

6-6-90

Vol. 55

No. 109

Wednesday
June 6, 1990

federal register

United States
Government
Printing Office

SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, \$300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

RECEIVED
JAN 10 1901

RECEIVED

RECEIVED
JAN 10 1901

Wednesday
June 6, 1990

Federal Register

Briefings on How To Use the Federal Register
For information on briefings in Minneapolis, MN and
Kansas City, MO, see announcement on the inside cover
of this issue.



FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for \$340 per year in paper form; \$195 per year in microfiche form; or \$37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is \$1.50 for each issue, or \$1.50 for each group of pages as actually bound, or \$175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 55 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

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.

MINNEAPOLIS, MN

- WHEN:** June 18, at 1:00 p.m.,
WHERE: Bishop Henry Whipple Federal Building, Room 570, Ft. Snelling, MN.
RESERVATIONS: 1-800-366-2998.

KANSAS CITY, MO

- WHEN:** June 19, at 9:00 a.m.,
WHERE: Federal Building, 601 East 12th Street, Room 110, Kansas City, MO.
RESERVATIONS: 1-800-735-8004.

WASHINGTON, DC

- WHEN:** June 28, 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.

Contents

Federal Register

Vol. 55, No. 109

Wednesday, June 6, 1990

ACTION

NOTICES

Grants and cooperative agreements; availability, etc.:

Special volunteer programs—

After school, weekend, and summer time youth illicit drug use prevention demonstration project, 23118

Agricultural Marketing Service

RULES

Potatoes (Irish) grown in—

Colorado, 23069

PROPOSED RULES

Milk marketing orders:

Upper Midwest, 23089

Agriculture Department

See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Food Safety and Inspection Service; Rural Telephone Bank

Animal and Plant Health Inspection Service

RULES

Plant-related quarantine safeguard:

Untreated oranges, tangerines, and grapefruit from Mexico transiting U.S. to foreign countries, 23065

Army Department

NOTICES

Environmental statements; availability, etc.:

Johnston Atoll Chemical Agent Disposal System, 23128

Civil Rights Commission

NOTICES

Meetings; State advisory committees:

Arizona, 23118

New Hampshire, 23118

Commerce Department

See Export Administration Bureau; Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements

NOTICES

Visa waivers; issuing procedures modification, 23127

Commodity Futures Trading Commission

NOTICES

Contract market proposals:

Chicago Mercantile Exchange—

Large order execution ("LOX") procedure, 23127

Meetings; Sunshine Act, 23175

(2 documents)

Customs Service

NOTICES

Commercial laboratory accreditations:

Bennett Testing Service, Inc., 23170

E.W. Saybolt & Co., Inc., 23170

Defense Department

See Army Department

Drug Enforcement Administration

NOTICES

Applications, hearings, determinations, etc.:

Eli Lilly Industries, Inc., 23143

Mallinckrodt, Specialty Chemicals Co., 23143

Minn-Dak Growers Ltd., 23143

Penick Corp., 23143, 23144

(2 documents)

Philadelphia Seed Co., 23144

Education Department

NOTICES

Agency information collection activities under OMB review, 23129, 23130.

(2 documents)

Grants and cooperative agreements; availability, etc.:

Handicapped technology, educational media, and materials program (infants, toddlers, children, and youth), 23129

National Assessment Governing Board; assessments in non-mandated subject areas, 23129

Energy Department

See also Energy Information Administration; Energy Research Office

NOTICES

Natural gas exportation and importation:

Williams Gas Marketing Co., 23132

Radiological conditions, certification:

New Jersey, 23132

Energy Information Administration

NOTICES

Agency information collection activities under OMB review, 23131

Energy Research Office

NOTICES

Meetings:

Fusion Policy Advisory Committee et al., 23131

Environmental Protection Agency

RULES

Air programs; State authority delegations:

Florida, 23077

PROPOSED RULES

Acquisition regulations:

Superfund and other than superfund contracts; organizational conflicts of interest, 23109

NOTICES

Pesticide applicator certification; Federal and State plans: Kansas, 23133

Toxic and hazardous substances control:

Polychlorinated biphenyls (PCBs); disposal approval, 23134

Export Administration Bureau**NOTICES**

Foreign availability assessments:
Polyimides, 23118

Federal Communications Commission**RULES**

Practice and procedure:
Broadcast licensing proceedings, misconduct; policy
statement, 23082
Radio stations; table of assignments:
Mississippi, 23084
Tennessee, 23084

PROPOSED RULES

Radio stations; table of assignments:
Mississippi et al., 23107
New York, 23107
Ohio, 23108
Oklahoma, 23108

Federal Crop Insurance Corporation**RULES**

Crop insurance regulations:
General administrative regulations; State laws and
regulations preemption, 23066

Federal Emergency Management Agency**RULES**

Nondiscrimination on basis of age in Federal programs and
activities, 23078

Federal Maritime Commission**NOTICES**

Agreements filed, etc., 23135
(2 documents)

Federal Reserve System**NOTICES**

Applications, hearings, determinations, etc.:
Centura Banks, Inc., 23135
First Alamogordo Bancorp, Inc., 23136
Peoples Bancorporation et al., 23136

Federal Retirement Thrift Investment Board**NOTICES**

Meetings; Sunshine Act, 23175

Federal Trade Commission**NOTICES**

Prohibited trade practices:
Culligan, Inc., 23137
Promodes, S.A., et al., 23138

Financial Management Service

See Fiscal Service

Fiscal Service**NOTICES**

Surety companies acceptable on Federal bonds:
Century Reinsurance Co., 23170
Meritplan Insurance Co., 23171

Fish and Wildlife Service**PROPOSED RULES**

Endangered and threatened species:
Baker's sticky seed, etc., 23109
Golden-cheeked warbler, 23109

Migratory bird hunting:

Seasons, limits, and shooting hours; establishment etc.,
23178

Food and Drug Administration**RULES**

Animal drugs, feeds, and related products:
Sponsor name and address changes—
Upjohn Co., 23075

Food Safety and Inspection Service**RULES**

Meat and poultry inspection:
Poultry breakfast strips; partially cooked, cured, and
smoked, 23070

PROPOSED RULES

Meat and poultry inspection:
Calves and adult cattle; differentiating policy, 23100

Foreign-Trade Zones Board**NOTICES**

Applications, hearings, determinations, etc.:
Virginia—
ITT auto parts plant et al., 23119

Health and Human Services Department

See Food and Drug Administration

Interior Department

See Fish and Wildlife Service; Land Management Bureau

Internal Revenue Service**RULES**

Excise taxes:
Manufacturers and retailers; diesel fuel sales, 23076

International Trade Administration**NOTICES**

Antidumping:
Industrial nitrocellulose from Brazil, 23120
Export trade certificates of review, 23123
Foreign buyer program; domestic trade shows support,
23123
Short supply determinations:
Type 430 stainless steel wire rod, 23126

International Trade Commission**NOTICES**

Meetings; Sunshine Act, 23175

Interstate Commerce Commission**NOTICES**

Railroad operation, acquisition, construction, etc.:
Ashland Railway, Inc., 23140
RailTex, Inc., 23143
Railroad services abandonment:
Boston & Maine Corp. et al., 23142
CSX Transportation, Inc., 23142

Justice Department

See Drug Enforcement Administration

Labor Department

See Pension and Welfare Benefits Administration

Land Management Bureau**NOTICES**

Environmental statements; availability, etc.:
Blackleaf, Production Unit, MT, 23139

Oil and gas leases:
 Colorado, 23139
 Virginia, 23139
 Survey plat filings:
 Utah, 23139

Maritime Administration

PROPOSED RULES

War risk insurance:
 Foreign-flag vessel types; application procedures and fees, 23103

National Oceanic and Atmospheric Administration

RULES

Fishery conservation and management:
 Gulf of Mexico reef fish, 23086
 Ocean salmon off coasts of Washington, Oregon, and California, 23087
 Pacific Halibut Commission, International:
 Pacific halibut fisheries, 23085

Nuclear Regulatory Commission

NOTICES

Environmental statements; availability, etc.:
 Virginia Electric & Power Co. et al., 23154
 Meetings:
 Medical Uses of Isotopes Advisory Committee, 23155
 Reactor Safeguards Advisory Committee, 23156
Applications, hearings, determinations, etc.:
 St. Mary Medical Center, 23157

Nuclear Waste Technical Review Board

NOTICES

Meetings, 23157

Pension and Welfare Benefits Administration

NOTICES

Employee benefit plans; prohibited transaction exemptions:
 Chase Manhattan Bank et al., 23144

Personnel Management Office

PROPOSED RULES

Pay administration:
 Administratively uncontrollable overtime work; annual premium pay, 23088

Public Health Service

See Food and Drug Administration

Rural Telephone Bank

NOTICES

Stockholders meetings; proxy voting, 23118

Securities and Exchange Commission

NOTICES

Meetings; Sunshine Act, 23175
 Self-regulatory organizations; proposed rule changes:
 American Stock Exchange, Inc., 23159
 National Association of Securities Dealers, Inc., 23161
 New York Stock Exchange, Inc., 23166
Applications, hearings, determinations, etc.:
 Bankers Trust Co., 23168

Small Business Administration

RULES

Disaster loans:
 Economic injury and physical disaster assistance, 23072

NOTICES

Disaster loan areas:

Michigan, 23169
 North Carolina, 23169

Meetings:

National Small Business Development Center Advisory Board, 23169

Meetings; regional advisory councils:

Iowa, 23169
 Missouri, 23169

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Thrift Supervision Office

NOTICES

Conservator appointments:

Caguas-Central Federal Savings Bank of Puerto Rico, 23171

First America Savings Bank, F.S.B., 23171

Pima Federal Savings & Loan Association, 23171

Remington Federal Savings Association, 23171

Universal Federal Savings Association, 23171

Receiver appointments:

Deseret Savings & Loan Association, F.A., 23171

Durand Federal Savings & Loan Association, 23172

First America Federal Savings Bank, 23172

First Federal Savings & Loan Association, 23172

First Savings Association of Brenham, 23172

Gill Savings Association, 23172

Mercury Savings & Loan Association, 23172

Pima Savings & Loan Association, 23172

Remington Savings Association, 23172

Universal Savings Association, 23173

Applications, hearings, determinations, etc.:

Findlay Savings Bank, 23173

Regency Savings Bank, F.S.B., 23173

Transportation Department

See also Maritime Administration

NOTICES

Aviation proceedings:

Hearings, etc.—

International Air Transportation Association, 23170

Treasury Department

See Customs Service; Fiscal Service; Internal Revenue Service; Thrift Supervision Office

United States Information Agency

NOTICES

Agency information collection activities under OMB review, 23173

Separate Parts in This Issue

Part II

Department of the Interior, Fish and Wildlife Service, 23173

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR

Proposed Rules:

550..... 23088

7 CFR

352..... 23065

400..... 23066

948..... 23069

Proposed Rules:

1068..... 23086

9 CFR

381..... 23070

Proposed Rules:

309..... 23100

310..... 23100

317..... 23100

13 CFR

123..... 23072

21 CFR

520..... 23075

522..... 23075

26 CFR

48..... 23076

602..... 23076

40 CFR

60..... 23077

44 CFR

7..... 23078

46 CFR

Proposed Rules:

308..... 23103

47 CFR

1..... 23082

73 (2 documents)..... 23084

Proposed Rules:

73 (4 documents)..... 23107,

23108

48 CFR

Proposed Rules:

1509..... 23109

1510..... 23109

1512..... 23109

1527..... 23109

1552..... 23109

50 CFR

301..... 23085

641..... 23086

661..... 23087

Proposed Rules:

17 (2 documents)..... 23109

20..... 23178

Agency information collection activities under OMB review
23178

Separate Parts in This Issue

Part II
Department of the Interior, Fish and Wildlife Service, 501

Reader Aids
Additional information, including a list of public
law, telephone numbers, and printing and
in the Reader Aids section of the end of this issue.

Rules and Regulations

Federal Register

Vol. 55, No. 109

Wednesday, June 6, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 352

[Docket No. 90-076]

Untreated Oranges, Tangerines, and Grapefruit from Mexico Transiting the U.S. to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Plant Quarantine Safeguard Regulations to allow certain movements of untreated oranges, tangerines, and grapefruit from Mexico through Galveston, Texas, for export. This action is warranted because it can be done without posing an increased pest risk to plants and plant products in the United States. It gives shippers the alternative of moving untreated Mexican oranges, tangerines, and grapefruit to the port at Galveston, Texas, by water route or truck for export from Galveston by water route, or, for bonded rail movements, moving the fruit from the port of entry through a slightly enlarged corridor northward for export.

EFFECTIVE DATE: June 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Safeguard Regulations contained in 7 CFR part 352 (the regulations) provide requirements applicable to most plants, plant products, and related articles, including oranges, tangerines, and grapefruit from

Mexico, that are moved through the United States for export.

Section 352.30 provides specific requirements for untreated oranges, tangerines, and grapefruit from Mexico. These include requirements concerning permits, notice of arrival, origin and period of entry, inspections, safeguards, and additional conditions for movement overland and by water route.

In a document published in the Federal Register on April 23, 1990 (55 FR 15232-15233, Docket No. 89-193), we proposed to amend the Plant Quarantine Safeguard Regulations by (1) Adding Galveston as an alternative to Brownsville for export by water route of untreated oranges, tangerines, and grapefruit from Mexico; (2) adding Galveston as a port of entry for such fruit moving by water route from Mexico through the United States to a foreign country; (3) adding Galveston as a port to which trucks may be used to haul such fruit to shipside, or to approved refrigerated storage pending loading aboard ship, for movement to a foreign country; and (4) replacing Houston, Texas, with Galveston on the boundary line for the corridor through which untreated oranges, tangerines, and grapefruit from Mexico would be allowed to transit the United States by bonded rail.

Comments on the proposed rule were required to be received on or before May 8, 1990. We did not receive any comments. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after date of publication in the Federal Register. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for oranges, tangerines, and grapefruit from Mexico is in progress. Making this rule effective upon publication may allow interested shippers to benefit from the option of using Galveston for the transit of this fruit before the end of this year's shipping season.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule allows untreated oranges, tangerines and grapefruit from Mexico to transit the port of Galveston, Texas, in accordance with the safeguard regulations of part 352, for export to foreign countries. Persons involved in this process include the citrus owners or exporters, some of which are small entities, and the transporters (trucking, railroad, and shipping companies), all of which are large entities. Economic impacts on small entities will be limited to small increases or decreases to shipping costs paid by the citrus owners or exporters.

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

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501, *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under Number 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant diseases, Plant pests, Plants (Agriculture), Postal Service, Quarantine, Transportation.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

Accordingly, 7 CFR part 352 is amended to read as follows:

1. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 149; 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 31 U.S.C. 9701; and 7 CFR 2.17, 2.51, and 371.2(c).

§ 352.30 [Amended]

2. In § 352.30, in the introductory text, in paragraph (a)(1), and in paragraph (e), remove the phrase "on the Mexican border".

3. In paragraph (b)(3)(iii) of § 352.30, remove "Brownsville," and add "Brownsville or Galveston," in its place.

4. In paragraph (b)(4)(i) of § 352.30, remove the word "Houston", both times it appears, and add "Galveston" in its place.

5. In paragraph (c)(1) of § 352.30, add "or Galveston," immediately following "Brownsville,".

6. In the heading for paragraph (c)(3) and in paragraph (c)(3)(i) of § 352.30, add "or Galveston" immediately following "Brownsville".

7. In paragraph (c)(3)(ii) of § 352.30, remove "Brownsville," and add "Brownsville or Galveston," in its place.

Done in Washington, DC, this 31st day of May 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-13075 Filed 6-5-90; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation**7 CFR Part 400**

[Docket No. 8020S]

General Administrative Regulations; Crop Insurance; Preemption of State Laws and Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) adds a new subpart P in chapter IV of title 7 of the Code of Federal Regulations (CFR), to be known as 7 CFR part 400, subpart P, General Administrative Regulations—Preemption of State Laws and

Regulations, to set forth the provisions of preemption by the Federal Crop Insurance Corporation of State laws and regulations under the authority contained in the Federal Crop Insurance Act, as amended. The intended effect of this rule is to clarify and further define FCIC's preemption of inconsistent State laws and regulations.

EFFECTIVE DATE: This rule is effective on June 6, 1990.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1994.

David W. Gabriel, Acting Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12612 (Federalism) and Secretary's Memorandum 1200-1 because: (1) The statutory mandate for preemption is express, clear, and unequivocal (7 U.S.C. 1506(k)); (2) The Supreme Court of the United States has determined preemption in an express, clear and unequivocal manner (*Federal Crop Insurance Corporation v. Merrill*, 332 U.S. 380 (1947)); and (3) the provisions outlined in this regulation announce no new policy but only serve to clarify and enunciate the policy and provisions which have been in existence since prior to 1947.

State statutes and regulations of the FCIC program have always been specifically preempted by the Federal Crop Insurance Act and the Supremacy Clause of the Constitution of the United States. See 7 U.S.C. 1506(k); *Federal Crop Insurance Corporation v. Merrill*, 332 U.S. 380 (1947).

Despite this well recognized preemption of State law and regulation in the Federal Assistance Program, FCIC has encountered frequent occurrences of State agencies requiring change in federally approved insurance policies to the extent that neighboring policyholders receive differing levels of federal assistance depending on whether they obtain their policy from FCIC or from a reinsured company, or depending on whether they live in differing States.

Additionally, many States have been asserting the right to tax premiums on the reinsured policies under various State taxing statutes. Since FCIC is required to reimburse the reinsured companies for their expenses, the incidence of these taxes falls on the Corporation which, by virtue of 7 U.S.C. 1511, is exempt therefrom. The FCIC estimates that it has paid over \$15 million in the last year as reimbursement for State Premium taxes which should not have been assessed.

