of, and specifically request an evidentiary hearing on, an objection that complies with the above requirements, including filing within the 30–day period.

2. Include a statement of the Federal issue(s) on which a hearing is requested and the requestor's contentions on each such issue.

3. Include a copy of any report, article, survey, or other written document (or the pertinent pages thereof) upon which the objector relies to justify an evidentiary hearing, unless the document is an EPA document that is routinely available to any member of the public.

4. Include a summary of any evidence not described in a written document as provided in item 3 above upon which the objector relies to justify an evidentiary hearing.

VI. References

(1) National Academy of Sciences (NAS), National Research Council. (1987) Regulating Pesticides in Food: The Delaney Paradox. National Academy Press, Washington, DC.

(2) U.S. Environmental Protection Agency (USEPA). (1989) Petition Proposing Revocation of Food Additive Tolerances (54 FR 27700, June 30, 1989).

(3) U.S. Environmental Protection Agency (USEPA). (1988) Regulation of Pesticides in Food: Addressing the Delaney Paradox Policy Statement; Notice (53 FR 41104, October 19, 1988).

Dated: April 18, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90–9465 Filed 4–24–90; 8:45 am]

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federal register

Wednesday
April 25, 1990

Part V

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary removes a regulatory provision, 34 CFR 222.66(d)(2), promulgated under the Impact Aid law, Pub. L. 81.874 (the Act). That regulatory provision prohibits a State with an equalized program of State aid meeting the requirements of section 5(d)(2) of the Act from taking into consideration any portion of a payment made under the Act on behalf of low-rent public housing pupils or increased payments on behalf of federally connected handicapped children. The Secretary removes this provision because changes made to the Impact Aid law have rendered the provision regarding low-rent housing payments obsolete. Because the provision regarding low-rent public housing students has had no statutory basis since fiscal year (FY) 1980, its removal is merely technical in nature. The removal is effective beginning with payments made from FY 1980 Impact Aid funds.

EFFECTIVE DATE: This regulatory change takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these final regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Director, Impact Air Program, U.S. Department of Education, 400 Maryland Ave., Room 2079, Washington, DC 20202–6272. Telephone: (202) 732–3637.

SUPPLEMENTARY INFORMATION:

Background

In 1974, Public Law 81–874 (the Impact Aid law) was amended to require that local educational agencies (LEAs) use Impact Aid payments made on behalf of low-rent housing pupils only "for special programs and projects designed to meet the special educational needs of educationally deprived children from low income families." See section 5(e)(3) of the Act, added by Public Law 93–380, section 305(a)(2), 88 Stat. 532 (1974). The Department published regulations implementing this statutory requirement on March 22, 1977. (47 FR 15544 (March 22, 1977)). Those regulations included a provision at 34 CFR 222.66(d)(2) prohibiting a State with an equalized program of State aid meeting the requirements of section 5(d)(2) of the Act from taking into consideration any portion of a payment made under the Act on behalf of low-rent public housing pupils.

In 1978, Congress removed the spending requirements that had made the low-rent housing payments categorical in nature. Pub. L. 95–561, sec. 1007(b), 92 Stat. 2308 (1978). This removal was effective beginning with FY 1980 funds.

The Secretary now removes § 222.66(d)(2) of the regulations because the elimination of the statutory requirement that Impact Aid funds paid on behalf of low-rent housing pupils be spent in a certain manner removed the rationale and necessity for precluding States certified under section 5(d)(2) from taking into consideration those low-rent housing payments. Under the law in effect between FY 1974 and FY 1980, allowing States with qualifying funding programs to reduce State aid on account of those payments would have frustrated the statutory requirement that those payments be spent for a specified purpose. However, the elimination of the statutory spending requirement necessitates the removal of the prohibition because statutory authority for the provision is now lacking. Because the provision regarding the consideration of low-rent housing payments has been without basis since FY 1980, this removal is technical in nature, and is effective for Impact Aid payments made for FYs 1980 and following. Since 1980, the Department has in fact allowed States with an equalized program of State aid meeting the requirements of section 5(d)(2) of the Act to take into consideration payments made under the Act on behalf of low-rent public housing pupils.

In addition to payments on behalf of children living in low-rent housing, § 222.66(d)(2) of the regulations also restates a statutory provision prohibiting States that meet the requirements of section 5(d)(2) of the Act from taking into consideration any portion of the increased payment made on behalf of federally connected handicapped children. See Section 5(d)(2)(A) of Public Law 81–874. That prohibition is also included in § 222.61(b)(1) of the Department's regulations (53 FR 39020) (October 4, 1988). Therefore, notwithstanding the removal of § 222.66(d)(2), States meeting the requirements of section 5(d)(2) of the Act continue to be prohibited from taking into consideration any portion of the increased payments made on behalf of federally connected handicapped children.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act (5 U.S.C. 553), it is the Secretary's practice to offer interested parties the opportunity to comment on proposed regulations. In this case, however, § 222.66(d)(2) is being removed because a change in the law has eliminated the authority and rationale for the provision regarding low-rent housing payments. The provision in the regulation prohibiting the consideration of handicapped payments is included elsewhere in the Impact Aid regulations; thus its removal from § 222.66(d)(2) has no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary has determined that these regulations will not have the type of impact on a sufficient number of small entities that would require analysis under the Regulatory Flexibility Act. The small entities that would be affected are LEAs with pupils living in low-rent housing that receive Federal funds under this program because of those children.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing.