A number of instances have been reported where indemnities have not reached the intended recipient because of garnishments, liens, attachments, etc., served upon the reinsured companies under the various State laws. The clear statutory intent was that these assistance benefits be exempt from such interference. (See 7 U.S.C. 1509)

Judgements have been entered in State Courts under State statutory or common law providing for the payment of punitive damages or providing for some multiplication of damages under "good faith" or some other State provision because of requirements of the FCIC Act or procedures and policy

provisions mandated by the FCIC. The Federal Crop Insurance Act restricts the losses which can be covered and causes of losses which can be insured against. The procedures, rules, and terms of insurance are to be established by FCIC. Appropriations by the Congress are to be used for their intended purpose and not to pay judgments which may or may not bear any relation to the loss which has been incurred.

Obviously, reinsured companies cannot stand the risk of exorbitant damages imposed because of that company's following of FCIC mandated terms and procedures, unless FCIC agrees to reimburse that company for those losses.

Since appropriated funds may only be used for the purpose for which they were appropriated, the continuation of the delivery of the program through the such companies depends on the straight forward clarification and declaration of federal preemption which has always existed but seldom been enforced.

The Federal Crop Insurance Act encourages the sales and service of policies under the Act through licensed agents and brokers. FCIC requires that the crop insurance program be delivered through the use of licensed agents and brokers by specifying the requirement that the persons selling or servicing its policies be licensed in certain generic categories by the State in which sales will occur. FCIC will continue this requirement as being in accordance with the intent of the legislation and as a further protection of the intended recipients of this federal benefit.

FCIC, as always, remains open to suggestions from any person, including State insurance regulatory bodies, on ways to improve the program including changes in policy terms of conditions. However, it is FCIC which must determine the necessity of and scope of such changes. They cannot be enforced in a patchwork pattern, with no regard for the requirements of, or the safeguards to the program.

FCIC has therefore, included provisions for Federal preemption in this rule. Several specific preemptions are listed as examples only, and are not intended to be inclusive.

On Wednesday, February 7, 1990, FCIC published a notice of proposed rulemaking in the *Federal Register* at 55 FR 4382, to contain one common set of crop insurance regulations and a common policy of insurance applicable to all such regulations now contained in 7 CFR chapter IV which will be applicable to all crop insurance policies sold by FCIC, or sold by private insurance companies and reinsured by FCIC under the provisions of a Standard

Reinsurance Agreement when appropriate Crop Provisions are published.

In addition, the notice of proposed rulemaking clarified FCIC's long standing position on the preemption of inconsistent State laws and regulations.

The public was given until March 9, 1990, to submit written comments, data, and opinions on the proposed rule. Comments were received from several State Commissioners of Insurance, and a collective statement on behalf of State Commissioners of Insurance from the National Association of Insurance Commissioners; Reinsured companies; Law firms representing insurance associations; the Office of Inspector General, United States Department of Agriculture; the Florida Fruit and Vegetable Association; several divisions of FCIC; and, one private citizen.

In view of the volume and nature of responses received, the preponderance of which addressed the issue of federal preemption, FCIC has determined to make final that portion of the notice of proposed rulemaking dealing with the issues involved in federal preemption and to establish such rule in a new subpart P in part 400, to be known as 7 CFR part 400, subpart P, General Administrative Regulations; Preemption of State Laws and Regulations.

The notice of proposed rulemaking with respect to establishing a Common Policy of crop insurance, also contained in the *Federal Register* notice of proposed rulemaking publication at 55 FR 4382, and the comments pertaining to the proposed policy provisions therein, are still under consideration by FCIC and will be addressed at a later date by publication of a separate final rule in the *Federal Register*.

Discussion of Comments Relating to Federal Preemption

FCIC received 23 timely filed letters containing 35 comments relating to that portion of the proposed rule relating to federal preemption. Respondents included the following: 8 insurance companies, 6 state agencies, 3 trade organizations, 4 law firms, 1 farmer organization, and 1 U.S. government agency.

The comments regarding this portion of the rule addressed the following issues: (1) Does the proposed rule violate the provisions of the McCarren-Ferguson Act (15 U.S.C. 1101 *et seq.*); (2) is the proposed rule authorized by the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) (Act); (3) is the proposed rule consistent with Executive Order 12612; (4) should states be deprived of this source of revenue and control over the industry; (5) should not the proposed

rule be delayed; and (6) does the proposed rule place insurance companies in a difficult relationship with state agencies.

McCarren-Ferguson Act

Two commentators indicated that federal preemption of state insurance laws violates the provisions of the McCarren-Ferguson Act. One commentator took the position that such federal preemption was consistent with the McCarren-Ferguson Act.

The McCarren-Ferguson Act provides that "no Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such businesses, unless such Act specifically relates to the business of insurance * * *." (15 U.S.C. 1011(b)). Pursuant to 7 U.S.C. 1506(k), Congress has specifically authorized FCIC to preempt state law in the area of crop insurance. Therefore, the proposed rule is consistent with the McCarren-Ferguson Act.

Federal Crop Insurance Act

Four commentators indicated that federal preemption was not authorized by the Federal Crop Insurance Act because the Act does not apply to contracts where FCIC is not a party. One commentator stated that the legislative history of the Act demonstrated Congress' intent that FCIC's regulations and contracts preempt the whole crop insurance regulatory field.

In the Act, Congress mandated that FCIC establish crop insurance throughout the United States and provided FCIC with the authority to preempt state insurance laws and regulations (7 U.S.C. 1506 and 1511). Specifically, Congress provided that "state and local laws or rules shall not apply to the extent that such contracts or agreements provide that such laws or rules do not apply * * *." (7 U.S.C. 1506(k)).

FCIC has consistently interpreted 7 U.S.C. 1506(k) to allow FCIC to preempt any state insurance rules or regulations regarding crop insurance that may apply to FCIC or to any insurance company with which FCIC has an agreement. Congress never intended this provision to be limited to those state rules that directly affect the contractual relationship between FCIC and the contractor.

This interpretation is necessary because, in order to carry out its Congressional mandate to establish crop insurance uniformly throughout the

United States, FCIC has to have the authority to control not only the contractual relationship with its contractors, but it also must control the relationship such contractors have with insureds. Many provisions of the agreements FCIC executes with contractors regulate contractual terms and conditions between the contractor and insureds. Thus, 7 U.S.C. 1506(k) must be interpreted to include the preemption of state rules that only apply to contractors such as the application of a state premium tax.

Executive Order 12612

Seven commentors indicated that the federal preemption rule violated Executive Order 12612 because FCIC did not prepare a "Federalism Assessment" and because FCIC did not give proper deference to the interests of States in the regulations of the insurance industry.

As indicated in the preamble to the proposed rule (55 FR 4382, published on February 7, 1990), the proposed rule is not subject to Executive Order 12612 for the following reasons:

- (1) The statutory mandate for preemption is express, clear, and unequivocal (7 U.S.C. 1506(k));
- (2) The Supreme Court of the United States has determined preemption in an express, clear, and unequivocal manner (*Federal Crop Insurance Corporation v. Merrill* 332 U.S. 380 (1947)); and
- (3) The provisions outlined in this regulation announce no new policy but only serve to clarify and enunciate the policy and provisions which have been in existence since prior to 1947. (55 FR 4382, February 7, 1990)

This Executive Order does not forbid agencies from issuing regulations that preempt state laws and regulations. It merely requires that such regulations should be based upon clear statutory authority. Section 4 of Executive Order 12612 provides in part, that "executive departments and agencies shall construe, in regulations and otherwise, a Federal statute to preempt state law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that Congress intended preemption of State law, * * *." The proposed rule is based upon an express statutory preemption of state law which is contained in the Act.

Pursuant to 7 U.S.C. 1506(k), Congress authorized FCIC to issue regulations and contracts that generally preempt the application of state law to the crop insurance industry. Without such authority, FCIC would be unable to carry out its Congressionally mandated purpose of the establishment of a

system of crop insurance throughout the United States (7 U.S.C. 1502). As indicated by the Supreme Court decision of *Federal Crop Insurance Corporation v. Merrill*, *supra*, FCIC's authority and policy to preempt state laws has been recognized for over forty years. All the Executive Order requires is that FCIC have the explicit authority by Congress before it issues regulations that preempt state law. 7 U.S.C. 1506(k) is such an express statutory authority to preempt state law.

State Taxes

Fifteen commentors, representing state agencies and several insurance companies, claimed that the federal preemption rule would unfairly deprive states of a source of revenue by exempting insurance companies that contract with FCIC from state premium taxes. Without these revenues, it is alleged that state agencies that regulate the insurance industry will not have sufficient funds to carry out their duties which are beneficial to insureds and insurance companies.

As indicated in the preamble to the proposed rule (55 FR 4382), FCIC is statutorily required to reimburse reinsured companies for their expenses (7 U.S.C. 1508(e)). A state premium tax charged to a reinsured company is an expense which FCIC may be required to reimburse. Thus, FCIC is the ultimate payer of these taxes. Congress, in the Act, prohibits states from taxing FCIC operations (7 U.S.C. 1511). To allow states to impose a premium tax that FCIC is required to pay would effectively render the Congressional prohibition of FCIC being taxed by states unenforceable.

Congress, through the Act, created a system in which FCIC must have the right to preempt the application of state laws. Otherwise, it will be unable to administer this program uniformly throughout the United States. However, many of the services provided by the states that the commentors fear are threatened by this rule, are not prohibited. The only change that is required is that the states find another source of funding of such programs.

Rule Should Be Delayed

Two commentors stated that the implementation of the federal preemption rule should be delayed until the 1991 crop year in order to avoid confusion.

The federal preemption rule is merely a formal clarification of a policy that has been in effect since 1947. The Act, as well as FCIC's regulations and policies, have specifically recognized FCIC's right to preempt state law. Thus, there is no

reason to delay the implementation of this rule. The primary immediate effect of this rule is to stop the assessment of premium taxes upon FCIC insurance company contractors and clarify the existing policy regarding proper policy interpretation. There is no programmatic reason to justify the delay of the implementation of the rule.

Rule Causes Confusion

One commentor stated that the federal preemption rule will create a confusing situation between the insurance companies who contract with FCIC and the state regulatory agencies that may still seek the payment of premium taxes.

The rule does not create the situation alleged by the commentor. Pursuant to 7 U.S.C. 1506(k); *Federal Crop Insurance Corporation v. Merrill*, *supra*; and the Supremacy Clause of the United States Constitution, the proposed rule would give FCIC the authority to federally exempt the FCIC insurance company contractor from any state premium tax.

Comments In General Support of the Proposed Rule

Two commentors indicated that they generally supported the proposed rule.

Accordingly, with the exception of minor and non-substantive corrections to language and format, FCIC herewith adopts the notice of proposed rulemaking published at 55 FR 4382, with respect to federal preemption, and adds a new subpart P in chapter IV of title 7 of the Code of Federal Regulations (CFR), to be known as 7 CFR part 400, subpart P, General Administrative Regulations—Preemption of State Laws and Regulations for these purposes, to set forth the provisions of preemption by the Federal Crop Insurance Corporation of State laws and regulations under the authority contained in the Federal Crop Insurance Act, as amended.

Since the provisions outlined in this regulation announce no new policy but only serve to clarify and enunciate the policy and provisions which have been in existence since prior to 1947 under the authority established in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), good cause is shown for making this rule effective in less than 30 days. Therefore, FCIC has determined that this rule is effective upon publication in the *Federal Register*.

List of Subjects in 7 CFR Part 400, Subpart P

Crop insurance, General administrative regulations, Preemption of state laws and regulations.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby adds a new subpart P in chapter IV of title 7 of the Code of Federal Regulations (CFR), to be known as 7 CFR part 400, subpart P, General Administrative Regulations—Preemption of State Laws and Regulations, to set forth the provisions of preemption of State laws and regulations, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart P—Preemption of State Laws and Regulations

Sec.

400.351 Basis and Applicability.
400.352 State and local laws and regulations preempted.

Authority: 7 U.S.C. 1506, 1516.

§ 400.351 Basis and applicability.

The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) [the Act], to prescribe the procedures for federal preemption of State laws and regulations not consistent with the purpose, intent, or authority of the Act. These regulations are applicable to all policies of insurance, insured or reinsured by the Corporation, contracts, agreements, or actions authorized by the Act and entered into or issued by FCIC.

§ 400.352 State and local laws and regulations preempted.

(a) No State or local governmental body or non-governmental body shall have the authority to promulgate rules or regulations, pass laws, or issue policies or decisions that directly or indirectly affect or govern agreements, contracts, or actions authorized by this part unless such authority is specifically authorized by this part or by the Corporation.

(b) The following is a non-inclusive list of examples of actions that State or local governmental entities or non-governmental entities are specifically prohibited from taking against the Corporation or any party that is acting pursuant to this part. Such entities may not:

(1) Impose or enforce liens, garnishments, or other similar actions against proceeds obtained, or payments issued in accordance with the Federal Crop Insurance Act, these regulations, or contracts or agreements entered into pursuant to these regulations;

(2) Tax premiums associated with policies issued hereunder;

(3) Exercise approval authority over policies issued;

(4) Levy fines, judgments, punitive damages, compensatory damages, or judgments for attorney fees or other costs against companies, employees of companies including agents and loss adjusters, or federal employees arising out of actions or inactions on the part of such individuals and entities authorized or required under the Federal Crop Insurance Act, the regulations, any contract or agreement authorized by the Federal Crop Insurance Act or by regulations, or procedures issued by the Corporation (nothing herein is intended to preclude any action on the part of any authorized State regulatory body or any State court or any other authorized entity concerning any actions or inactions on the part of the agent, company or employee of any company whose action or inaction is not authorized or required under the Federal Crop Insurance Act, the regulations, any contract or agreement authorized by the Federal Crop Insurance Act or by regulations or procedures issued by the Corporation); or

(5) Assess any tax, fee, or amount for the funding or maintenance of any State or local insolvency pool or other similar fund.

The preceding list does not limit the scope or meaning of paragraph (a) of this section.

Done in Washington, DC, on May 31, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-13081 Filed 6-5-90; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV-90-159]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 948 for the 1990-91 fiscal period. Authorization of this budget will allow the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this

program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1990, through June 30, 1991.

FOR FURTHER INFORMATION CONTACT:

Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-2020.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended [7 CFR part 948], regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 30 handlers and approximately 80 producers of potatoes in Colorado Area 3. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of Colorado Area 3 potato producers and handlers may be classified as small entities.

The Colorado Potato Administrative Committee, Northern Colorado Office (Area 3) (committee) unanimously voted at its April 12, 1990, meeting to recommend its 1990-91 budget and assessment rate to the Secretary of Agriculture for consideration.

The committee, the agency responsible for local administration of the order, consists of producers and

handlers of Colorado Area 3 potatoes. These producers and handlers are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed at a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The recommended assessment rate was derived by dividing anticipated expenses by expected fresh shipments of Colorado Area 3 potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts, and expenses are incurred on a continuous basis.

The recommended budget for the 1990-91 fiscal year of \$4,312 is \$694 more than the previous year due to several increases, including the manager's salary and travel expenses for compliance audits. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. Administrative expenses that are shared are divided so that 85 percent is paid under the State order and 15 percent under the Federal order. All promotion and advertising expenses are financed under the State order.

The 1990-91 recommended assessment rate of \$0.005 per hundredweight of potatoes is the same as last year. This rate, when applied to anticipated fresh market shipments of 711,000 hundredweight, would yield \$3,555 in assessment revenue. Additional money to be received from the Federal-State Inspection Service for rent (\$360) and interest (\$450) would result in total revenues of \$4,365 which would be adequate to cover budgeted expenses. The projected reserve for the end of the 1990-91 fiscal period is \$5,000 which would be carried over into the next fiscal year. This amount is within the maximum permitted by the order of two fiscal years' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the *Federal Register* on May 10, 1990 [55 FR 18909]. That document contained a proposal to add § 948.204 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through May 21, 1990. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1990-91 fiscal period for the program begins on July 1, 1990, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Colorado Area 3 potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* [5 U.S.C. 553].

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

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

2. A new § 948.204 is added to read as follows [This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations]:

§ 948.204 Expenses and assessment rate.

Expenses of \$4,312 by the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3) are authorized, and an assessment rate of \$0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1991. Unexpended funds may be carried over as a reserve.

Dated: May 31, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-13047 Filed 6-5-90; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 88-002F]

RIN 0583-AA82

Partially Cooked, Cured and Smoked, Poultry Breakfast Strips

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending subchapter C, part 381, of the poultry products inspection regulations to permit the preparation, under certain conditions, of partially cooked, cured and smoked, poultry breakfast strips which are intended to be further cooked by the consumer before consumption. This product would be labeled with the statement "Partially Cooked: For Safety, Cook Until Well Done," specifying that the product is not suitable for consumption until thoroughly cooked. In addition, detailed instructions on how to cook the product are required on the immediate container of the product.

EFFECTIVE DATES: July 6, 1990.

FOR FURTHER INFORMATION CONTACT:

Mr. Ashland Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-4293.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this rule is not a "major rule." It will not result in an annual effect on the economy of \$100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The rule relieves restrictions in the current regulations to permit the production of partially cooked, cured and smoked poultry breakfast strip products under certain conditions. The production of these products would be voluntary, and any costs incurred would be the normal costs associated with marketing a new product. The extent of these costs will depend on the number of producers who choose to market partially cooked poultry breakfast strip products, and the amount of product they choose to produce. In addition, the rule allows poultry product producers to compete on a more equitable basis with beef and pork bacon producers.