Dated: March 30, 1990.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations.)

The Secretary amends part 222 of title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 236–241–1 and 242–244, unless otherwise noted.

§ 222.66 [Amended]

2. In § 222.66, paragraph (d)(2) is removed and paragraph (d)(1) is redesignated as paragraph (d).

[FR Doc. 90–9505 Filed 4–24–90; 8:45 am]

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Wednesday
April 25, 1990

Part VI

Department of Transportation

Coast Guard

46 CFR Parts 401, 403 and 404
Great Lakes Pilotage; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 401, 403, and 404

[CGD 88-111]

RIN 2115-AD19

Great Lakes Pilotage

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the Great Lakes Pilotage Regulations. This rule: (1) Requires that an unqualified annual audit be submitted by each authorized pilot organization, performed in accordance with Generally Accepted Auditing Standards promulgated by the American Institute of Certified Public Accountants, (2) establishes general guidelines and procedures for ratemaking, (3) requires that the costs of all support services directly related to the provision of pilotage that pilots require vessels to utilize be included in the rate base, (4) requires each pilotage pool to certify whether any support service entity is related by beneficial ownership to a pilot, (5) clarifies the regulations to indicate that financial penalties can be applied to pilots as well as vessel operators who are in violation, (6) amends the steps that are to be followed when a pilot is not available within a reasonable period of time, and (7) amends the rate schedule by adding a charge to compensate a registered pilot for "dead heading" across Lake Erie when aboard a vessel whose master uses a "B Certificate" in lieu of the pilot. These changes are necessary in order to increase the efficiency and effectiveness of the Great Lakes Pilotage System.

EFFECTIVE DATE: May 25, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Merchant Vessel Personnel Division (G-MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-0217.

SUPPLEMENTARY INFORMATION: In December 1988, the Secretary of Transportation approved the Great Lakes Pilotage Study Final Report, which contains recommendations to improve the Great Lakes Pilotage System. Some of the recommendations call for amendments to the Great Lakes Pilotage Regulations. A Notice of Proposed Rulemaking was published in the **Federal Register** on March 22, 1989 (54 FR 11930). The 60 day comment period ended May 22, 1989, and we received seventeen written comments, one of them co-signed by 15 Members of Congress.

Drafting Information

The principal persons involved in drafting this rule are: Mr. John J. Hartke, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Commander Gerald A. Gallion, Project Attorney, Office of the Chief Counsel.

Discussion of Comments

Most of the comments received expressed opposition to the Canadian B Certificate. The B Certificate issue was discussed in the DOT Great Lakes Pilotage Study but was not addressed by the proposals contained in the Notice of Proposed Rulemaking of March 22, 1989, and is not affected by this final rule.

Many commenters requested a public hearing; however, the Coast Guard determined that a public hearing on these proposed regulations would not aid the rulemaking process because the most controversial issue on which comments were received, B Certificates, is not a part of this rulemaking. Several comments were received in support of the proposal to amend the rate schedule by adding a charge to compensate a registered pilot for "dead heading" across Lake Erie when aboard a vessel whose master uses a B Certificate in lieu of the required pilot. Two comments were received in opposition to the proposal. One of the opposing comments stated that the "dead heading" charge would amount to a unilateral rate increase because Canada has not adopted the same charge. The other comment stated that the "dead heading" charge would essentially deny the option of replacing pilotage with the services of a B Certificate master, and that the cost of the "dead heading" would be significant. The Coast Guard is aware of the fact that Canada has not adopted the "dead heading" charge; however, that particular charge impacts on the U.S. pilots differently than on Canadian pilots. Canadian pilots are employees of the Great Lakes Pilotage Authority, Ltd. and are on an annual salary, whereas the U.S. pilots are private contractors and are compensated only for those services for which they charge a fee. It seems inappropriate to require U.S. pilots to be held captive without some reasonable compensation aboard vessels whose masters use a B Certificate in lieu of a pilot. The Coast Guard is also aware that the "dead heading" charge would reduce the financial benefit of utilizing the option of replacing the required pilot with the B Certificated master of a foreign vessel in Lake Erie. The reduction in benefit to the B Certificate vessel would be considerably less than the cost of establishing and maintaining a pilot boat at Southeast Shoal, if that were possible, which is probably not because of the geography of the area. The Coast Guard does not believe that the cost of the "dead heading" charge would be significant. As indicated in the Notice of Proposed Rulemaking, we estimated that the cost would average approximately $540 per vessel per trip for those vessels utilizing a B Certificated master.

Many commenters requested an environmental impact statement/study. Coast Guard Commandant Instruction M16475.1B provides implementing procedures and policy for considering environmental impacts under the National Environmental Policy Act.

This rule does not change pilotage standards, the structure of the pilotage system, pilotage waters, or pilotage requirements. The rulemaking imposes changes regarding audits, ratemaking, financial penalties, and communication procedures when a pilot is not available within 6 hours. These changes do not individually or cumulatively have a significant adverse or beneficial effect on the human environment in terms of direct or indirect changes to the natural environment or to human health or safety.

As defined by the Council on Environmental Quality, "Categorical Exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required."

The Coast Guard has determined that, under the provisions of the Commandant Instruction regarding implementing procedures of the National Environmental Policy Act, this final rule is categorically excluded from the requirement for an environmental assessment or an environmental impact statement. A Categorical Exclusion Determination is included in the public docket. A commenter pointed out that the proposed § 404.10(b) seems to state that only expenses previously incurred may be projected for the selected future period and be included in the rate base. It was not the Coast Guard's intent to limit acceptable expenses to those that had actually been previously incurred. Pilot organizations may present proposed or expected new items of

expense and justify them as reasonable and necessary. The final rule reflects this clarification.

Another comment objected to proposed § 404.10(e) because it suggests that the workload standards of 1,000/1,800 hours per pilot per season would be the sole determinant of pilot numbers for rate purposes. The Coast Guard agrees with this comment, and the change is reflected in the final rule. The Department of Transportation Great Lakes Pilotage Study Final Report concluded that the bridge time work standard should not be the only factor used in determining the number of pilots in the rate base and that the standard should not be rigidly applied.

Another comment objected to the proposed inclusion of costs of "pilotage related services" in the pilotage rate base. The Coast Guard proposed that the costs of all support services that pilots require vessels to utilize should be included in the rate base. An example mentioned in the Notice of Proposed Rulemaking was the charge for hand-held radios the pilots use in providing pilotage services. This charge is not presently included in the pilotage rate base. The commenter states that radio fees are a commercial matter between the companies supplying the radios and the vessel operators. This argument is not convincing because pilot boats and dispatching are likewise a commercial matter between the companies supplying the service and the vessel operators, yet the charges for these services are included in the rate base. The Coast Guard does not agree with the commenter; we believe that the costs of all support services that pilots require vessels to utilize should be included in the pilotage rate base.

Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. Accordingly, the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities. There would be two identifiable additional costs. One would be the additional charge for one pilot organization to upgrade its financial reporting from a compilation report to an unqualified audit report. The other additional cost would be the charge to be paid by the ship to compensate a registered pilot for "dead heading" across Lake Erie when a vessel's master uses a "B Certificate" in lieu of the pilot. When a vessel's master utilizes his "B Certificate" in the undesignated waters of Lake Erie, the vessel does not incur the trans-lake pilotage charge. However, because there is not pilot boat at Southeast Shoal to embark and disembark the pilot, the registered pilot must "dead head" across Lake Erie aboard the vessel. Although the registered pilot must be aboard, but is not employed by the vessel, the charge to the vessel is calculated on the detention rate contained in § 401.420. It is estimated that approximately 20 vessels per year would be affected by this charge, and the cost of this "dead heading" charge would average approximately $540 per vessel per trip. The remaining amendments to the regulations are management actions on the part of the Coast Guard that should improve the efficiency and effectiveness of the Great Lakes Pilotage System.

Paperwork Reduction Act

This rulemaking contains no new information collection or recordkeeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking and concluded that, under section 2.B.2.C of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 46 CFR Parts 401, 403, and 404

Administrative practice and procedure, Great Lakes, Navigation (water), Reporting and recordkeeping requirements, Seamen.

Accordingly, 46 CFR parts 401 and 403 are amended and 404 is added as follows:

PART 401—[AMENDED]

1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46; § 401.105 also issued under the authority of 44 U.S.C. 3507.

2. In § 401.320 paragraph (d)(4) is revised to read as follows:

§ 401.320 Requirements and qualifications for authorization to establish pools.

* * * * *

(d) * * *

(4) It will be subject to audit and inspection by the Coast Guard and will submit by April 1 of each year an unqualified long form audit report for the preceding year prepared by an Independent Certified Public Accountant, performed in accordance with Generally Accepted Auditing Standards promulgated by the American Institute of Certified Public Accountants.

* * * * *

3. In Section 401.410 paragraph (c) is revised to read as follows:

§ 401.410 Basic rates and charges on undesignated waters.