Background

On March 24, 1989, the Food Safety and Inspection Service published a proposal in the Federal Register (54 FR 12219) to amend the poultry products inspection regulations to permit the preparation of partially cooked poultry breakfast strips. This action was in response to a petition from Swift-Eckrich, Inc., Oak Brook, IL, requesting that the poultry products inspection regulations be amended to allow for the production of partially cooked poultry products, which require further cooking by the consumer.

The current regulation (9 CFR 381.150) requires all heat-processed poultry products to reach an internal temperature of 160 °F. before they are removed from the cooking medium. An exception is made for cured and smoked poultry products, which must be heated to an internal temperature of 155 °F.

Minimum cooking temperature for heat processed poultry rolls were included as one of several amendments to the poultry products inspection regulations in 1964 (29 FR 7586), and for "other" poultry products in 1972 (37 FR 9706). The cooking requirements were issued to "provide protection against non-spore forming pathogenic bacteria" (29 FR 4804). Poultry rolls were of particular concern as they were a new product which required additional handling to fabricate. Additional handling offered greater opportunity for the introduction of bacteria into the interior of the product, which in turn made it necessary for poultry rolls to be cooked sufficiently to assure that the internal temperature of the product was high enough to kill the bacteria.

FSIS believes that many consumers may be interested in poultry product alternatives to red meat products. Poultry breakfast strips would offer a lower fat replacement for traditional bacon, and a meat alternative for consumers prohibited from eating pork for religious, cultural or dietary reasons. However, because of the inherent low fat content of poultry, and the fact that this new product would be manufactured into thin strips, the petitioner indicated that cooking to 155 °F. in the establishment before distribution would result in a product which would be inordinately dry and, thus, unappealing to consumers.

The petitioner requested that the cooking requirements in section 381.150 of the poultry products inspection regulations (9 CFR 381.150) be amended to allow for the production of partially cooked poultry products. However, because of the potential for inclusion of pathogenic microorganisms, such as *Salmonella* sp. or *Listeria* sp., during the manufacturing process, FSIS has narrowed the amendment of the poultry products inspection regulations to only permit the preparation of partially cooked, cured and smoked, poultry breakfast strips. The cure would act as a bacterial inhibitor which would reduce bacterial growth and enhance product wholesomeness; and the strips would be thin enough that heat penetration during cooking by the consumer would be rapid, so that any bacteria remaining in the product would be destroyed.

FSIS determined that the petitioner presented a reasonable request for promulgation of rulemaking to accommodate partially cooked, cured and smoked, poultry breakfast strips; however, there are two issues of concern which were addressed in the proposal. First, a partially cooked poultry product could potentially be heated by a consumer to appear, but not in actuality be, sufficiently cooked to kill all pathogenic bacteria.

Many consumers rely on the visual effect of heat on traditional pork bacon to determine whether the product has been sufficiently cooked. The fat in traditional pork bacon is white when it is removed from the package. As the bacon heats, the fat becomes translucent and eventually turns light brown. FSIS believes that consumers use this change in the appearance of traditional bacon fat to determine that the product has been fully cooked.

However, because of the inherently lower fat content in poultry breakfast strips, a visual indicator cannot be used to determine whether product has been sufficiently cooked. Therefore, this rule

requires that the labels of partially cooked, cured and smoked, poultry breakfast strips bear a statement indicating that further cooking is required. The statement "Partially Cooked: For Safety, Cook Until Well Done," is required to appear on the principal display panel in letters no smaller than 1/2 the size of the largest letter in the product name as a labeling requirement. The rule requires that the producer provide detailed cooking instructions on the immediate container of the products; however, because appropriate cooking instructions will vary from product to product, specific cooking instructions are not delineated in the rulemaking.

Secondly, the petitioner did not indicate a minimum temperature to which the product would be heated during manufacturing. Thus, the producer may inadvertently choose a cooking temperature that would destroy harmless spoilage microorganisms without destroying pathogens such as salmonellae. This rule requires that partially cooked, cured and smoked, poultry breakfast strips reach an internal temperature of 140 °F., followed by rapid cooling.

The reduction or elimination of competing food spoilage or harmless microorganisms may encourage rapid growth of pathogens in cured and smoked poultry breakfast strips. Thus, this product must be quickly cooled to 80 °F. in 1.5 hours and to 40 °F. within 5 hours to preserve wholesomeness.

To provide additional protection against pathogen growth, the labels of partially cooked, cured and smoked, poultry breakfast strips are required to bear a "Keep Refrigerated" or "Keep Frozen" statement in accordance with 9 CFR 381.125.

Comments on the Proposed Rule

Three comments were received in response to the proposal—one from an industry member, one from an industry organization and one from a professional organization. All three commenters supported the proposal. However, one suggested that the words "Partially Cooked, Cured and Smoked" be required to be the same size as the letters in "Poultry Breakfast Strips."

FSIS is not prescribing "poultry breakfast strips" as a product name; this is outside of the scope of this rulemaking. However, the product name must comply with the requirements set forth in 9 CFR 381.117.

FSIS considers the phrase "Partially Cooked, Cured and Smoked," which may appear either before or after the applicable poultry breakfast strips

product name, to be part of the product name. The size of the letters of all words in the product name should receive equal prominence. The phrase "Partially Cooked: For Safety, Cook Until Well Done" is a warning notice, however, and must be printed in letters of easily readable style, no smaller than 1/2 the size of the largest letter in the product name. This is consistent with current policy for similar statements on other products under FSIS jurisdiction, and fully informs the consumer of the nature of the product.

List of Subjects in 9 CFR Part 381

Poultry products inspection, Cooked poultry, Poultry breakfast strips.

Final Rule

For reasons set forth in the preamble, title 9, subchapter C, part 381, of the Code of Federal Regulations is amended as set forth below:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451-470; 601-695; 33 U.S.C. 1254; 7 CFR 2.17, 2.55.

2. Subpart O of part 381 is amended by revising the heading of § 381.150, designating the current paragraph as paragraph (b) and adding a new paragraph (a) to read as follows:

§ 381.150 Requirements for the production of poultry breakfast strips, poultry rolls, and certain other poultry products.

(a) Poultry breakfast strips are cured and smoked products which require special handling during distribution and additional cooking before consumption. These products shall be heated to an internal temperature of 140 °F. After heating in the establishment, these products must be cooled to 80 °F. within 1.5 hours and to 40 °F. within 5 hours. Labeling for these products shall comply with § 381.125 of this part. In addition, the statement "Partially Cooked: For Safety, Cook Until Well Done" shall appear on the principal display panel in letters no smaller than 1/2 the size of the largest letter in the product name. Detailed cooking instructions shall be provided on the immediate container of the products.

3. New paragraph (b) of 9 CFR 381.150 is amended by making the first letter of paragraph (b) a small letter and inserting a new phrase at the beginning of the first sentence of paragraph (b) to read as follows: "Except for product produced in accordance with paragraph (a) of this section,".

Done at Washington, DC, on May 31, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90-12998 Filed 6-5-90; 8:45 am]

BILLING CODE 3410-DM-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

[Rev. 11, Amdt. 11]

RIN 3245-AB97

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule conforms the present regulations to Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988 ("Act"), approved November 3, 1988 (102 Stat. 2989). It authorizes drought disaster loans for small nurseries, additional loan amounts for the mitigation of recurring disaster damages, uncollateralized physical disaster loans of \$10,000 or less, 4 percent loans for nonprofit concerns, and resolves interpretive questions which have arisen since the last revision in 1984 (49 FR 32310).

EFFECTIVE DATE: June 6, 1990.

FOR FURTHER INFORMATION CONTACT:

Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 L Street NW., room 820, Washington, DC 20416 (Tel. (202) 653-6879).

SUPPLEMENTARY INFORMATION: On December 22, 1989, SBA published a Notice of Proposed Rulemaking (54 FR 52820) with a request for comments on or before January 22, 1990. One comment was received, concerning the definition of "Nursery" which is discussed below.

The final rule clarifies the proposed introduction (§ 123.2). It breaks a long sentence into two sentences, and selects different examples of gradual physical occurrences (shoreline erosion and gradual land subsidence) for which SBA is not authorized to make disaster loans. In addition, this final rule includes a clarification regarding collateral, § 123.11, also discussed below.

Section 123.24(f), dealing with refinancing of damaged or destroyed property, has been revised in three respects. First, we make clear that the definitions of "property" and "totally destroyed or substantially damaged" apply only to this paragraph (f); second, that damage is measured after deduction of insurance or other compensation; and

third, that refinancing is available for a primary residence or for business property including machinery and equipment.

Section 123.41(b) has been revised to conform the enumeration order of ineligible small concerns in paragraph 2 to the order used in the business loan policy regulation, part 120. The substance of this paragraph is unchanged.

In all other respects the final rule follows the proposed rule. The explanations given with the proposed rule apply, and are not repeated here.

Section 120(a) of the Act has made nurseries, which are victims of drought disasters, eligible for economic injury disaster assistance. A definition of "nursery" is therefore added to § 123.3. The comment referred to above correctly pointed out that the purpose of the legislative amendment is to make nurseries, which would otherwise be excluded from economic injury disaster assistance as agricultural enterprises, eligible for such assistance. It was further pointed out that certain non-agricultural nurseries, such as wholesale distributors of flowers and florist supplies (Industry No. 5193 of the Standard Industrial Classification Manual, Office of Management and Budget, Executive Office of the President—1987), and retail nurseries dealing in lawn and garden supplies purchased from others (Industry No. 5261), although they may also grow some of these products, have not been barred as agricultural enterprises (see § 123.17) from SBA disaster assistance heretofore and they remain eligible. Accordingly, the comment urged that the definition be revised to correspond more closely to the definition of nurseries of the agricultural type, Industry No. 0181. The revised definition includes a lower percentage (50 percent or more) of annual receipts that must be derived from products grown by the nursery than was proposed in the Notice of Proposed Rulemaking, and makes clear at § 123.41(b)(4), that small wholesale and retail plant distributors are eligible for economic injury disaster assistance.

Section 123.11, as proposed, would have exempted physical disaster loans of \$10,000 or less and economic injury disaster loans of \$5,000 or less from any requirement of collateral, and would have barred the aggregation of both types of loans in order to determine whether collateral could be required. The possibility that the same borrower could be eligible for more than one loan of either type was not considered, and aggregation of such loans was not discussed. As revised, the section now

makes clear that physical disaster loans for injuries sustained in the same disaster will be aggregated, as will economic injury disaster loans. The clause permitting acceptance of collateral when offered has been added to give borrowers the choice of securing their loans voluntarily.

Section 123.24(f) has been revised to make clear that the definitions of "property" and "totally destroyed or substantially damaged" apply only to this paragraph (f), and further that damage is measured after deduction of insurance or other compensation.

Compliance with Executive Orders 12291 and 12612, and the Regulatory Flexibility and Paperwork Reduction Acts.

SBA has determined that these regulations do not constitute a major rule for purposes of Executive Order 12291, because they would not have an annual impact on the national economy of \$100 million or more. In this regard, we estimate that the failure to require collateral for the smaller loans will affect only \$1 million of loans. The aggregate reduction in the interest rate for nonprofit concerns without credit elsewhere will not exceed \$215,000 annually. The new definition of "disaster" may cause SBA to make additional loans of up to \$7 million. We expect that SBA will make no more than \$4 million in drought disaster loans to nurseries. As to mitigation measures, we estimate a maximum of \$30 million in additional loans amounts. The change in the refinancing regulations and the other editorial amendments have no monetary impact. Accordingly, we anticipate that these regulations will have an impact of less than \$44 million.

SBA certifies that these regulations have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, these regulations may have a significant economic impact on a substantial number of small entities. We have indicated above the dollar amounts of the impact of each section of these regulations. The following analysis is provided within the context of the review prescribed by the Regulatory Flexibility Act (5 U.S.C. 603).

1. The new definition of "disaster," the renunciation of collateral for the smaller loans, the reduction of the interest rate for nonprofit entities without "credit elsewhere," the availability of drought disaster loans for nurseries, the availability of additional disaster loan amounts for the mitigation

of recurring damage are all mandated by sections 119-121 of the Act.

2. The legal basis for these rules is section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

3. One objective of these regulations is to implement the Act. Another objective is to make it easier for the public to avail themselves of the new disaster lending authority given to SBA and to clarify existing rules.

4. These new regulations will apply to an unpredictable number of small business and individual disaster loan borrowers. In fiscal year 1988, SBA made 13,463 disaster loans.

5. Proposed § 123.24(j) asks applicants that request an additional loan amount to cover the cost of measures to mitigate future recurring damage, to state the nature and cost of planned mitigation measures. This request has been approved by OMB under clearance number 3245-0017, 0018 (SBA Form 1632).

6. There are no Federal rules which would duplicate, overlap, or conflict with the regulations.

7. There are no practical alternatives to these rules which would minimize any significant economic impact of the proposed rules on small entities.

8. These regulations are not likely to cause an increase in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or have adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based businesses to compete with foreign-based businesses in domestic or export markets.

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, we certify that these regulations, if promulgated, will not impose any reporting or recordkeeping requirements not already approved by the Office of Management and Budget (see No. 5 above).

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs/business, Small businesses.

Accordingly, 13 CFR part 123 is amended as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 continues to read as follows:

Authority: Sections 5(b)(6); 7 (b), (c), (f) of the Small Business Act, 15 U.S.C. 634(b)(6); 636 (b), (c), (f); Pub. L. 100-590.

2. Section 123.2 *Introduction* is revised to read as follows:

§ 123.2 Introduction.

SBA is authorized to make or to guarantee loans as necessary or appropriate to victims of sudden physical disaster, or of economic injury caused by unforeseeable and unintended events resulting from a sudden physical disaster. SBA is not authorized to provide assistance in gradual physical occurrences such as shoreline erosion or gradual land subsidence. Congress has not reopened programs now repealed which in the past provided, among other things, disaster assistance to businesses adversely affected by Federal government actions or by price or market fluctuations. SBA is authorized to make economic injury disaster loans to nurseries that are victims of drought (see § 123.41(b)). No economic injury disaster loans are authorized for applicants able to obtain Credit Elsewhere (see definition in § 123.3). No person who has been convicted of a felony during and in connection with a riot or civil disorder shall be permitted, for a period of one year after the date of the conviction, to receive any benefit under any law of the United States providing relief for disaster victims (5 U.S.C. 7313 note).

§ 123.3 [Amended]

3. Section 123.3 *Definitions* is amended by revising the definition of *Disaster* therein to read as follows:

"Disaster" means a sudden event which causes severe physical damage, including, but not limited to, floods, hurricanes, tornadoes, earthquakes, volcanic eruptions, windstorms, land- or mudslides, tidal waves, fires, explosions, riots or civil disorders and industrial accidents (including oil spills). It also means sudden physical events that cause substantial economic injury, but may not cause physical damage to the victim's property, events such as ocean conditions resulting in a significant displacement, (e.g., by major ocean currents) or closure (e.g., because of toxic algae blooms) of customary fishing waters, and contamination of food or other products for human consumption from unforeseeable and unintended events beyond the control of the victim.

4. Section 123.3 is further amended by adding after the definition of *Major Source of Employment* the following new definition:

Nursery: Any commercial establishment deriving fifty percent (50

percent) or more of its annual receipts (as defined in part 121 of this chapter) from the production and sale of ornamental plants and other nursery products, including but not limited to bulbs, florist greens, foliage, flowers, shrubbery, flower and vegetable seeds, and sod (Industry No. 0181, Standard Industrial Classification Code, Office of Management and Budget, Executive Office of the President, 1987). See also § 123.41(b)(4).

§ 123.4 [Amended]

5. Section 123.4 *Types of loans* is amended by removing "§§ 122.7, 122.8 and 122.10" therefrom and adding "§ 120.3" instead.

§ 123.5 [Amended]

6. Section 123.5 *Financial Institutions* is amended by revising the reference to "§ 120.4" therein to read "§ 120.2-4".

7. Section 123.11 *Collateral* is amended by removing the last sentence thereof, and adding instead the following:

§ 123.11 Collateral.

* * * SBA shall not require, but may accept voluntary offers of, collateral for physical disaster loans (see subpart B of this part) of ten thousand dollars (\$10,000) or less. Generally, SBA will not require, but may accept voluntary offers of, collateral for economic injury disaster loans (see subpart C of this part) not exceeding five thousand dollars (\$5,000). Loans under subparts B and C, respectively, made to one borrower and/or its affiliates (as defined in part 121 of this chapter) for injuries sustained in the same disaster shall not be aggregated to determine the need for collateral, but such loans under the same subpart shall be so aggregated. When SBA requires an applicant to pledge available collateral in accordance with this section, the applicant's refusal to pledge such collateral may justify the decline of a loan.

§ 123.21 [Amended]

8. Section 123.21 *Physical disaster loan authority* is amended by adding in paragraph (e) *Loan purposes* after the first sentence a new sentence to read as follows:

(e) * * * Additional loan amounts may be used to meet minimum standards of safety and decency or building code requirements (see § 123.24(i)) or to protect damaged or destroyed real property from possible future like disasters (see § 123.24(j)).

9. Section 123.21 *Physical disaster loan authority*, paragraph (e) *Loan purposes* is further amended by placing a period after the words "original location" in the last sentence thereof and removing the rest of the sentence therefrom.

§ 123.23 [Amended]

10. Section 123.23 *Declaration procedures* is amended by revising the third sentence of paragraph (c) *Certification by Governor* to read as follows:

(c) * * * The Governor's certification shall further specify the county or counties or other political subdivisions in which the Disaster occurred. * * *

11. Section 123.24 is amended by revising paragraphs (a) and (f) thereof and adding a new paragraph (j) at the end thereof to read as follows:

§ 123.24 Conditions affecting all physical disaster loans.