* * * * *

(c) When in transit of the undesignated waters of Lake Erie, and the vessel's master uses an appropriate certificate in lieu of a pilot, and the pilot is on board, the vessel shall pay a charge calculated on the basic detention rate provided in § 401.420, unless the services of the pilot are utilized and a charge is made under paragraph (a) of this section.

4. Section 401.430 is revised to read as follow:

§ 401.430 Prohibited charges.

No rate or charge shall be applied against any vessel, owner or master thereof, by a registered pilot which differs from the rates and charges set forth in this part, nor shall any rates or charges be made for services performed by a registered pilot, or for support services directly related to the provision of pilotage that a registered pilot requires a vessel to utilize, other than those for which a rate is prescribed in this part, without the approval of the Director.

5. Section 401.432 is added to read as follows:

§ 401.432 Certification of support services.

Each association holding a Certificate of Authorization shall certify each year whether any support service entity is directly or indirectly related by beneficial ownership to that association or to a United States registered pilot who is also a member of that association.

6. Section 401.500 is revised to read as follows:

§ 401.500 Penalties for violations.

Any person, including a pilot, master, owner, or agent, who violates any

provision of this part shall be liable to the United States for a civil penalty as set forth in 46 U.S.C. 9308.

7. In Section 401.510 paragraphs (b)(1) and (b)(4) are revised to read as follows:

§ 401.510 Operation without registered pilots.

* * * * *

(b) * * *

(1) Notification to the master that a pilot is not available will be made by the Director, either directly to the vessel or through the appropriate pilotage pool, orally or in writing as the circumstances admit, and shall not be deemed given until the notice is actually received by the vessel.

* * * * *

(4) When a pilot is expected to become available within 6 hours of the time pilot services are required, the vessel shall be informed that a pilot is available and the approximate time the pilot will report on duty. However, should any unusual circumstance or condition exist which may justify notification that a pilot is not available in less than 6 hours, the pilotage pool shall inform the Director as in paragraph (b)(3) of this section, along with the circumstances involved. Additionally, the vessel may contact the Director directly to request notification under paragraph (b)(1) of this section is a notice of pilot availability is not received from the appropriate pilotage requirements to the pool.

* * * * *

PART 403—[AMENDED]

8. The authority citation for part 403 continues to read as follows:

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

9. In part 403 under "Financial Reporting" in 11. Reporting Requirements, paragraph 6 is revised to read as folllows:

11. Reporting requirements

* * * * *

6. Each association holding a Certificate of Authorization shall furnish the Coast Guard by April 1 of each year with an unqualified long form audit report for the preceding year prepared by an Independent Certified Public Accountant, performed in accordance with Generally Accepted Auditing Standards promulgated by the American Institute of Certified Public Accountants.

* * * * *

10. Part 404 is added to read as follows:

PART 404—GREAT LAKES PILOTAGE RATEMAKING

Sec.

404.01 General Ratemaking Provisions.
404.05 Guidelines.
404.10 Procedures.

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46.

§ 404.01 General ratemaking provisions.

The purpose of this part is to provide guidelines and procedures for Great Lakes pilotage ratemaking. Included in this part are explanations of the steps followed in developing a pilotage rate adjustment, the analysis used, and the guidelines to be followed in arriving at the pilotage rates contained in part 401 of this chapter.

§ 404.05 Guidelines.

The following is a listing of the principal general guidelines to be followed in the ratemaking process:

(a) Each expense item shall be governed by a test of reasonableness in determining if a given cost is to be included in the rate base.

(b) Each expense item included in the rate base shall be uniform for all three pilot associations to the extent possible. For example, costs associated with pilot travel and training shall be measured against a common standard.

(c) No expense item may be justified on the basis of past years' expenditures, and each expense item shall be evaluated to determine if it is necessary, and if so, at what dollar amount.

(d) An expense item associated solely with the corporate structure of a pilot organization shall be examined to determine if it is necessary for the provision of pilotage services.

(e) Each expense item must be reasonable, and to the extent possible, measured against comparable or similar expenses in other industries, or by criteria used by the U.S. Internal Revenue Service.

(f) An expense item must be supported by adequate financial or other statistical data, and must be clearly shown to be a direct cost of providing pilotage services.

(g) If additional detailed analytic criteria are found to be necessary to determine the reasonableness of expenses, they may be utilized, and additional guidelines may also be developed and utilized.

§ 404.10 Procedures.

The following is a general description of the types of analyses performed and the general methodology followed in the development of most Great Lakes pilotage rate adjustments. This methodology may not always be followed because of agreements with Canada or for other reasons. Additional or other types of analyses may also be performed as circumstances admit. The general guidelines contained in § 404.05 are applied in the analyses identified here.

(a) Revenues earned by all authorized U.S. Great Lakes pilot associations are analyzed and projected for the selected future period.

(b) Expenses incurred by all authorized U.S. Great Lakes pilot associations as well as proposed or expected new items of expenses, are analyzed and projected for the selected future period. This analysis includes the application of various guidelines, including those in § 404.05.

(c) All projected expenses are segregated into the following categories:

(1) Administration
(2) Dispatching
(3) Pilot Boats
(4) Pilot Travel
(5) Pilot Training
(6) Target Pilot Compensation.

(d) Target Pilot Compensation for ratemaking purposes is based on comparability with licensed counterparts on U.S. Great Lakes Vessels, and whether the services are provided in designated or undesignated waters. Target compensation for pilots providing services in designated waters (46 CFR 401.405) should be comparable to masters on U.S. Great Lakes vessels, and target compensation for pilots providing services in undesignated waters (46 CFR 401.410) should be comparable to first mates on U.S. Great Lakes vessels.

(e) The number of pilots used for ratemaking purposes is based on pilot workload standards of 1,000 hours per pilot per season in designated waters, and 1,800 hours per pilot per season in undesignated waters. However, these bridge time work standards are not the only factors considered in determining the number of pilots in the rate base.

(f) Estimated vessel traffic is projected by reviewing traffic trends, and obtaining the views of knowledgeable interested persons.

Dated: April 18, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Security and Environmental Protection.

[FR Doc. 90-9446 Filed 4-24-90; 8:45 am]

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federal register

Wednesday
April 25, 1990

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Ketchikan International Special Airport Traffic Rule; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 26211; Notice No. 90-15]

RIN 2120-AC90

Ketchikan International Special Airport Traffic Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the special air traffic rule at Ketchikan, Alaska by establishing rule applicability in all portions of the Ketchikan Control Zone. The rule currently excludes certain portions of the airspace below 600 feet mean sea level (MSL). This notice would also clarify the original intent of the rule by specifying that pilots must maintain a constant listening watch on the traffic advisory frequency while operating in the control zone. The FAA believes that the level of safety provided for aircraft operations in the Ketchikan area will be enhanced by this proposed amendment.

DATES: Comments must be submitted on or before May 29, 1990.

ADDRESSES: Comments on this notice should be mailed or delivered in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26211, 600 Independence Avenue SW., Washington, DC 20591. The comments delivered must be marked Docket No. 26211. Comments may be examined in the Rules Docket, room 915G, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. A. Wayne Pierce, Air Traffic Rules Branch, ATO-230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in these proposed rulemaking procedures by submitting such written data, views, or arguments as they may desire. Comments are invited that provide the factual basis supporting the views and suggestions presented relating to the environmental, energy, or economic impacts that may result from adoption of the proposals contained in this notice. Substantive comments should be accompanied by cost estimates. Communications should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further action on this NPRM. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons before and after the closing date for comments. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26211." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the regulatory docket or notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should also request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Ketchikan International Airport was opened in 1973 adjacent to Ketchikan Harbor. Prior to that time, wheeled-aircraft with passengers or cargo destined for Ketchikan would land at Annette Island, about 18 miles southeast of Ketchikan International Airport, and transfer payloads to float aircraft. The float aircraft would then ferry passengers and cargo to Ketchikan and land in the harbor. Upon the airport's opening, wheeled-aircraft, including large turbojet aircraft, began using Ketchikan International Airport. Float aircraft continued to operate in substantial numbers in the vicinity of Ketchikan, using the harbor for surface operations.

A control zone was established at Ketchikan on May 24, 1973, and on April 8, 1976, the FAA promulgated an amendment to part 93 of the Federal Aviation Regulations (FAR), establishing the current Ketchikan International Airport Traffic Rule (Amdt. No. 93-33, 41 FR 14879). That action affected all of the Ketchikan Control Zone excluding that airspace below 600 feet above sea level and—(a) more than three miles from the nearest point on Ketchikan International Airport; (b) east of a line through the center of Pennock Island, extending to the end of the ferry slip at Ketchikan International Airport, thence through Channel Island; or (c) west of a line extending from Granina Point to Vallemar Point.

Reference Material

The report of an FAA Air Traffic Management Analysis conducted in September, 1987, revealed that air traffic congestion in the Ketchikan area subsided briefly after the opening of the new airport, and then began to increase steadily over the ensuing years. That analysis and report included, in pertinent part, the following major focus points:

(1) An air traffic activity survey at both Ketchikan International Airport and Ketchikan Harbor;

(2) An evaluation of the efficiency of the traffic flow;

(3) An analysis of the interaction and potential conflict between aircraft operating at the Ketchikan Airport and the several seaplane operating areas in the Tongass Narrows; and

(4) An examination of all non-standard procedures.

Prominent among the recommendations of the report was the suggestion that the Ketchikan International Airport Traffic Rule be modified to eliminate the existing exclusion for aircraft operating below 600 feet MSL in most of the affected area. This notice proposes to implement that recommendation. The other recommendations included in the report, though bearing merit, are not germane to this proposal and will not be discussed here.