(a) *Amount*. The amount of a loan is limited to the Eligible Physical Loss sustained and amounts permitted under paragraphs (f), (g), (h), (i), and (j) of this section. In no event may the total amount of SBA's share outstanding and committed to a borrower, together with its affiliates as defined in part 121 of this chapter, resulting from a single Disaster, exceed \$500,000, except as permitted in § 123.28 (Major employer) and limited by § 123.25 (Homeowners). SBA's share of an immediate participation in or guaranty of a loan under this part may not exceed 90 percent of the sum of the unpaid principal and accrued interest.

(f) *Refinancing*. (1) A part of or all loans secured by recorded liens on property totally destroyed or substantially damaged by the Disaster may be refinanced with additional disaster loan proceeds, as appropriate, subject in the case of Homeowners (as defined in § 123.3) to § 123.25(a)(3) and in all other cases to paragraph (a) of this section.

(2) For purposes of this paragraph (f), "Property," in the case of Homeowners means real property, and in all other cases, means both real property and machinery and equipment.

(3) For purposes of this paragraph (f), "Totally destroyed or substantially damaged" means uninsured or otherwise uncompensated damage of either:

(i) 40 percent or more of the lesser of market value or replacement cost at the time of the disaster, of a primary residence, including land, in the case of

Homeowners, or the aggregate value of the damaged real property (including land), and damaged machinery and equipment in all other cases, or

(ii) 50 percent or more of such value or replacement cost of a primary residence (not including land) in the case of Homeowners, or the aggregate value of damaged real property (excluding the value of the site) and damaged machinery and equipment in all other cases.

(4) Such refinancing shall be permitted only if the applicant is determined by SBA to be unable to obtain Credit Elsewhere (as defined in § 123.3) and if the totally destroyed or substantially damaged property is to be repaired, rehabilitated or replaced (including by relocation).

(5) The amount refinanced shall not exceed the lesser of the Eligible Physical Loss (as defined in § 123.3), or the balance of such lien, reduced by insurance or otherwise.

(j) *Mitigation*. (1) Subject to paragraph (a) of this section, an applicant for or recipient of a loan under this subpart may, at any time prior to final disbursement thereof, apply for an additional loan amount for the protection from or the mitigation of future recurring damage to the damaged real property from like events, not to exceed the lesser of the cost of such mitigation, or twenty percent (20%) of the basic loan amount to repair or replace damaged real and personal property at the same location, including permissible upgrading pursuant to paragraph (i) of this section, but loan amounts authorized pursuant to this paragraph (j) shall not duplicate amounts authorized pursuant to paragraph (i) of this section.

(2) The basic loan amount shall be determined at the time of the application under this paragraph, (j), and shall reflect any decreases or increases in earlier approved loan amounts, but shall not include refinancing pursuant to paragraph (f) of this section. If such basic loan amount is increased after SBA approval of the additional loan amount pursuant to this paragraph (j), the additional loan amount pursuant to this paragraph (j) may be increased proportionately if the cost of mitigation exceeds the previously approved additional amount, not to exceed such cost. A like decrease, however, shall not require a proportionate reduction.

(3) SBA shall not accept an application pursuant to this paragraph (j) after the final disbursement of the basic loan amount, unless substantial cause essentially beyond the control of

the applicant can be shown for such late application.

(4) Examples of mitigation measures include but are not limited to retaining walls, seawalls, grading and contouring land, relocating utilities and modifying structures.

§ 123.25 [Amended]

12. Section 123.25 *Special conditions—Home loans* is amended by replacing the period at the end of paragraph (a)(3) with a semicolon, and further by removing paragraph (a)(4) and adding instead new paragraphs (a)(4) and (a)(5) as follows:

(a) * * *

(4) \$24,000 for mitigation pursuant to § 123.24(j) of this part;

(5) \$244,000 for the total loan within the limitations specified in paragraphs (a)(1) through (a)(4) of this section.

* * * * *

13. Section 123.25 is further amended by revising paragraph (e) *State grants* to read as follows:

* * * * *

(e) *State grants.* Where a State has instituted a grant program under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5178) for victims of Major Disasters, those victims who lack repayment ability shall be immediately referred by the Federal Emergency Management Agency to appropriate State representatives without referral to SBA, in order to expedite assistance to victims. Disaster victims who desire to do so, however, may file an application with SBA in order to obtain a decision on their eligibility for financial assistance from SBA (OMB Approval No. 3245-0017 or 3245-0018).

* * * * *

14. Section 123.25 *Special Conditions—Home loans* is further amended by removing paragraph (g) *RESPA* therefrom and redesignating present paragraph (h) as paragraph (g).

§ 123.26 [Amended]

15. Section 123.26 *Special Conditions—Business loans* is amended by removing from the second sentence of paragraph (a) the reference “§ 121.3-2” and inserting instead “part 121.”

16. Section 123.29 is revised to read as follows:

§ 123.29 Loans to privately owned colleges and nonprofit organizations.

SBA is authorized to make physical disaster loans in the case of loss or damage as a result of a declared Disaster (see § 123.23), to the extent that such loss or damage is not compensated by insurance or otherwise, to a privately owned college or university. SBA may

further, in the case of a Major Disaster, waive interest payments on loans to such schools for the first three years of the term of such loans. See also § 123.13. SBA may also make such physical disaster loans to nonprofit organizations, including agricultural cooperatives (see § 123.41(b)(3)). Loans to such schools and such nonprofit organizations able to obtain Credit Elsewhere (as defined in § 123.3) shall be made at the Old Formula Rate. Loans to such concerns unable to obtain Credit Elsewhere shall be made at the same rate as loans to small concerns unable to obtain Credit Elsewhere (see § 123.26(b)).

17. Section 123.40 *Introduction* is amended by revising the first sentence thereof to read as follows:

§ 123.40 Introduction.

Loans to which this subpart applies are available only to small business concerns (including small nurseries affected by a drought disaster) and small agricultural cooperatives situated in a Disaster Area (see definition in § 123.3), which have suffered or are likely to suffer substantial economic injury (as defined in § 123.41(a)) as a result of that specific Disaster (see § 123.23). * * *

18. Section 123.41 is amended by revising paragraph (b) to read as follows:

§ 123.41 General provisions.

* * * * *

(b) *Eligible Applicants.* (1) Loans under this subpart are authorized only for small business concerns (including small nurseries as defined in § 123.3, affected by a drought disaster designated by the Secretary of Agriculture) and small agricultural cooperatives (see paragraph (b)(3) of this section), located within the Disaster Area and meeting the size standards of part 121 of this chapter as of the time (stated in the relevant declaration or designation) when the economic injury commenced, and which have suffered or are likely to suffer substantial economic (as distinguished from physical) injury directly resulting from a declared Disaster and are unable to obtain Credit Elsewhere (as defined in § 123.3).

(2) Small business concerns regardless of their business activity are eligible to apply for these loans, except for (i) media or similar concerns—see § 120.101-2(b); (ii) gambling concerns—see § 120.101-2(c); (iii) concerns engaged in illegal activities—see § 120.101-2(d); (iv) lending or investment concerns—see § 120.101-2(e); (v) concerns with principals incarcerated, on parole or probation—see § 120.101-2(f); (vi) multi-

level sales distribution (“pyramid”) concerns—see § 120.101-2(g); (vii) loan packagers—see § 120.101-2(h); (viii) concerns engaged in speculation—see § 120.102-5; (ix) concerns investing in property—see § 120.102-8.

(3) Nonprofit and charitable concerns and consumer and marketing cooperatives, as enumerated in § 120.101-2(a), are ineligible for loans under this subpart. Other cooperatives are eligible only if small and each of the owners would qualify as small under part 121 of this chapter. However, small agricultural cooperatives acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141), and meeting the size standards of part 121 of this chapter as of the time of the Disaster with respect to which a declaration or designation under section 7(b)(2) of the Act has been issued, are eligible.

(4) For agricultural enterprises, see § 123.17. Wholesale and retail florists (Industry Nos. 5193 and 5261, see definition of nursery in § 123.3) and nurseries deriving less than 50 percent of annual receipts from the production and sale of nursery products are not deemed agricultural enterprise for the purposes of this part.

(5) Applicants determined by SBA as able to obtain Credit Elsewhere are not eligible for loans under this subpart.

* * * * *

19. Section 123.41 *General Provisions* is further amended by removing from the provision in paragraph (e) thereof “§ 121.3-2” and inserting instead “part 121”.

Dated: May 9, 1990.

Susan Engeleiten,
Administrator.

[FR Doc. 90-13044 Filed 6-5-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of five new animal drug applications (NADA's) from Sterling Drug, Inc., to The Upjohn Co.
EFFECTIVE DATE: June 6, 1990.

FOR FURTHER INFORMATION CONTACT:

Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION:

Sterling Drug, Inc., 90 Park Ave., New York, NY 10016, advised FDA of a change of sponsor for five NADA's to The Upjohn Co., Kalamazoo, MI 49001. The NADA's affected are:

NADA Number	Product
15-506.....	Winstrol-V Tablets (Stanozolol).
30-844.....	Winstrol-V Suspension (Stanozolol).
44-611.....	Talwin-V (Pentazocine Lactate).
100-703.....	Carbocaine-V (Mepivacaine HCL).
135-544.....	Winstrol-V Chewable Tablets.

The agency is amending the regulations in 21 CFR 520.2150a, 520.2150b, 522.1372, 522.1698, and 522.2150 to reflect the change.

List of Subjects in 21 CFR**21 CFR Part 520**

Animal drugs.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.2150a [Amended]

2. Section 520.2150a *Stanozolol tablets* is amended in paragraph (b) by removing "000934" and inserting in its place "000009".

§ 520.2150b [Amended]

3. Section 520.2150b *Stanozolol chewable tablets* is amended in paragraph (b) by removing "000934" and inserting in its place "000009".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

4. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1372 [Amended]

5. Section 522.1372 *Mepivacaine hydrochloride injection* is amended in paragraph (b) by removing "000934" and inserting in its place "000009".

§ 522.1698 [Amended]

6. Section 522.1698 *Pentazocine lactate injection* is amended in paragraph (b) by removing "000934" and inserting in its place "000009".

§ 522.2150 [Amended]

7. Section 522.2150 *Stanozolol sterile suspension* is amended in paragraph (b) by removing "000934" and inserting in its place "000009".

Dated: May 18, 1990.

Robert C. Livingston,

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

[FR Doc. 90-13062 Filed 6-5-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 48 and 602**

[T.D. 8303]

RIN 1545-AJ13

Election To Have Certain Diesel Fuel Taxes Imposed on Sales to Retailers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document adopts as final regulations temporary regulations published in the *Federal Register* on March 1, 1988, relating to the collection of excise taxes on diesel fuel under an election provided by section 4041(n) of the Code. Changes to the applicable law were made by the Tax Reform Act of 1986.

EFFECTIVE DATES: The regulations are effective April 1, 1987, and apply to sales of diesel fuel for use in diesel-powered highway vehicles made after March 31, 1987, and before April 1, 1988, with the exception of the following provisions, which are effective as of March 1, 1988:

§ 48.4041-21(g).

§ 48.4041-21(h)(1) following "§ 4041 (a)(1).";

§ 48.4041-21(h)(2);

§ 48.4041-21(i)(3); and

§ 48.4041-21(k)(1).

FOR FURTHER INFORMATION CONTACT:

Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC 20224, Attention: CC: P&PSI:8 (202-566-4077, not a toll-free call).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information requirements contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-0977. The estimated average burden associated with the collection of information requirements in this final rule is 19 minutes per respondent/recordkeeper.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer TR:FP, and to the Office of Management and Budget, Paperwork Reduction Project, (RIN 1545-AJ13), Washington, DC 20503.

Background

On March 1, 1988, the *Federal Register* published temporary regulations [T.D. 8181] (53 FR 6518) (1988-1 C.B. 344) under section 4041 (n) of the Internal Revenue Code relating to the collection of excise taxes on diesel fuel under an election provided by section 4041(n) of the Code. The text of those temporary regulations also served as a notice of proposed rulemaking published in the *Federal Register* for the same day [LR-114-86] (50 FR 6524) (1988-1 C.B. 925). No written comments were received. A public hearing was not requested. Accordingly, the notice of proposed rulemaking is withdrawn, and the temporary regulations are adopted as redesignated by this Treasury decision.

In General

Section 1702 of the Tax Reform Act of 1986 (Pub. L. No. 99-514, 100 Stat. 2773) added section 4041(n) to the Code effective for sales of diesel fuel on or after April 1, 1987. Section 4041(n) allowed a qualified diesel fuel retailer to elect to shift the liability for the tax imposed by section 4041(a)(1) to the seller of the fuel to that retailer. A qualified retailer was not required to make the election with respect to all its sellers in order for the election to become effective. The qualified retailer remained liable, however, for any tax imposed on the subsequent sale of diesel fuel purchased tax-free from a seller not covered by a valid election. Section 4041(n) was subsequently repealed by section 10502(b)(4) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203, 101 Stat. 1330), effective for sales of diesel fuel on or after April 1, 1988. These regulations therefore do not reflect changes made to the diesel fuel excise tax by the Omnibus Budget Reconciliation Act of 1987.

Special Analyses

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of these regulations is Lauren G. Shaw, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury

Department participated in developing the regulations, both on matters of substance and style.

List of Subjects**26 CFR Part 48**

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 48 and 602 are amended as follows:

Authority citation amended:

Paragraph 1. The authority for part 48 is amended:

(a) by removing the following citation:

Section 48.4041-21T is also issued under 26 U.S.C. 4041(n); and

(b) by adding the following citation:

Section 48.4041-21 is also issued under 26 U.S.C. 4041(n).

§ 48.4041-21T [Redesignated as § 48.4041-21].

Par. 2. 26 CFR part 48 is amended by redesignating § 48.4041-21T as § 48.4041-21, and removing the word "(Temporary)" from the end of the section heading.

PART 602—[AMENDED]

Par. 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended].

Par. 4. The table of OMB control numbers in § 602.101(c) is amended as follows. The entry reading: "48.4041-21T . . . 1545-0977" is revised to read: "48.4041-21 . . . 1545-0977".

Dated: May 11, 1990.

[FR Doc. 90-13004 Filed 6-5-90; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60**

[FRL: 3785-2]

Standards of Performance for New Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On December 27, 1989, the Florida Department of Environmental Regulation (FDER) requested delegation of authority for the implementation and enforcement for various new and/or revised standards in 40 CFR part 60 (Standards of Performance for New Stationary Sources (NSPS)). In a letter dated January 31, 1990, EPA delegated the new and/or revised standards to Florida.

DATES: The effective date of delegation is January 31, 1990.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation may be examined during normal business hours at the Agency's regional office, 345 Courtland St., NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (identified below) should be submitted to Mr. Steve Smallwood, P.E., Director, Division of Air Resources Management/FDER, Twin Towers Office Bldg., 2600 Blair Stone Road, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: R. Douglas Neeley of the EPA Region IV Air Programs Branch at the above address and telephone number 404-347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION. Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR part 60, NSPS. The State may enforce an NSPS under state law and in state court, not under section 113(b) of the CAA in Federal Court.

On December 27, 1989, the FDER requested delegation of authority of NSPS for the following:

40 CFR part 60 subpart	Referenced EPA promulgation	FDER rule
Db—Industrial-Commercial-Institutional Steam Generating Units	Dec. 16, 1987, 52 FR 47842	17-2.660
F—Portland Cement Plants	Dec. 14, 1988, 53 FR 50364	17-2.660
O—Sewage Treatment Plants	Oct. 6, 1988, 53 FR 39416	17-2.660
BB—Kraft Pulp Mills	Apr. 12, 1988, 53 FR 12009	17-2.660
DD—Grain Elevators	Nov. 5, 1987, 52 FR 42434	17-2.660
GG—Stationary Gas Turbines	Nov. 5, 1987, 52 FR 42434	17-2.660
BBB—Rubber Tire Manufacturing Industry	Oct. 9, 1987, 52 FR 37874	17-2.660
QQQ—Petroleum Refinery Wastewater Systems	Nov. 23, 1988, 53 FR 47623	17-2.660
SSS—Magnetic Tape Manufacturing Industry	Oct. 3, 1988, 53 FR 38914	17-2.660
TTT—Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines	Jan. 29, 1988, 53 FR 2676	17-2.660

After thorough review of the request, the Regional Administrator determined that such delegation was appropriate with all the conditions set forth in the initial delegation letter of June 10, 1982.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant impact on a substantial number of small entities.

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

Authority: Sections 111 of the Clean Air Act, as amended (42 U.S.C. 7411).

Dated: May 23, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 90-13105 Filed 6-5-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 7

RIN 3067-AA00

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Age Discrimination Act of 1975 (the "Act"), as amended, and the general governmentwide regulation codified at 45 CFR part 90.

The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age. The Act applies to persons of all ages.

This rule is designed to guide the actions of recipients of financial assistance from FEMA. The rule incorporates the basic standards for determining age discrimination, which are set forth in the general regulation, 45 CFR part 90. It discusses the responsibilities of FEMA recipients and the investigation, conciliation and enforcement procedures FEMA will use to ensure compliance with the Act.

EFFECTIVE DATE: August 6, 1990.

FOR FURTHER INFORMATION CONTACT:

Katherine H. Shannon, Director of Personnel and Equal Opportunity, Room 810, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3962 (Voice), (202) 646-4117 (TTY).

SUPPLEMENTARY INFORMATION: The history of the Act can be found in the background section of the general regulation issued by the Department of Health, Education and Welfare (HEW), now the Department of Health and Human Services (HHS), to implement the Act and to guide the development of each agency's specific regulation, 44 FR 33768 (June 12, 1979) and in the Supplementary Information of the proposed FEMA regulation, 53 FR 922 (January 14, 1988). The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age. The Act applies to persons of all ages.