Need for Regulation

The report cited concern within the Ketchikan aviation community that the exclusion of operations below 600 feet MSL posed an unnecessary and unwarranted diminution in the margin of safety which could be provided by the special airport traffic rule without the exclusion.

The report noted that the combined volume of traffic at Ketchikan International Airport and Harbor has reached over 100,000 operations annually. If the total volume of traffic were at the airport, the airport would qualify for an airport traffic control tower. The fact that the airport and harbor are adjacent has the result that the traffic to and from both landing areas uses much of the same airspace for operations. The majority of that traffic operating to and from the harbor and mixing with the operations of surface vessels means the FAA cannot exercise jurisdiction over the surface operations. The FAA believes that the original rule was adequate in 1976 but deserves further consideration at this time.

An analysis of aircraft accidents and incidents in the Ketchikan area between October 1, 1982, and September 30, 1987, reveals one mid-air collision and no reported near mid-air collisions (NMAC). Since this period, there was one reported NMAC on September 21, 1988, approximately 4½ miles west of the airport.

According to the National Transportation Safety Board's (NTSB) Factual Report, the collision occurred between a Hughes helicopter and a Cessna 185, approximately eight-tenths of a mile southeast of the airport, at approximately 500 feet MSL. Portions of the helicopter's flight, inbound to the harbor, were within airspace excluded from applicability of the special rule. The collision occurred near the boundary line between excluded airspace and non-excluded airspace. The helicopter pilot had contacted the Ketchikan Flight Service Station (FSS), advised that he was inbound to the harbor from the southeast, and received traffic advisories. The Cessna pilot made initial contact with the FSS about 20–30 seconds later, advised of his impending departure, and received traffic advisories. A local pilot reported to the NTSB that some pilots inbound to Ketchikan make initial contact with the FSS to receive advisories and then change frequencies to communicate with their companies. The NTSB was unable to determine if this had occurred in this instance.

The FAA does not favor this practice as pilots may be unaware of other traffic pertinent to their flight. Advisory Circular No. 42E, Traffic Advisory Practices at Airports Without Operating Control Towers, states that pilots should monitor and communicate on the advisory frequency from 10 miles outside the airport until landing. The FAA believes that pilots operating in the vicinity of airports, especially in periods of congestion, should be more concerned with potential traffic conflicts than with company communications. Company communications can be made prior to entering the congested area and/or after landing. The FAA believes that the level of safety provided by the rule would be enhanced if pilots monitored the advisory frequency constantly while operating within the affected area.

For the reasons set forth above, the FAA proposes to amend the Ketchikan International Airport Traffic Rule by: (1) Eliminating the exclusion which exists for aircraft operating below 600 feet MSL in most of the area; and (2) adding a provision to require that pilots monitor the advisory frequency at all times while operating in the control zone.

Regulatory Evaluation Summary

Introduction

The FAA is required to assess the benefits and costs of each proposed rulemaking action. This ensures that the public is not burdened with rules whose costs outweigh their benefits. This section contains an analysis that quantifies, to the maximum possible extent, the costs and benefits of amending the special air traffic rules of the Ketchikan Control Zone.

The proposed amendment is intended to enhance aviation safety by eliminating the area of exclusion for aircraft operating below 600 feet MSL within the perimeter of the Ketchikan Control Zone. The proposal also specifies that pilots must maintain a constant listening watch on the traffic advisory frequency while operating in the control zone.

Benefit-Cost Analysis

Costs

The FAA estimates the total quantitative costs expected to accrue from implementation of this proposed rule to be zero. However, some aircraft operators may incur qualitative costs in the form of the inconvenience of having to stay in constant two-way radio communications with the traffic advisory frequency.

In terms of the FAA, the proposed rule would not impose any additional administrative costs for either personnel or equipment. Any additional operations workload generated by the proposed rule would be absorbed by current personnel and equipment resources that are already in place at the Ketchikan Flight Service Station (FSS).

The only potential quantitative costs to aircraft operators would be the purchase of two-way radio equipment. However, all aircraft operators who taxi onto the runway at Ketchikan National Airport (KTN) or use the Ketchikan Control Zone, including the area of exclusion, are assumed to have the necessary radio equipment to monitor the advisory radio frequency. This is assumed since the vast majority of aircraft that fly in and out of Ketchikan are operated commercially and already have two-way radios in order to keep in contact with their companies. Furthermore, all aircraft operators, commercial or not, who taxi onto the runway at KTN or operate within the Ketchikan Control Zone above 600 feet MSL are required to establish two-way radio communications and receive a traffic advisory from the FSS. Thus, they already must have two-way radios in order to comply with current regulations.

On a qualitative basis, the FAA does recognize that potential costs could accrue from this proposal in the form of inconvenience to aircraft operators who do not monitor the traffic advisory frequency at all times while inside the control zone. The inconvenience to them would simply be the requirement to monitor the traffic advisory frequency at all times when they would prefer not to do so. There also is the potential for inconvenience for those aircraft operators who operate within the area of exclusion, since current regulations do not require them to monitor the traffic advisory frequency. Because of the uncertainty as to the number of aircraft operators who could be affected, coupled with the fact that the cost of inconvenience is difficult to quantify, the FAA solicits comments and information from the aviation community regarding the extent that potential costs, both qualitative and quantitative, might be incurred.

Benefits

The proposed rule is expected to accrue potential benefits primarily in the form of enhanced safety to the aviation community and flying public. Such safety, for example, would take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions attributed to the elimination of the 600 feet MSL area of exclusion and establishment of constant two-way radio communication within the Ketchikan Control Zone.

The two ways that aviation safety would be enhanced by this proposed rule are discussed in detail below:

First, this proposed rule would enhance aviation safety by requiring aircraft operators to engage in two-way radio communications with the traffic

advisory frequency while in the Ketchikan Control Zone. Combined flight operations at KTN and at Ketchikan Harbor have reached over 100,000 annually. This large volume of air traffic includes a mixture of general aviation aircraft (both wheeled and float) and large turbojet-type aircraft. Enhanced aviation safety would be achieved by requiring anyone who operates any of these types of aircraft in any airspace below 3,000 feet MSL within the Ketchikan Control Zone or taxis onto the runway at KTN, to monitor the advisory frequency at all times while operating within the specified airspace. This would enhance the safety of all aircraft operating within the Ketchikan Control Zone by providing aircraft operators with enough traffic and other advisory information necessary to safely avoid other aircraft within the entire perimeter of the control zone.

Second, enhanced aviation safety would accrue because this proposed rule would eliminate the 600 foot MSL area of exclusion of the Ketchikan Control Zone. The current exclusion of aircraft operating below 600 feet MSL from participating in the special air traffic rules and communication requirements of the control zone is a concern among the Ketchikan aviation community and the FAA. This area of exclusion poses an aviation safety hazard at Ketchikan. This is evidenced by a midair collision that occurred on August 12, 1987, between a Hughes helicopter and a Cessna 185. The collision occurred within the area of exclusion. During the ensuing investigation, it was revealed that some pilots inbound to Ketchikan make initial contact with the FSS and receive traffic and other advisories, and then change frequencies to communicate with their companies. This practice is dangerous because of the potential risk to aviation safety as the result of the pilot leaving himself unaware of changing air traffic information. This information is pertinent to not only his safety but to the safety of other aircraft operators as well. As mentioned earlier, the FAA's Advisory Circular No. 42D: Traffic Advisory Practices at Airports Without Operating Control Towers, cautioned pilots against this very practice. The FAA believes that pilots operating in the vicinity of airports, especially during periods of congestion, should be more concerned with potential traffic conflicts than with company communications. Company communications can be adequately accomplished before entering the congested area or after landing.

The FAA believes that the proposal to eliminate the area of exclusion, coupled with the proposed requirement to maintain a constant listening watch on the traffic advisory channel, would increase the safety level of the Ketchikan Control Zone. It is difficult to forecast this safety increase in quantitative terms. Since October 1, 1982, one actual midair collision and one near midair collision have occurred in the Ketchikan area. Although it was not determined whether one or both of the pilots involved in the midair collision had discontinued monitoring the FSS frequencies, the accident investigation revealed that this was done routinely by local pilots in order to communicate with their companies. For the purpose of this evaluation, the Ketchikan accident will serve as the FAA's best indication, over the next 10 years, of the potential benefits of this proposal.

The potential benefits, in monetary terms, associated with avoiding a midair collision similar to the one that occurred in Ketchikan would amount to an estimated $2.2 million ($1.4 million discounted) in 1988 dollars. This figure represents $2 million for the two fatalities (based on the FAA's minimum value of $1 million for each aviation statistical fatality), plus $203,000 for property damage, namely the Hughes helicopter that was destroyed.

The FAA strongly believes this proposal would help to reduce the probability of a midair collision, especially in an area of increasing traffic levels. The FAA believes there would be a significantly lower likelihood that an accident of the magnitude, which occurred in Ketchikan, that amounted to an estimated $2.2 million in monetary damages, would happen again. This figure represents a conservative estimate due to uncertainty, but can be viewed as the equivalent of saving at least two lives and one aircraft over the next 10 years.

Conclusions

The estimated cost of this proposal, in quantitative terms, is zero. This is because there would be no costs incurred due to additional equipment or personnel on the part of either the FAA or aircraft operators. In qualitative terms, aircraft operators could incur the cost of inconvenience. This is a result of the requirement to maintain a constant listening watch of the traffic advisory channel.