The proposed FEMA regulation was published at 53 FR 922 on January 14, 1988. No comments were received relative to the proposed regulation.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules. A major rule is defined as any rule that has an annual effect on the national economy of \$100 million or more—or certain other specified effects. FEMA concludes that this rule is not a major rule within the meaning of the Executive order because it does not have an effect on the economy of \$100 million or more, or otherwise meet the threshold criteria.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of these small entities," an analysis must be prepared describing the rule's impact on these small entities. "Small entities" are defined to include small businesses, small nonprofit organizations, and small governmental entities. Based on the cost analysis of the age regulation, FEMA finds that the effect of the age regulation

is minimal. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements contained in this rule under provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 3067-0177.

List of Subjects in 44 CFR Part 7

Aged, Civil Rights.

FEMA amends part 7 of title 44 of the Code of Federal Regulations by designating the current text as subpart A—Nondiscrimination in FEMA Programs—General, reserving subparts B–D, and adding new subpart E as set forth below.

Subpart E—Nondiscrimination on the Basis of Age in FEMA Program Activities Receiving Federal Financial Assistance

General

Sec.

- 7.910 What is the purpose of the Age Discrimination Act of 1975?
- 7.911 What is the purpose of FEMA's age discrimination regulation?
- 7.912 To what programs does this regulation apply?
- 7.913 Definition of terms used in this regulation.

Standards for Determining Age Discrimination

- 7.920 Rules against age discrimination.
- 7.921 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.
- 7.922 Exceptions to the rules against age discrimination: Reasonable factors other than age.
- 7.923 Burden of proof for exceptions.
- 7.924 Affirmative action by recipient.
- 7.925 Special benefits for children and the elderly.
- 7.926 Age distinctions contained in FEMA regulations.

Duties of FEMA Recipients

- 7.930 General responsibilities.
- 7.931 Notice to subrecipients and beneficiaries.
- 7.932 Assurance of compliance and recipient assessment of age distinctions.
- 7.933 Information requirement.

Investigation, Conciliation, and Enforcement Procedures

- 7.940 Compliance reviews.
- 7.941 Complaints.
- 7.942 Mediation.

- 7.943 Investigation.
- 7.944 Prohibition against intimidation or retaliation.
- 7.945 Compliance procedure.
- 7.946 Hearings, decisions, post-termination proceedings.
- 7.947 Remedial action by recipient.
- 7.948 Alternate funds disbursement procedures.
- 7.949 Exhaustion of administrative remedies.

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 26101, *et seq.* (45 CFR part 90).

General

§ 7.910 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975 (the "Act"), as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally-assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and this regulation.

§ 7.911 What is the purpose of FEMA's age discrimination regulation?

The purpose of this regulation is to set out FEMA's policies and procedures under the Age Discrimination Act of 1975 and the general governmentwide regulations, 45 CFR part 90. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally-assisted programs, activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 7.912 To what programs does this regulation apply?

(a) The Act and this regulation apply to each FEMA recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by FEMA.

(b) The Act and this regulation do not apply to:

- (1) An age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body which:
 - (i) Provides any benefits or assistance to persons based on age; or
 - (ii) Establishes criteria for participation in age-related terms; or
 - (iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act (29 U.S.C. 150, *et seq.*)

§ 7.913 Definition of terms used in this regulation.

As used in this regulation, the term "Act" means the Age Discrimination Act of 1975 as amended (title III of Pub. L. 94-135).

Action means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard or method of administration.

Age means how old a person is, or the number of years from the date of a person's birth.

Age distinction means any action using age or an age-related term.

Age-related term means a word or words which necessarily imply a particular age or range of ages (for example, *children*, *older persons*, but not *student*).

Agency means the Federal Emergency Management Agency.

Director means the Director of the Federal Emergency Management Agency.

Federal financial assistance means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

- (a) Funds; or
- (b) Services or Federal personnel; or
- (c) Real and personal property or any interest in or use of property, including:
 - (1) Transfers or leases of property for less than fair market value or for reduced consideration; and
 - (2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

Normal operation means the operation of a program or activity without significant changes that would impair its ability to meet its objective.

Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

Statutory objective means any purpose of a program or activity expressly stated in any Federal statute, State statute or local statute or ordinance adopted by an elected, general purpose legislative body.

Subrecipient means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

United States includes the 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, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands and all other territories and possessions of the United States. The term "State" also includes any one of the foregoing.

Standards for Determining Age Discrimination

§ 7.920 Rules against discrimination.

The rules stated in this section are limited by the exceptions contained in §§ 7.921 and 7.922 of these regulations.

(a) *General rule*: No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules*: A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 7.921 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by § 7.920, if the action reasonably takes into account age as a factor necessary to the

normal operation of the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 7.922 Exceptions to the rules against age discrimination: Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 7.920 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 7.923 Burden of proof for exceptions.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 7.921 and 7.922 is on the recipient of Federal financial assistance.

§ 7.924 Affirmative action by recipient.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in the limited participation in the recipient's program or activity on the basis of age.

§ 7.925 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 7.921.

§ 7.926 Age distinctions contained in FEMA regulations.

Any age distinctions contained in a rule or regulation issued by FEMA shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or

regulation applies, notwithstanding the provisions of § 7.921.

Duties of FEMA Recipients

§ 7.930 General responsibilities.

Each FEMA recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and this regulation, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford FEMA access to its records to the extent FEMA finds necessary to determine whether the recipient is in compliance with the Act and this regulation.

§ 7.931 Notice to subrecipients and beneficiaries.

(a) Where a recipient passes on Federal financial assistance from FEMA to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and this regulation.

(b) Each recipient shall make necessary information about the Act and this regulation available to its program beneficiaries in order to inform them about the protection against discrimination provided by the Act and this regulation.

§ 7.932 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from FEMA shall sign a written assurance as specified by FEMA that it will comply with Act and this regulation.

(b) Recipient assessment of age distinctions. (1) As part of the compliance review under § 7.940 or complaint investigation under § 7.943, FEMA may require a recipient employing the equivalent of fifteen or more employees to complete written evaluation, in a manner specified by the responsible Agency official, of any age distinction imposed in its program or activity receiving Federal financial assistance from FEMA to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the FEMA regulations, the recipient shall take corrective action.

§ 7.933 Information requirement.

Each recipient shall:

(a) Keep records in a form acceptable to FEMA and containing information which FEMA determines are necessary to ascertain whether the recipient is complying with the Act and this regulation.

(b) Provide to FEMA, upon request, information and reports which FEMA determines are necessary to ascertain whether the recipient is complying with the Act and this regulation.

(c) Permit FEMA reasonable access to the books, records, accounts, and other recipient facilities and sources of information to the extent FEMA determines is necessary to ascertain whether the recipient is complying with the Act and this regulation.

Investigation, Conciliation, and Enforcement Procedures

§ 7.940 Compliance reviews.

(a) FEMA may conduct compliance reviews and preaward reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and this regulation. FEMA may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and this regulation has occurred.

(b) If a compliance review or preaward review indicates a violation of the Act or this regulation, FEMA will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, FEMA will arrange for enforcement as described in § 7.945.

§ 7.941 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with FEMA, alleging discrimination prohibited by the Act or these regulations occurring after the date of final adoption of this rule. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause showing, FEMA may extend this time limit.

(b) FEMA will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed. A complaint is deemed "sufficient" when it contains particulars (e.g., names, addresses, and telephone numbers of parties involved; date(s) of alleged discrimination; kind(s) of alleged discrimination) upon which to begin an investigation.

(c) FEMA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally

the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact FEMA for information and assistance regarding the complaint resolution process.

(d) FEMA will return to the complainant any complaint outside the jurisdiction of this regulation, and will state the reason(s) why it is outside the jurisdiction of this regulation.

§ 7.942 Mediation.

(a) FEMA will promptly refer to a mediation agency designated by the Director all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and this regulation, unless the age distinction complained of is clearly within an exception; and,

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or for the mediator to make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to FEMA. FEMA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with FEMA. Mediation ends if:

(1) Sixty days elapse from the time the complaint is filed; or

(2) Prior to the end of that 60 day period, an agreement is reached; or

(3) Prior to the end of that 60 day period, the mediator determines that an

agreement cannot be reached. This 60 day period may be extended by the mediator, with the concurrence of FEMA, for not more than 30 days if the mediator determines agreement will likely be reached during such extended period.

(f) The mediator shall return unresolved complaints to FEMA.

§ 7.943 Investigation.

(a) *Informal investigation.* (1) FEMA will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, FEMA will use informal fact finding methods, including joint or separate discussion with the complainant and recipient, to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. FEMA may seek the assistance of any involved state program agency.

(3) FEMA will put any agreement in writing and have it signed by the parties and an authorized official at FEMA.

(4) The settlement shall not affect the operation of any other enforcement effort of FEMA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If FEMA cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of this regulation, FEMA will attempt to obtain voluntary compliance, it will begin enforcement as described in § 7.945.

§ 7.944 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or this regulation; or

(b) Cooperates in any mediation, investigation, hearing, or other part of FEMA's investigation, conciliation and enforcement process.

§ 7.945 Compliance procedure.

(a) FEMA may enforce the Act and this regulation through:

(1) Termination of a recipient's Federal financial assistance from FEMA under the program or activity involved where the recipient has violated the Act or this regulation. The determination of the recipient's violation may be made only after a recipient has had an

opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or this regulation.

(ii) Use of any requirement of or referral to any Federal, State or local government agency that will have the effect of correcting a violation of the Act or this regulation.

(b) FEMA will limit any termination under § 7.945(a)(1) to the particular recipient and particular program or activity or part of such program and activity FEMA finds in violation of this regulation. FEMA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from FEMA.

(c) FEMA will take no action under paragraph (a) until:

(1) The Director has advised the recipient of its failure to comply with the Act and this regulation and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Director has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Director will file a report whenever any action is taken under paragraph (a).

(d) FEMA also may defer granting new Federal financial assistance from FEMA to a recipient when a hearing under § 7.945(a)(1) is initiated.

(1) New Federal financial assistance from FEMA includes all assistance for which FEMA requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from FEMA does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 7.945(a)(1).

(2) FEMA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 7.945(a)(1). FEMA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) FEMA will limit any deferral to the particular recipient and particular program or activity or part of such program or activity FEMA finds in violation of this regulation. FEMA will not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not and would not, in connection with new funds, receive Federal financial assistance from FEMA.

§ 7.946 Hearings, decision, post-termination proceedings.

Certain FEMA procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to FEMA enforcement of this regulation. They are found at 44 CFR 7.10 through 7.16.

§ 7.947 Remedial action by recipient.

Where FEMA finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that FEMA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that had discriminated, FEMA may require both recipients to take remedial action.

§ 7.948 Alternate funds disbursement procedure.

(a) When FEMA withholds funds from recipient under this regulation, the Director may, if allowable under the statute governing the assistance, disburse the withheld funds directly to an alternate recipient: Any public or nonprofit private organization or agency, or State or political subdivision of the State.

(b) The Director will require any alternate recipient to demonstrate:

(1) The ability to comply with this regulation; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 7.949 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and FEMA had made no finding with regard to the complaint; or

(2) FEMA issues any finding in favor of the recipient.

(b) If FEMA fails to make a finding within 180 days or issues a finding in favor of the recipient, FEMA shall:

(1) Promptly advise the complainant in writing of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint at the time it is filed.

(iii) That before commencing the action, the complainant shall give 30 days notice by registered mail to the Director, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: The alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court (Federal or State) of the United States.

Dated: May 18, 1990.

Robert H. Morris,
Acting Director, Federal Emergency
Management Agency.

[FR Doc. 90-12967 Filed 6-5-90; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 90-195]

Practice and Procedure: Broadcast Licensing Proceedings, Misconduct; Policy Statement

AGENCY: Federal Communications Commission.

ACTION: Policy statement and final rule.

SUMMARY: The Commission's policies concerning the range of relevant non-FCC related misconduct in broadcast licensing proceedings are modified to reflect the fact that the Commission will consider any felony convictions as bearing on a broadcast applicant or licensee's character qualifications. The Commission will also consider adverse adjudications of antitrust or anticompetitive misconduct relating to any media of mass communications, as defined in 47 U.S.C. 309(i). The FCC also

adopted new rules prohibiting any applicant, permittee or licensee from making any written misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission (47 CFR 1.17) and requiring broadcast licensees and permittees to report adverse determinations of relevant misconduct that are finally adjudicated during the term of their permit or license (47 CFR 1.65(c)).

EFFECTIVE DATE: The Policy Statement is effective June 6, 1990; 47 CFR 1.17 will be effective 30 days after publication in the Federal Register; 47 CFR 1.65(c) will be effective 90 days after publication in the Federal Register.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254-6530.

SUPPLEMENTARY INFORMATION: The new § 1.65(c) imposes a collection of information burden on the public. The public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. It is estimated that a total of approximately 20 responses will be made to the Commission annually. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

This is a summary of the Commission's Policy Statement and Order, adopted May 10, 1990, FCC 90-195. The full text of this Commission Policy Statement and Order and the rule changes are available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street NW., Washington, DC. The full text of this Policy Statement and Order and the rule amendments may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037, (202) 857-3800.

Title: Policy Regarding Character Qualifications in Broadcast Licensing; Amendment of part 1, the Rules of Practice and Procedure, Relating to

Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications (Policy Statement and Order).

Summary of Policy Statement and Order

1. The Commission is modifying its policies regarding character qualifications previously enunciated in Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179 (1986), *recon. granted in part, denied in part*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (DC Cir. June 11, 1987) (hereinafter referred to as *Character Policy Statement*). We are also amending our rules to make the provisions of 47 CFR 73.1015 regarding misrepresentation applicable to all applications and/or statements filed with the Commission, and we are adding a new § 1.65(c) requiring broadcast licensees to report adjudications relevant to character qualifications that are issued during the license term.

2. The Character Policy Statement generally indicated that, in connection with non-FCC related misconduct, the Commission would consider only adjudicated (a) Fraudulent representations to governmental units, (b) criminal misconduct involving false statements or dishonesty, and (c) broadcast-related violations of antitrust or other laws dealing with competition. 102 FCC 2d at 1195-1197, 1200-1203. However, upon further reflection, we believe a propensity to comply with the law generally is relevant to the Commission's public interest analysis, and that an applicant's or licensee's willingness to violate other laws, and, in particular, to commit felonies, also bears on our confidence that an applicant or licensee will conform to FCC rules and policies.

3. Thus, evidence of any conviction for misconduct constituting a felony will be relevant to our evaluation of an applicant's or licensee's character. Because all felonies are serious crimes, any felony conviction provides an indication of an applicant's or licensee's propensity to obey the law.¹ While

conviction for a felony raises questions of whether an applicant or licensee has the requisite propensity to obey the law, we continue to believe that there are mitigating factors that must be taken into consideration in our deliberations. See Character Policy Statement, 102 FCC 2d at 1227-29; see also RKO General, Inc., 5 FCC Rcd 642, 644 (1990).

4. Moreover, because of the interrelationship of the mass media, we see no reason to limit our focus to broadcast related violations of laws relating to antitrust or anticompetitive misconduct. We therefore believe that adjudicated violations of antitrust or anticompetitive laws involving any media of mass communications, as defined in 47 U.S.C. 309(i), also are relevant to our licensing decisions.

5. We continue to believe that it is appropriate to refrain from making licensing decisions based on mere allegations of relevant non-FCC misconduct, even where those allegations have resulted in an indictment or are otherwise in process of being adjudicated by another agency or court. Character Policy Statement, 102 FCC 2d at 1204-05.² However, where such matters remain pending in another forum we may, in appropriate cases, condition any grant of the application before us on the outcome of that proceeding. See *Id.* at 1206 n.66.

6. Generally, we do not intend to change our policies regarding the case-by-case determination of whether an existing licensee, designated for hearing on character issues with respect to one license, may buy or sell other licenses or have other authorizations renewed. See Character Policy Statement, 102 FCC 2d at 1223-25; Transferability of Broadcast Licenses, 53 RR 2d 126 (1983). We wish to make clear, however, that, in appropriate cases, the Commission may condition the grant of any application involving a licensee that has been designated for hearing on character issues. If the decision in the hearing is adverse to the licensee, we will revisit any such conditioned grants to determine whether we would have made the grant if the adverse hearing determination had been before us.

7. In order to consider the application of these policies in individual cases, a number of FCC forms, and/or the instructions thereto, will be amended to include appropriate questions

concerning adjudicated or pending adjudications of relevant misconduct by the applicant. Such form modifications will broaden the class of relevant misconduct to include all felonies and mass media related antitrust or anticompetitive matters. In addition, renewal applicants, as well as assignors and transferors, will be required to provide information regarding relevant pending adjudications involving fraudulent representations to governmental units, felonies, and mass media related antitrust or anticompetitive matters.

8. Section 73.1015 prohibits any applicant, licensee, or permittee from making any written "misrepresentation or willful material omission[s] bearing on any matter within the jurisdiction of the Commission," 47 CFR 73.1015. That rule is technically not applicable to other applicants, licensees, and permittees, but all Commission licensees are already required to tell the truth to the Commission. See 47 U.S.C. 312(a)(1). Accordingly, we will amend part 1 of our rules by addition of a new § 1.17 that is substantially the same as § 73.1015, except that, by virtue of its location in part 1, it will be applicable to applicants, licensees, and permittees in all radio services.

9. As applicants are required to provide information on pending adjudications of relevant misconduct, any material change in the status of such pending adjudications must be reported to the Commission pursuant to § 1.65 of our rules. 47 CFR 1.65(a). We are also adding a new § 1.65(c) to require broadcast permittees and licensees to report adjudications relevant to character qualifications that are issued during the license term.

10. Accordingly, *It Is Ordered That* the Commission's rules are amended by the addition of a new § 1.17 and a new § 1.65(c) as set forth below. The new § 1.17 shall be effective 30 days from publication of a summary of this Policy Statement and Order in the Federal Register. The new § 1.65(c) is subject to approval by the Office of Management and Budget under the Paperwork Reduction Act and shall be effective 90 days from publication of a summary of this Policy Statement and Order in the Federal Register.

11. *It Is Further Ordered That* the Managing Director, in consultation with the Chief, Mass Media Bureau, is delegated authority to amend all applicable FCC forms, in accordance with the provisions of this Policy Statement and Order, subject to the approval of the Office of Management

¹ Moreover, we retain the discretion to consider serious misdemeanor convictions in appropriate or compelling cases, particularly where there is a pattern of such convictions.

² However, we also continue to believe that, where an applicant has allegedly engaged in nonbroadcast misconduct, "so egregious as to shock the conscience and evoke almost universal disapprobation," such conduct "might be a matter of Commission concern even prior to adjudication by another body." Character Policy Statement, 102 FCC 2d at 1205, n.60.

and Budget under the Paperwork Reduction Act.

12. The action herein is taken pursuant to section 4(i), 303(r), 308(b), 312, 319(a) and 403 of the Communications Act of 1934, as amended.

For further information regarding this proceeding, contact Martin Blumenthal, Office of General Counsel, (202) 254-6530.

List of Subjects in 47 CFR 1

Administrative practice and Procedure radio.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Part 1 of title 47 of the CFR is amended as follows:

PART 1—[AMENDED]

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.17 is added to read as follows:

§ 1.17 Truthful written statements and responses to Commission inquiries and correspondence.

The Commission or its representatives may, in writing, require from any applicant, permittee or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to some other matter within the jurisdiction of the Commission. No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.

Note: Section 1.17 is limited in application to written matter. It implies no change in the Commission's existing policies respecting the obligation of applicants, permittees and licensees in all instances to respond truthfully to requests for information deemed necessary to the proper execution of the Commission's functions.

3. Section 1.65 amended by adding a new paragraph (c) to read as follows:

§ 1.65 Substantial and significant changes in information furnished by applicants to the Commission.

(c) All broadcast permittees and licensees must report to the Commission any adverse finding or adverse final

action taken by any court or administrative body, within 30 days of the issuance of any such adverse finding or adverse final action, that involves conduct bearing on the permittee's or licensee's character qualifications and that would be reportable in connection with an application for renewal as reflected in the renewal form.

[FR Doc. 90-13000 Filed 6-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-471; RM-6697]

Radio Broadcasting Services; Heidelberg, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 257C2 for Channel 257A at Heidelberg, Mississippi, in response to a petition filed by Pine Belt Broadcasting, Inc. We shall also modify the license for Station WEEZ, Heidelberg, to specify operation on Channel 257C2. The coordinates for Channel 257C2 are 31-52-21 and 89-15-41.

DATES: Effective July 16, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-471, adopted April 13, 1990, and released June 1, 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

Radio broadcasting.

PART 73—[AMENDED]

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 under Mississippi, is amended by removing Channel 257A and adding Channel 257C2 at Heidelberg.

Federal Communications Commission.

Kathleen B. Levitz,
*Deputy Chief, Policy and Rules Division,
Mass Media Bureau.*

[FR Doc 90-13063 Filed 6-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-405; RM-6818]

Radio Broadcasting Services; Elizabethton, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 257C3 for Channel 257A at Elizabethton, Tennessee, and modifies the license of Station WUSJ-FM to specify operation on the higher class channel, at the request of Eaton P. Govan, III and Burton B. Cagle, Jr. See 54 FR 40141, September 29, 1989. The coordinates for Channel 257C3 at Elizabethton are 36-26-57 and 82-06-31. With this action, this proceeding is terminated.

DATES: Effective July 16, 1990.

FOR FURTHER INFORMATION CONTACT: Ordee D. Pearson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-405, adopted May 3, 1990, and released June 1, 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

Radio broadcasting.

PART 73—[AMENDED]

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 for Tennessee, is amended by removing Channel 257A and adding Channel 257C3 at Elizabethton.

Federal Communications Commission.
Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 90-13064 Filed 6-5-90; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 900118-0130]

RIN 0648-AD05

Pacific Halibut Fisheries

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

SUMMARY: NOAA issues a final rule to implement an allocative regulation governing fishing for halibut in the Bering Sea as recommended by the North Pacific Fishery Management Council (Council). The primary purpose and intended effect of this action is to enhance the economic development of the Pacific halibut fishery by persons who live on either of the Pribilof Islands or operate primarily in Regulatory Area 4C.

EFFECTIVE DATE: June 25, 1990.

ADDRESSES: Copies of documents supporting this rule may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: The fishery for Pacific halibut (*Hippoglossus stenolepis*) off the coasts of Alaska, British Columbia, Washington, Oregon, and California is governed by the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention) signed by the United States and Canada in 1953 and amended in 1979. The Convention is carried out by the International Pacific Halibut Commission (IPHC).

Until 1987, all regulations governing the Pacific halibut fishery were developed by the IPHC and, for U.S. fishermen, recommended to the Secretary of State for approval and implementation at 50 CFR part 301. However, section 5(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773c(c), provides for the appropriate

Regional Fishery Management Council established under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) to develop regulations, including limited access regulations, governing the U.S. portion of Convention waters and applicable to nationals or vessels of the United States that are in addition to, and not in conflict with, regulations adopted by the IPHC.

In 1987, this provision was interpreted by NOAA to mean that regulations having domestic allocation of the Pacific halibut resource as their primary purpose will be developed by the Council with respect to Alaska and by the Pacific Fishery Management Council with respect to Washington, Oregon, and California. Regulations having biological conservation as a primary purpose will continue to be developed by the IPHC. This policy does not necessarily prevent both Regional Councils from developing biological conservation regulations that are in addition to and not in conflict with IPHC regulations. Neither does the policy necessarily prevent the IPHC from developing regulations that have secondary domestic allocation effects.

To determine the need for domestic allocation of Pacific halibut, the Council solicited regulatory proposals from the general public, other agencies, and staff between August 15 and September 15, 1989. The Council received 17 such proposals, which were then reviewed and evaluated by the Council's Halibut Management Team (MT) and the Halibut Regulatory Amendment Advisory Group (RAAG). At its meeting on September 26-29, 1989, the Council reviewed recommendations of the MT and RAAG and decided to consider only the allocative measure proposed by the Central Bering Sea Fishermen's Association for Regulatory Area 4C.

The MT prepared a draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) that assesses the potential environmental and economic effects of reasonable regulatory alternatives to the proposed measure including the status quo (or no change) alternative as required by the National Environmental Policy Act of 1969, Executive Order 12291, and NOAA policy. A notice of availability of this document was published in the Federal Register on November 16, 1989 (54 FR 47694) and comments were accepted until November 27, 1989.

At its December 5-8, 1989, meeting, the Council considered public testimony and the recommendations of its Advisory Panel and Scientific and Statistical Committee. The Council then

voted to adopt the proposed measure as its preferred alternative and recommend its implementation to the Secretary.

A notice of a proposed rule and request for comment was published in the Federal Register on February 22, 1990 (55 FR 6295).

Public Comments

No public comments were received before the end of the public comment period on March 19, 1990.

Effect of Final Rule

The regulatory change revises paragraph (d) in § 301.10 to impose a maximum catch of 10,000 pounds (4.5 metric tons) of halibut (per vessel) on all vessels fishing in Area 4C per fishing period. Formerly, this catch limit was imposed only for the first 50 percent of the overall catch limit for Area 4C; a maximum per-vessel catch per fishing period of 20,000 pounds (9 metric tons) was specified for the remaining 50 percent of the Area 4C catch limit. The change in combination with existing vessel clearance requirements under § 301.13 would effectively allocate most if not all of the allowable halibut harvest in Area 4C to resident (local) fishermen of the Pribilof Islands.

Classification

This rule is published under section 5(c) of the Halibut Act and is implemented with the approval of the Secretary of Commerce who has determined that it is consistent with the Halibut Act and other applicable law.

The Council prepared an EA in combination with a RIR and IRFA for this regulatory amendment. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA/RIR/IRFA may be obtained from the address above.

The Under Secretary for Oceans and Atmosphere, NOAA (Under Secretary), determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/IRFA. Based on the same document, it was concluded that this rule may have significant effects on small entities.

This rule does not contain any collection-of-information requirement subject to the Paperwork Reduction Act. This rule also does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Assistant Administrator finds that because the first open fishing period in Regulatory Area 4C begins on June 25, 1990 (March 30, 1990; 55 FR 11929), and that 50 percent of the halibut catch limit in Regulatory Area 4C may be taken as early as July 1, this rule must be effective no later than June 25 in order to achieve the purpose of this rule. Consequently, the Assistant Administrator finds for good cause that it is impracticable, unnecessary, and contrary to the public interest to delay for the full 30 days the effective date of this rule under section 553(d) of the Administrative Procedure Act in order to have this action effective by the opening of the fishing period on June 25, 1990.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties.

Dated: June 1, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 301 is amended as follows:

PART 301—PACIFIC HALIBUT FISHERIES

1. The authority citation for part 301 continues to read as follows:

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

2. Section 301.10 paragraph (d) is revised to read as follows:

§ 301.10 Fishing period limits.

* * * * *

(d) Notwithstanding paragraph (b) of this section, all vessels fishing in Area 4C shall be limited to a maximum catch of 10,000 pounds (4.5 metric tons) of halibut per vessel per fishing period.

[FR Doc. 90–13094 Filed 6–5–90; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 641

[Docket No. 900253–053]

Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Emergency rule; extension of effectiveness.

SUMMARY: An emergency rule that prohibits the harvest and possession of jewfish in the Gulf of Mexico exclusive economic zone (EEZ) is in effect through May 31, 1990. The Secretary of Commerce (Secretary) extends the emergency rule for an additional 90 days (through August 29, 1990) to allow sufficient time to implement an amendment to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP) that would continue the prohibition. The intended effect of this rule is to respond to an emergency in the reef fish fishery by reducing the fishing mortality of jewfish.

EFFECTIVE DATES: June 1, 1990, through August 29, 1990.

ADDRESSES: Copies of documents supporting this action may be obtained from Robert A. Sadler, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT:

Robert A. Sadler, 813–893–3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Under section 305 (e)(2)(B) and (e)(3)(B) of the Magnuson Act, the Secretary promulgated an emergency rule (55 FR 8143, March 7, 1990) effective for 90 days (March 2, through May 31, 1990) to reduce the fishing mortality of the depleted jewfish resource in the Gulf of Mexico. The Secretary extends the emergency rule for an additional 90 days in accordance with section 305(e)(3)(B) of the Magnuson Act because conditions justifying the emergency action remain unchanged. The 90-day extension will prevent the resumption of jewfish harvest in the EEZ.

The initial emergency rule prohibited the harvest and possession of jewfish in the EEZ of the Gulf of Mexico based on declines in abundance reported by the fishing and scientific communities. Apparently, jewfish are no longer abundant anywhere throughout their range; decreased numbers coupled with life history characteristics that render jewfish highly susceptible to harvest threaten the continued existence of this unique species. Also, jewfish do not reach maturity early in life; the youngest mature female recorded was 10 years old. Consequently, the species would

not be expected to recover quickly if a collapse occurred. Other details concerning the basis for the emergency rule and the classification of the rulemaking are contained in the initial emergency rule (55 FR 9143) and are not repeated here. This extension is necessary to prevent a lapse of the harvest prohibition prior to the implementation of Amendment 2 to the FMP that will continue the prohibition in the EEZ of the Gulf of Mexico.

As required by section 305(e)(3)(B) of the Magnuson Act, the Secretary and the Council have agreed that the emergency rule should be promulgated for an additional period of 90 days. Accordingly, the provisions of the extended emergency rule remain effective through August 29, 1990. However, because of the staggered effective dates of portions of the rule to implement Amendment 1 to the FMP, the emergency rule is simplified and restated herein.

This extension of an emergency rule is exempt from the normal review procedures of E.O. 12291 as provided for in section 8(a)(1) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 31, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.7, a new paragraph (t) is added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(t) Harvest or possess a jewfish in or from the EEZ.

§ 641.21 [Amended]

3. In § 641.21, paragraph (a)(4) is suspended.

4. In § 641.24, paragraph (b)(3) is revised and a new paragraph (b)(5) is added to read as follows:

§ 641.24 Bag and possession limits.

* * * * *

(b) * * *

(3) Groupers, excluding jewfish—5.

* * * * *

(5) Jewfish—0.

* * * * *

5. In § 641.25, a new paragraph (d) is added to read as follows:

§ 641.25 Commercial quotas.

* * * * *

(d) Jewfish—0 pounds.

[FR Doc. 90-13050 Filed 6-1-90; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon, at midnight, May 27, 1990, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial fishery quota of 26,100 chinook salmon for the subarea will be reached by May 27, 1990. The closure is necessary to conform to the preseason announcement of 1990 management measures. This action is intended to ensure conservation of chinook salmon.

DATES: *Effective:* Closure of the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, to commercial salmon fishing is effective at 2400 hours local time, May 27, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until June 18, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION:

Regulations governing the ocean salmon fisheries specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced that the 1990 commercial fishery for all salmon except coho in the subarea from the U.S.-Canada border to Cape Falcon, Oregon, would begin on May 1 and continue through the earlier of June 15 or the attainment of a quota of 26,100 chinook salmon. This fishery was closed on May 14, 1990 based on the projected attainment of the chinook quota (55 FR 20607, May 18, 1990). Subsequent evaluation of landing data indicated that the closure was based on an overestimate of actual catch, and the fishery was reopened on May 18, 1990, as published on May 31, 1990. A total of 19,000 chinook salmon has been landed through May 24, 1990. Based on projected catch rates in this fishery, the chinook quota of 26,100 fish is expected to be reached by midnight, May 27, 1990. Therefore, the fishery in this subarea is closed to further fishing effective 2400 hours local time, May 27, 1990.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this closure was given prior to 2400 hours local time, May 27, 1990, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of closure of the commercial salmon fishery in the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, which is effective 2400 hours local time, May 27, 1990.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding a closure of the commercial fishery between the U.S.-Canada border and Cape Falcon, Oregon. The States of Washington and Oregon will manage the commercial fishery in state waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to other fisheries which may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through June 18, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: June 1, 1990.

David S. Crestin,

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

[FR Doc. 90-13093 Filed 6-1-90; 2:35 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 55, No. 109

Wednesday, June 6, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206-AD97

Pay Administration (General); Annual Premium Payment for Administratively Uncontrollable Overtime Work

AGENCY: Office of Personnel
Management.

ACTION: Proposed action.

SUMMARY: The Office of Personnel Management proposes to amend its regulations on the calculation of annual premium pay for administratively uncontrollable overtime (AUO) work. This change is necessary to implement Pub. L. 101-173, November 27, 1989, which eliminates the rate of basic pay for GS-10, step 1 (currently \$27,206 per year), as the maximum base for computing annual premium pay for AUO work. The proposed regulations would require that annual premium pay for AUO work be calculated on the basis of the employee's actual rate of basic pay.

DATES: Comments must be submitted on or before August 6, 1990.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John P. Cahill, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Public Law 101-173, November 27, 1989, amends section 5545(c)(2) of title 5, United States Code, effective with the first pay period beginning after September 30, 1990, by removing the GS-10, step 1, limit on the rate of basic pay used to compute annual premium pay for administratively uncontrollable overtime (AUO) work.

Federal employees in positions in which the hours of duty cannot be

administratively controlled, and which require substantial amounts of irregular, unscheduled overtime duty, are authorized to be paid premium pay on an annual basis instead of receiving payment for each hour of irregular or occasional overtime work performed. Computation of the annual premium is based on an average of past irregular, unscheduled overtime hours worked and any information bearing on the number of hours of duty which may reasonably be expected to be required in the future.

Currently, employees who work an average of at least 3 hours of irregular, unscheduled overtime work per week may receive annual premium pay of not less than 10 percent nor more than 25 percent of that part of their rate of basic pay which does not exceed the minimum rate of basic pay for GS-10. However, the amendment made by Pub. L. 101-173 will change the formula for calculating premium pay for AUO work. The minimum rate of basic pay for GS-10 no longer will be the maximum base for computing this premium. Instead, annual premium pay for AUO work will be calculated as an appropriate percentage of an employee's actual rate of basic pay. This means that an employee whose rate of basic pay is greater than the rate of basic pay for GS-10, step 1, will be entitled to annual premium pay computed on the rate of basic pay for his or her actual grade and step.

To ensure that employees are fully compensated under 5 U.S.C. 5545(c)(2), as amended by Pub. L. 101-173, the Office of Personnel Management (OPM) is proposing to remove 5 CFR 550.152, which requires that annual premium pay for AUO work be limited to an amount less than the amount of overtime pay (exclusive of regular overtime) that would otherwise be payable under 5 U.S.C. 5542. We believe Congress intended employees to receive annual premium pay based solely on the established rate of basic pay for their actual grade and step at whatever percentage rate is determined to be appropriate (between 10 and 25 percent) under 5 U.S.C. 5545(c)(2), 5 CFR 550.151, and 5 CFR 550.154, without regard to the amount of pay that otherwise would be due under the overtime pay provisions of 5 U.S.C. 5542(a). Agencies are reminded, however, of their continuing obligation under 5 CFR 550.161(f) to review their annual premium pay determinations periodically and to

adjust or discontinue payment of annual premium pay when the available evidence indicates that either action is warranted.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,
Director.

Accordingly, OPM proposes to amend part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

1. The authority citation for subpart A of part 550 is revised to read as follows, and the authority citations following all the sections in subpart A are removed:

Authority: 5 U.S.C. 5548 and 6101(c).