The potential benefits of this proposal would be the enhanced safety by requiring aircraft operators to be more aware, via constant two-way radio communications with the traffic advisory channel, of traffic and other advisory information necessary to navigate safely within the Ketchikan Control Zone. Another form of enhanced safety would be the elimination of the area of exclusion that exists from the ground up to 600 feet MSL. The potential benefits, in monetary terms, associated with avoiding a midair collision similar to the one that occurred in Ketchikan would amount to an estimated $2.2 million ($1.4 million, discounted 10 percent). On balance, the FAA firmly believes the proposed rule is cost-beneficial.

International Trade Impact Assessment

The proposed amendment would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed amendment would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The small entities that could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire owning, but not necessarily operating, nine or fewer aircraft.

Only those small entities without two-way radios would be affected by this proposed amendment. However, the FAA assumes that all potentially affected aircraft already are equipped with two-way radios. This assumption is based on the fact that these small aircraft operators routinely fly in and out of the Ketchikan Control Zone, where they are required by the present air traffic rule, to establish two-way communications with the Ketchikan FSS. Therefore, the FAA believes this proposed amendment would not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and

the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Aviation safety, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 93 of the Federal Aviation Regulations (14 CFR part 93) as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), and 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97–449, January 12, 1983).

2. Section 93.151 is revised to read as follows:

§ 93.151 Applicability.

This subpart prescribes special air traffic rules and communication requirements for persons operating aircraft, under VFR, in the airspace below 3,000 feet MSL within the perimeter defined for the Ketchikan Control Zone, regardless of whether that control zone is in effect.

3. Section 93.153 is revised to read as follows:

§ 93.153 Communications.

(a) When the Ketchikan Flight Service Station is in operation, no person may operate an aircraft within the airspace specified in § 93.151, or taxi onto the runway at Ketchikan International Airport, until that person has established two-way radio communications with Ketchikan Flight Service Station and has received a traffic advisory and continues to monitor the advisory frequency at all times while operating within the specified airspace.

(b) When the Ketchikan Flight Service Station is not in operation, no person may operate an aircraft within the airspace specified in § 93.151, or taxi onto the runway at Ketchikan International Airport, unless that person continuously monitors and communicates, as appropriate, on the designated common traffic advisory frequency (CTAF) as follows:

(1) *For inbound flights.* Announces position and intentions when no less than 10 miles from Ketchikan International Airport, and monitors the designated frequency until clear of the movement area on the airport or Ketchikan Harbor.

(2) *For departing flights.* Announces position and intentions prior to taxiing onto the active runway on the airport or onto the movement area of Ketchikan Harbor and monitors the designated frequency until outside of the airspace described in § 93.151 and announces position and intentions upon departing that airspace.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, if two-way radio communications failure occurs in flight, a person may operate an aircraft within the airspace specified in § 93.151, and land, if weather conditions are at or above basic VFR weather minimums.

Issued in Washington, DC, on April 19, 1990.

Harold W. Becker,

Acting Director, Air Traffic Rules and Procedures Service.

[FR Doc. 90–9549 Filed 4–24–90; 8:45 am]

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 23, 1990

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws

Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3968 / Pub. L. 101-274

To further delay the applicability of certain amendments to the Public Health Service Act that relate to organ procurement organizations. (Apr. 23, 1990; 104 Stat. 139; 1 page) Price: $1.00

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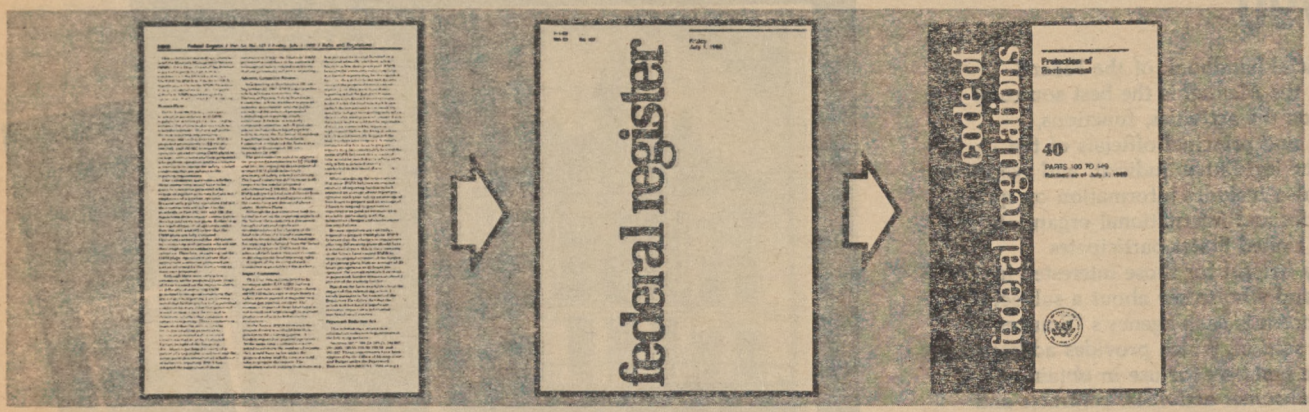

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