2. Section 550.151 is revised to read as follows:

§ 550.151 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of other premium pay prescribed in this subpart (except premium pay for regular overtime work, and work at night, on Sundays, and on holidays), to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less than 10 percent nor

more than 25 percent, of the employee's rate of basic pay.

§ 550.152 [Removed and reserved]

3. Section 550.152 is removed and reserved.

[FR Doc. 90-13061 Filed 6-5-90; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1068

[Docket No. AO-178-A43; DA-90-010]

Milk in the Upper Midwest Marketing Area; Emergency Final Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This emergency final decision revises the pooling requirements for regular and reserve supply plants; provides discretionary authority for the market administrator to make changes to regular and reserve supply plant shipping requirements and diversion limitations; changes the administrative assessment on milk pooled under the order; and removes certain order language made obsolete by these changes in the Upper Midwest milk order.

These changes being made to the Upper Midwest milk order are based on a record of a public hearing held in Bloomington, Minnesota, March 14-15, 1990, where proposals by three dairy farmer cooperatives who supply a significant portion of milk to the Upper Midwest market were heard.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The

amendments will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued March 2, 1990; published March 8, 1990 (55 FR 8472).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7 CFR part 900), at Bloomington, Minnesota, on March 14-15, 1990. Notice of such hearing was issued on March 2, 1990, and published March 8, 1990 (55 FR 8472).

Interested parties were given until April 2, 1990, to file post-hearing briefs on the proposals as published in the hearing notice and on whether the proposals should be considered on an expedited basis.

The material issues on the record of the hearing relate to:

1. Performance requirements for regular and reserve supply plants.
2. Discretionary authority to revise pooling requirements.
3. The administrative assessment rate.
4. Removal of obsolete order language.
5. The need for emergency action.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Performance Requirements for Regular and Reserve Supply Plants

A. Regular Supply Plants

Several changes to regular supply plant performance requirements are adopted in order to provide regular supply plant operators flexibility in satisfying performance requirements and to insure that these requirements actually serve the market's fluid milk needs.

Regular supply plant shipping requirements currently are based upon the market's Class I utilization rate for the same month of the prior year. This basis for determining the regular supply plant shipping requirement is retained in this decision, but may be changed by the market administrator as market conditions warrant. The issue of discretionary authority to change such performance standards is discussed later in this decision.

The first change to regular supply plant performance requirements will allow the use of milk deliveries to distributing plants by cooperatives who act as handlers (as defined in § 1068.9(c) of the order and hereinafter referred to as .9(c) deliveries) as qualifying shipments. The order does not now provide this flexibility but does offer it to proprietary operators of regular supply plants who can use diversions to distributing plants as qualifying shipments.

A second change to the performance requirements for regular supply plants that is adopted will permit the formation of units of two or more supply plants for pooling purposes. The order currently allows for the formation of units by reserve supply plants and not for regular supply plants. After having filed a request with the market administrator, units would operate for a year (August-July) and would be required to meet the applicable shipping requirement as if it were a single plant. Each milk handler in a unit will also be required to ship at least five percent of the handler's total Grade A milk receipts in one of the months of August through December to demonstrate its ability to ship Grade A milk for the fluid market. Each plant that is part of a unit must be located within the marketing area, or have been a pool plant for at least the three months immediately prior to the effective date of this new provision, provided pool plant status is maintained. Pool supply plants located outside of the marketing area that do not maintain pool status will lose pool plant status and would not be able to subsequently return to the order as a regular supply plant in a unit.

A third change will count milk shipments by regular supply plants to distributing plants on a net shipments basis. Present order provisions count all regular supply plant milk shipments to distributing plants as qualifying shipments even though the distributing plant may subsequently divert or transfer milk to other plants. Excluded from this net shipment provision are distributing plant milk shipments to other distributing plants, transfers to commercial food processing establishments, and a tolerance of one million pounds of milk transferred to other plants that are not pool distributing plants.

Revising the regular supply plant performance standards was proposed by three dairy farmer cooperatives that represent a significant portion of producers supplying milk to the Upper Midwest market: Associated Milk Producers, Inc. (AMPI), Land O'Lakes, Inc. (LOL), and Mid-America Dairy, Inc.

Inc. (Mid-Am). Representatives from two other dairy farmer cooperatives, the National Farmers Organization (NFO) and Cass-Clay Creamery, also testified in support of these changes. Representatives from Marigold Foods, Frigo Cheese Corporation, and Kraft, Inc., all proprietary handlers in the Upper Midwest market, similarly testified in support of the proposed changes. No one who testified or who filed subsequent briefs opposed changes to the regular supply plant performance requirements.

All witnesses who testified at the hearing clearly recognized an urgent need for changing the shipping requirements for regular supply plants for the fall months this year. Without changing certain pooling provisions for regular supply plants, the LOL witness testified that an excessively high shipping requirement would likely result, especially for the months of September through November of 1990 where shipping requirements, if left unchanged, will be over 50 percent. If all eligible producer milk had been pooled last fall, the upcoming fall's shipping requirements would be far lower, ranging from 22 to about 25 percent. Such lower shipping percentages, he said, would be close to the expected need of the market for the fall of 1990.

The LOL witness testified that in the fall months of 1989, a great deal of milk was not pooled under the Upper Midwest order. He said that this was a rational decision because the uniform or blend price for milk was lower than the Class III or manufacturing use price of milk. In some of the fall months, the value of milk in the Upper Midwest order for fluid uses was less than the value of the same milk for uses in manufacturing due to an unusual pricing situation that developed.

The general testimony by the representative from LOL was supported in subsequent testimony by witnesses representing AMPI, Mid-Am, Cass-Clay Creamery, Marigold Foods, and Frigo Cheese Corporation. Representatives from NFO and Kraft had generally supporting views on changing the shipping requirement for the upcoming fall months. However, they thought that the shipping percentages for the fall months of 1990 should be established by this decision, and then left to the market administrator to change as market conditions may indicate. Both Kraft and NFO said that the shipping requirement for the fall of 1990 should be established at what the Class I use rate would have been if all eligible milk had been pooled under the order in the fall of 1989.

Changing the regular supply plant shipping requirement that would permit

the use of .9(c) milk deliveries by cooperatives to distributing plants to count as qualifying shipments would, according to AMPI, LOL, and Mid-Am, give cooperatives who operate regular supply plants the same shipping flexibility currently available to proprietary operators of regular supply plants who can use diversions to distributing plants as qualifying shipments. The proponents testified that using .9(c) deliveries as qualifying shipments could reduce the cost incurred by cooperatives in servicing the Class I market. A brief filed by LOL added that such a change thereby promotes more efficient delivery of milk to distributing plants.

Allowing the formation of units consisting of two or more regular supply plants for pooling purposes as currently allowed for reserve supply plants would, according to the proponents, afford cooperatives the opportunity to develop more efficient systems for servicing the Class I needs of the market with regular supply plants without reducing overall market performance. As proposed, each handler with a supply plant(s) in a unit would be required to ship to distributing plants at least 5 percent of its Grade A milk receipts from dairy farmers during one of the months of August through December. The representative from LOL testified, and in subsequent testimony all others who testified also indicated, that it was important that every regular supply plant demonstrate its ability to serve the Class I needs of the market.

A modification to the original proposal regarding the formation of units was presented at the hearing by the representative of LOL. The LOL witness testified that without a geographic limitation on the territory in which a regular supply plant that is part of a unit can be located, there would be a possibility that a remote plant could pool milk on the Upper Midwest order without regular association with this market. He indicated that there was a need to eliminate the opportunity for abuse of the flexibility that forming units may provide. Specifically, the modified proposal by the LOL witness would require that to be in a unit, a supply plant must be located within the current marketing area, in the State of North Dakota, or in that portion of South Dakota which is east of the Missouri River. The original proposal was silent on describing where a supply plant had to be located to be part of a unit.

The representative from NFO supported the notion of allowing regular supply plants to form units, but proposed instead that all supply plants in units would have to be located within the Upper Midwest marketing area. NFO

said that such a restriction is important because plants located outside the market in North and South Dakota could too readily pool reserve supplies of milk normally associated with other orders or unregulated fluid milk sales. This would mean, NFO maintained, that the Upper Midwest order could carry such Class III milk supplies yet not share in any of the Class I proceeds.

The representative from Kraft testified that while they also supported the concept of allowing the formation of units, they believed that the same geographic location requirement should apply for regular supply plant units as for those units of reserve supply plants—the currently defined Upper Midwest marketing area. The representative from Frigo Cheese Corporation similarly testified that there should be a unified set of boundaries for both reserve and regular supply plant units, but stated that they did not have an opinion formulated as to where the geographic boundaries should be set.

The last proposed change for regular supply plant shipping requirements proposed by AMPI, LOL, and Mid-Am involved counting qualifying shipments to distributing plants on net rather than gross deliveries to satisfy pool performance requirements. The representative from LOL testified that there are times when milk is more valuable when used to make manufactured products (such as butter, nonfat dry milk, and cheese) than for fluid uses. In fact, according to the LOL witness, this situation was so pronounced in three months during the autumn of 1989 that rumors surfaced that some supply plant operators had arranged to deliver milk to distributing plants to technically meet shipping requirements, only to subsequently receive a similar quantity of milk back from the distributing plant for manufacturing purposes. Such actions, said the LOL witness, undermine the effectiveness of the order's performance standards and increase the difficulty faced by distributing plant operators in securing enough milk to meet the market's fluid needs. It also increases the burden and opportunity cost incurred by other supply plants in the market, according to the LOL spokesman.

While wanting to eliminate the opportunity for such abuses by requiring that all qualifying shipments service the needs of the Class I market, LOL said that their original proposal was too rigid and that there are legitimate reasons for transfers of some amounts of milk from a distributing plant to another plant. The original proposal would not have

permitted any transfers, regardless of the reasons. As such, LOL modified the original proposal to provide that transfers to commercial food processing establishments would not be deducted from the amount of shipping credit at a distributing plant. The LOL representative further modified the proposal so that transfers of up to two percent of milk receipts at a distributing plant, up to the first 10 million pounds of such receipts, plus one percent of the quantity by which such receipts exceed 10 million pounds, up to a maximum of 400,000 pounds of milk, would count as meeting the shipping requirements for regular supply plants.

The Marigold witness testified that there is a problem in his opinion in that the order permits supply plants to meet their supply commitments without actually giving up any milk. This happens, said the Marigold witness, when milk is "pumped over." In this situation, milk is physically received at a distributing plant, is pumped back into tankers and is moved back to the supply plant, but technically counts as a qualifying delivery. The Marigold witness said that even though supply plants had met their shipping obligations, Marigold was nonetheless short of Class I milk for the fall months of 1989 and was forced to obtain milk at prices above the going over order price.

The Kraft witness generally supported the LOL position on net shipments. However, he said that the net shipment provision should not become too burdensome to handlers supplying the market on a regular basis and who do not engage in pump-over arrangements with distributing plants because it would be unfair to those supply plants who make their shipments with every intent of satisfying their shipping requirement. In this regard, the Kraft witness said that LOL's tolerance allowances for net shipments seem to be moving in the correct direction. These concerns of Kraft were supported by the witness from Frigo Cheese Corporation.

The witness from NFO supported LOL's proposal on net shipments to allow exemptions of transfers to commercial food processing establishments and a tolerance level for other problems such as quality. However, in NFO's view, since diversions are exempted, they questioned whether or not this proposal would accomplish its objective.

The supply plant issues involved in this proceeding reflect a basic desire of the industry in this market to accomplish two objectives. One is to provide that the fluid milk needs of the market are met effectively and efficiently. The other is that there should

be greater equity of shipping performance among those in the market who operate supply plants. The following changes that are adopted will meet those needs. They will provide greater flexibility for supply plant operators, while at the same time narrowing a gap between performance requirements and the actual amount of milk made available for fluid use.

One intent of the order is to promote efficiencies in the movement of milk. In light of this and the broad support for change, there is no reason why .9(c) milk deliveries by cooperatives to distributing plants should not count as qualifying shipments. Allowing such milk deliveries to count as supply plant qualifying shipments will give cooperatives the same flexibility available to proprietary supply plant operators who can use diversions to distributing plants as qualifying shipments.

A concern in allowing this flexibility is that, since .9(c) deliveries are already permitted for reserve supply plants, it may be possible for a cooperative who operates both regular and reserve supply plants to have such deliveries counted twice, once as a regular supply plant .9(c) delivery, and then again as a reserve supply plant .9(c) delivery. While this is a valid concern, it is unlikely to occur because the market administrator will monitor the reporting of such shipments.

Permitting the formation of units of two or more supply plants for pooling purposes received widespread support as it would clearly tend to provide for efficiency to supply plant operators, by allowing them to service the market's Class I needs from whatever plant location(s) best serves their needs. Allowing the formation of supply plant units provides the same flexibility and resulting efficiencies currently afforded in the order for reserve supply plants. An issue in the formation of units of regular supply plants is whether or not to restrict where plants that form units may be located.

Many of the changes at issue in this proceeding will tend to bring the provisions for supply plants and reserve supply plants closer together. In fact, one of the proponents indicated that eventually they may propose moving to a single supply plant provision. Although there will continue to be differences between the two supply plant provisions, there appears to be no reason to have different geographic restrictions on where supply plants in units may be located. Accordingly, it is concluded that regular supply plants must be located within the marketing

area in order to be included in a unit of supply plants.

At this time there are supply plants that should be allowed to be in a unit, even though they are outside the marketing area. These plants have regularly been associated with the market and should be permitted to be in a unit, provided that they have been pool plants in each of the three consecutive months immediately preceding the effective date of the provision that allows handlers to form units of regular supply plants. They may retain eligibility to be in a unit so long as they continue to maintain pool plant status. Such plants could, however, be a regular supply plant by meeting the shipping standards on a monthly basis. Therefore, even if pool status were not maintained, only the ability to be included in a unit would be lost. This provision will ensure that supply plants having a regular association with the market may be in a unit, but will preclude distant milk that has no association with the market from being pooled without having to demonstrate an association.

The unitizing provision for regular supply plants will have the same general requirements for forming units as now provided for reserve supply plants. Thus, handlers desiring to form units must file a request with the market administrator by July 15 of each year. The unit would operate for a 12-month period beginning on August 1. The request to form a unit will need to specify the plants that will be included in the unit and the order in which such plants would cease to be considered part of the unit if the unit fails to meet the shipping requirements. Any plant that ceases to be part of a unit will not be eligible to rejoin a unit until the following August. No plant may become part of a unit after the unit is formed and the market administrator has been notified. Moreover, each supply plant handler in a unit must ship at least 5 percent of such handler's milk supply to pool distributing plants in one of the months of August through December in order for the handler's plants to be pooled as part of a unit for the month of December. This provision will ensure that the handlers are in fact capable of shipping milk.

Although these provisions are new with respect to regular supply plants, they are virtually the same as the unit pooling provisions now applicable to reserve supply plants.

The record indicated concern that some suppliers of milk to distributing plants may avoid the intent of the order's shipping requirement by

engaging in such activities as pump-overs. Although the record is not clear that such activities have in fact taken place, it was clear that all the hearing participants shared a real concern that there was a great deal of incentive to keep milk for manufacturing uses, rather than making milk available for fluid use. There was a consensus that it would be appropriate to place into the order a provision that would tend to preclude such abuse, and this is accomplished with a provision that will count regular supply plant (and reserve supply plant) shipments on a net basis.

Testimony by the proponents modified the original strict version of the net shipments proposal to accommodate legitimate milk transfers. Thus, a tolerance level for transfers to any plant was offered to recognize that there may be a need for a distributing plant to move some milk to another plant(s) for reasons other than to circumvent the supply plant shipping requirements.

It appears that the proposal and the modification of it were based on perceptions that a problem may exist, but the proposed solution was not based on actual market experience. Therefore, we are reluctant to adopt even the modified proposal, which still is quite restrictive. Since supply plants have operated for so many years in the absence of a net shipments provision, it is prudent to be cautious and therefore not overly restrictive in attempting to find a mechanism that will do what is desired without at the same time creating new problems for any of the handlers involved.

The proponents indicated that a distributing plant that received milk from a supply plant may be involved in supplying milk products to a commercial food processor, and that transfers of fluid milk products to a commercial food processor, therefore, would not be a basis for reducing the shipments from a supply plant(s) to the distributing plant that would be recognized as qualifying shipments for the supply plant(s). They also indicated that low quality or adulterated milk may be unintentionally received at a distributing plant, which subsequently would need to be transferred to another plant. Another situation cited would be when a distributing plant operator over-estimated the amount of milk needed. In such cases, a supply plant operator that shipped milk to a distributing plant in good faith should not have those shipments disqualified.

In view of the lack of experience on which to base a provision and the desire to not be overly restrictive, we believe that the best approach is to provide that up to one million pounds of milk may be

transferred from a distributing plant to plants other than other distributing plants and commercial food processors. Hopefully such a provision will serve its intended purpose of preventing abuse of the supply plant performance requirements.

At the hearing, a potential problem with a net shipments provision was discussed, although there was no specific proposal to deal with the problem. The problem could arise where application of the net shipments provision would result in some shipments to a distributing plant from one or more supply plants being disallowed as qualifying shipments. The question is how will the disqualifications be passed back to the supply plants involved. In response to a question about this, the LOL witness indicated that the disqualified shipments should be passed back to the various suppliers on a pro-rata basis.

We believe that the most appropriate response to such a situation would be to rely on the market administrator's judgment for dealing fairly with this issue. The market administrator can investigate and properly determine in most cases whether a pro-rata basis, or some other basis, would be most appropriate in carrying out the intent of the net shipment provision. Therefore, the order will be silent in this regard.

B. Reserve Supply Plants

Changes to reserve supply plant performance requirements that are adopted will narrow the differences between regular and reserve supply plants but nevertheless retain the reserve supply plant system of the Upper Midwest order. These changes will mean regular and greater milk shipments from reserve supply plants to distributing plants in order to maintain pool status.

The current order requirement that 5 percent of a reserve supply plant's milk be shipped to a distributing plant in the months of August and December, and 8 percent in the months of September, October, and November in order to maintain pool status will be changed. For the months of July through December, the marketwide Class I utilization percentage for the same month of the previous year is adopted as the shipping requirement for milk shipments from reserve supply plants to distributing plants. For the months of January through June, a shipping requirement of 10 percent to distributing plants is adopted.

As with regular supply plants, this decision will not set or establish a specific shipping requirement for July through December. Instead, the shipping

requirement for these months will be the Class I use percentage for the same months a year earlier or as otherwise determined by the market administrator. This is discussed later in this decision.

A reserve supply plant will receive credit towards the shipping requirement when milk is shipped to distributing plants regulated under another Federal order, provided the market administrator is notified of the amount of milk delivery commitments. However, total credit for shipments to plants regulated under another Federal order will be limited to the quantity of milk delivered from the reserve supply plant to distributing plants under the Upper Midwest order during the month. The order currently counts all reserve supply plant shipments to distributing plants regulated under another Federal order towards meeting the shipping requirement in response to a call, provided the market administrator was notified of any such commitments to ship milk prior to the announcement of the call.

As a change that also is adopted for regular supply plants, milk shipments from reserve supply plants to distributing plants should also be counted for pool qualification on a net shipments basis. As with regular supply plants, present order provisions count all reserve supply plant milk shipments to distributing plants as qualifying shipments even though the distributing plant may subsequently divert or transfer milk to other plants. Excluded from this net shipment provision are distributing plant milk shipments to other distributing plants, transfers to commercial food processing establishments, and a tolerance of one million pounds of milk transferred to other plants that are not pool distributing plants. These exclusions are identical to those that are adopted for regular supply plants.

The current order requirements that a reserve supply plant receive a daily average of 25,000 pounds of milk and that an initial shipment of 45,000 pounds of milk be delivered to a distributing plant are removed from the order. In light of the changes that are made as described above, reserve supply plants will be making milk shipments on a regular basis. Therefore, these current order provisions will serve no effective purpose.

Changes to the reserve supply plant provisions were proposed by AMPI, LOL, and Mid-Am. Everyone who testified supported the proposal for deleting from the order the requirement that reserve supply plants receive a daily average of 25,000 pounds of milk

and the requirement that an initial shipment of 45,000 pounds of milk be shipped to a distributing plant because the changes proposed for reserve supply plant shipping standards would make these requirements obsolete.

In LOL's testimony, the witness proposed significant changes to the minimum shipping requirements for reserve supply plants. Without these changes, said the LOL witness, a great deal of uncertainty will exist as reserve supply plant operators try to make appropriate plans for supply arrangements.

The LOL witness testified that during the past two years conditions have shown that high levels of milk shipments from reserve supply plants were needed in the fall months. According to the LOL witness, since September 1988 the market administrator had issued 13 calls for milk: four calls were at or slightly below the marketwide Class I use rate for the same month of the previous year and nine calls (issued in 1989 and 1990) were at levels well above the marketwide Class I use for the same month of the previous year. The LOL witness concluded that there was a great need for reserve supply plant milk in months other than the fall months. The LOL witness testified that the proposal to change the minimum shipping requirement to the marketwide Class I utilization rate for the same month of the previous year during the months of July through December, and 10 percent during January through June, ensures that the burden of supplying milk would be distributed equitably among all reserve supply plant operators benefiting from participation in the pool. It would also reduce the need for repeated calls for milk by the market administrator.

The AMPI, LOL, and Mid-Am proposal to make this change to the reserve supply plant shipping requirement was supported in testimony by representatives from Cass-Clay Creamery, Marigold Foods, and Frigo Cheese Corporation, and in all subsequent briefs.

The representative from Kraft testified that he supported the logic for determining reserve supply plant shipping requirements proposed by AMPI, LOL, and Mid-Am. However, as with his views previously discussed on shipping requirements for regular supply plants, he opposed establishing this fall's shipping requirement by discretionary authority. As for regular supply plants, the Kraft witness said he supported setting a shipping requirement level at what the Class I utilization percentage would have been if all eligible milk had been pooled under the

order in the fall of 1989. This method of establishing shipping requirements for reserve supply plants was also supported in testimony by the NFO representative.

The NFO representative testified that reserve supply plant shipping requirements should be set at a level which reflects the market's historical need for Class I milk supplies from reserve supply plants. According to the NFO witness, the Upper Midwest market's reserve supply plants have historically shipped about 7 to 8 percent less than the marketwide Class I utilization. Therefore, in NFO's view, the monthly minimum shipments from reserve supply plants should be 7.5 percent less than the prior year's Class I utilization for the same months. Use of the call provision, testified the NFO witness, would remain for bringing forth any additional volumes of milk.

As with their testimony and reasons for a net shipments measurement of supply performance for regular supply plants, the LOL witness also modified their original proposal for reserve supply plant shipping requirements to mitigate the possibility of evading shipping requirements by offsetting shipments to a distributing plant with receipts from the distributing plant. In recognition of certain legitimate needs for transfers from a distributing plant to another plant, the LOL witness testified that it is practical to also provide the identical tolerance for legitimate milk transfers proposed for regular supply plants—up to two percent of milk receipts at a distributing plant, up to the first 10 million pounds of such receipts, plus one percent of the quantity by which such receipts exceed 10 million pounds, up to a maximum of 400,000 pounds of milk—to count as meeting the shipping requirements.

The views of those who testified on a net shipments provision were made in such a manner that the provision would apply equally to both regular and reserve supply plants. Since that testimony has already been discussed in the changes to the order affecting regular supply plants, it would serve no purpose to reiterate that testimony in this discussion of testimony affecting reserve supply plants.

The LOL witness proposed a 50 percent limit on the shipping credit for reserve supply plant shipments to other Federal order distributing plants in the event of a call. He testified that this change was needed to mitigate the burden on reserve supply plant operators who don't ship to Upper Midwest distributing plants but participate in the pool. When this occurs, the LOL witness testified, more

milk shipments are required by reserve supply plant operators who do not engage in out-of-order milk shipments. The LOL witness reiterated his belief that the majority of market service performed by reserve supply plants should occur within the market in order to participate in the pool. He indicated that 5 or 6 reserve supply plant operators received shipping credit for up to 17 million pounds of milk during the months of August through November 1989. This meant, according to the LOL witness, that other handlers in the market had to ship that much more milk to distributing plants in the call area in order for the market to be adequately supplied with fluid milk. While such Class I shipments to other order distributing plants add to the value of the current pool, the LOL witness maintained that the cost of the year round participation of that milk is much higher. Support for this limitation on out-of-order milk shipments as proposed by the LOL representative was made in testimony by representatives from Cass-Clay Creamery and Marigold Foods.

Representatives from AMPI and NFO testified that if reserve supply plants are given credit for shipments to other markets, they will be encouraged to offer milk shipments where they are needed. This helps enhance the blend price for Upper Midwest order producers, the AMPI witness testified, and not counting such shipments could discourage making such shipments. The AMPI representative proposed that in the absence of a call, reserve supply plant shipments to distributing plants regulated under another Federal order be credited as having met the shipping requirement in the same manner as when a call is in effect.

NFO's witness testified in favor of the AMPI representative's proposal and testified further that a final decision published in the *Federal Register* in March 1976 affecting the Upper Midwest order said that credit for shipments by reserve supply plants to other order plants should be given in recognition that the Upper Midwest order serves as a reserve supply area of milk for other parts of the country. Not to count such shipments could discourage shipments, which may in fact be needed in other marketing areas. The Mid-Am representative supported the AMPI proposal.

Briefs filed by LOL and NFO reiterated their positions from the hearing testimony. The LOL brief maintained that the AMPI proposal provided too much freedom for reserve supply plants to receive shipping credits in the absence of a call. What would

likely result, the LOL brief said, would be an increased reliance on the call provision to ensure adequate milk deliveries to distributing plants. Normal reserve supply plant shipping requirements would be less reliable for assuring an adequate supply because while the amount of milk that should be shipped would be known, what would be available to the Upper Midwest market would not be known.

Changes adopted for reserve supply plants reflect the concerns of the industry to "equalize the playing field" for those who supply the market's fluid needs with those who benefit from pooling. The benefit of participation in the market's pool for a supply plant is receiving a price for milk that is higher than the price of milk used for manufacturing. The obligation that arises from participation in the Upper Midwest pool is essentially giving up milk for fluid use. The changes adopted require that if reserve supply plants are to benefit from pooling, the obligation to service the market's fluid Class I milk needs must be performed.

Adopting the reserve supply plant shipping requirement that 10 percent of its receipts be shipped to a distributing plant during January-June, and the marketwide Class I utilization percentage for the same month of the previous year for the remaining months, essentially recognizes the need for year-round shipping requirements by reserve supply plants. These shipping requirements are adopted because there is a need to bring forth more milk for the fluid needs of the market, and to improve equity among handlers operating regular supply plants and reserve supply plants. Reserve supply plants should be better able to anticipate how much milk will be needed to supply the fluid market in order to be pooled, which should remove some uncertainty that they now must accept.

The order does not now require regular milk shipments in the first seven months of the year, and only between 5-8 percent in the last five months of the year depending on the month. Only when a call is issued by the market administrator are additional milk supplies required to be shipped by reserve supply plants to distributing plants.

The record shows heavy use of the call provision by the market administrator to meet the Class I needs of the market. The record also shows that the call percentage has often exceeded regular supply plant shipping requirements. It was also used for the months of January and February in 1990, a period of time when reserve supply

plant milk shipments were not normally needed. The trend in the market for handlers to not pool milk or to pool it under another marketing order seems to be continuing. The first two months of 1990 indicate that the market pooled about 200 million pounds less milk than "normal." Therefore, adoption of these shipping requirements will likely lessen the need for the market administrator to issue calls. Moreover, this should help satisfy the market need for milk in the first six months of the year.

NFO's proposed modification to set a minimum reserve supply plant shipping requirement at the historical level of reserve supply plant shipments needed to meet Class I needs and to rely on the call provision in the event additional milk volumes are needed is not adopted. The thrust of the changes being made to the Upper Midwest order is to equalize the performance requirements of both types of supply plants by having the same shipping requirements during the fall months of the year when the need for shipments to service the Class I needs is greatest. To accept the NFO proposal would run counter to this goal. Moreover, the shipping requirement for reserve supply plants, under NFO's proposal, could result in far different shipping requirements between regular and reserve supply plants.

NFO's principal concern is that adopting the marketwide Class I utilization percentage as a performance standard for reserve supply plants will cause more milk to move than is needed for Class I uses at distributing plants. This is a real and valid concern that we choose to deal with in a different way than NFO suggests. Thus, in the interest of improving and maintaining equity of performance between the two types of supply plant operations, the market administrator will keep this objective in mind when considering whether to use discretionary authority to adjust the supply plant shipping standards. Accordingly, if the market administrator decides that a downward adjustment is warranted, he likely would adjust the standards for both types of plants at the same time. Assurance that the supply plant shipping standards will be managed in this fashion should ease NFO's concern in this matter.

The concern that there are reserve supply plant operators who enjoy pool status yet who do not ship milk to order distributing plants is a valid concern as it does place an increased burden on those plants that do not ship their milk to plants under other orders. At the same time the testimony clearly indicated an understanding that the Upper Midwest market serves as a reserve supply area of milk for other

parts of the country and that milk shipments to other Federal order markets in fact do occur. Not to recognize such shipments could tend to discourage the movement of milk where it is needed.

Credit for milk shipments made to other Federal order distributing plants by reserve supply plant operators in the event of a call will be limited to the quantity of milk delivered from the reserve supply plant to distributing plants during the month. This will ensure that to the extent that a reserve supply plant in the Upper Midwest market serves other federal order markets, it must also satisfy its own market. The current order requirement that the market administrator be notified of the amount of such milk delivery commitments prior to the announcement of a call is retained.

The AMPI modification that, in the absence of a call, reserve supply plant shipments to distributing plants regulated under another Federal order be credited as having met the shipping requirement in the same manner as when a call is in effect is similarly adopted. This will continue to recognize that the Upper Midwest is a reserve supply area for other markets but will require specific performance to satisfy the needs of the Upper Midwest market by those who want to continue to receive the benefit that pooling provides.

LOL's concern that AMPI's proposed modification is too liberal for reserve supply plant shipments in the absence of a call because it would provide a less reliable indicator for assuring an adequate supply is rejected. The order has previously not required regular shipments from reserve supply plants. When a call was issued, credit for shipments was provided. Although it would be inconsistent with the history of reserve supply plant provisions not to recognize such shipments, it may result in other plants having to ship more milk. If it becomes burdensome, then perhaps it raises a question about whether two types of supply plant provisions should be maintained.

The net shipments provisions for measuring supply plant performance were proposed to apply equally to regular and reserve supply plants. The previous discussion of this issue for regular supply plants applies here for reserve supply plants as well. Therefore, there is no need to reiterate findings and conclusions again in this section.

In light of all the changes being adopted to reserve supply plant performance requirements, there is no need to retain either the 25,000 pound

average milk receipt requirement or the requirement to make an initial 45,000 pound milk shipment to a distributing plant. Both requirements are effectively rendered obsolete in light of the fact that reserve supply plants will now be required to not only ship a greater percentage of their milk receipts, they will be doing so year round. Therefore, these two requirements have been eliminated.

2. Discretionary Authority To Revise Pooling Requirements

This decision provides discretionary authority for the market administrator to revise pooling requirements. This authority will allow the market administrator to revise shipping requirements for the fall of 1990 and make subsequent adjustments for regular and reserve supply plants, and make adjustments in diversion limits.

This action will give the market administrator the discretionary authority to administratively change shipping requirements upward or downward for regular supply plants in order to encourage needed Grade A fluid milk shipments to distributing plants or to prevent unneeded and uneconomic milk shipments. The order does not now provide for any sort of discretionary authority to change regular supply plant shipping requirements. The order currently requires that the shipping requirement be not less than the marketwide Class I utilization percentage for the same month of the preceding year.

Additionally, this action will give the market administrator the discretionary authority to revise downward the shipping requirements for reserve supply plants. The market will continue to rely on the call provision to generate additional milk shipments from reserve supply plants if needed. In addition to the call provision for reserve supply plants, the order currently provides for reducing established shipping requirements (by up to five percentage points during the months of August and December, and by up to eight percentage points during the months of September, October, and November) by the Director of the Dairy Division if he finds that such revision is necessary to prevent uneconomic milk shipments.

The market administrator also will have the discretionary authority to revise diversion percentages. The order does not currently provide discretionary authority to administratively revise diversion percentages.

Discretionary authority to administratively revise pooling requirements, specifically affecting regular and reserve supply plant

shipping requirements and diversion percentages, was proposed by AMPI, LOL and Mid-Am. In the original proposals, discretionary authority was to be placed with the Director of the Dairy Division. However, at the hearing, the representative from LOL modified the original proposals to have the discretionary authority placed with the market administrator on these matters affecting pooling requirements. These modifications to the original proposals were supported by virtually everyone who testified at the hearing and in subsequent briefs. The LOL witness indicated that granting the market administrator the discretionary authority to administratively revise pooling requirements would also be most effective because of the speed at which the market administrator can react to local and short-run market conditions. According to the LOL witness, this modification does not change the concept of administrative discretion; rather it only changes who exercises it. Citing their experience in the market administrator's issuance of calls, with decisions rendered within two weeks, the LOL witness said that it was unlikely that the Director of the Dairy Division could have done any better.

The LOL witness testified that administrative discretion should be available to the market administrator to adjust regular supply plant shipping requirements up or down to prevent uneconomic milk shipments. This witness testified that this is needed to develop realistic shipping percentages for the fall of 1990, without which the abnormally high Class I utilization percentage in the fall of 1989 would lead to excessive shipping requirements this fall.

Representatives from AMPI, Mid-Am, NFO, Marigold Foods, Cass-Clay Creamery, Frigo Cheese Corp., and Kraft all testified in support of the general testimony of the witness, from LOL and specifically in support of the modification of assigning the discretionary authority to the market administrator. In addition to supporting the testimony of the LOL witness, the AMPI representative submitted evidence that compared the longer process that the Director of the Dairy Division must follow in exercising his discretionary authority as compared with that of the market administrator in issuing calls. This evidence indicated that such actions took as few as 32 days and as long as 71 days when undertaken by the Dairy Division Director, while it took the market administrator from 14-16 days to issue calls for milk shipments. This, in the view of the representative

from AMPI, demonstrated the ability of the market administrator to respond to market changes more quickly than the Director of the Dairy Division.

The Kraft witness testified that while he agreed that the shipping percentages for this coming fall are too high and need revision, and that discretionary authority to amend shipping requirements should be placed with the market administrator, he did not support unlimited discretionary authority to adjust shipping requirements. In his opinion, the intent of the discretionary authority is to provide the market administrator the ability to fine-tune shipping requirements to reflect market conditions. Instead of unlimited discretion, the Kraft witness proposed a ten percentage point limit be placed on the discretionary authority to increase or decrease the shipping requirement. He believed that if a greater adjustment was needed, then market conditions had changed enough that such adjustments went beyond fine-tuning.

However, during cross examination the Kraft witness did indicate that if market conditions prevailed again this fall as they had in the autumn of 1989, then the limits he proposed would be insufficient to have handled the situation and that another hearing would be needed to make needed changes to the order. He subsequently offered instead that unlimited discretion be allowed for downward adjustments to shipping standards.

For revising reserve supply plant shipping requirements, the LOL witness testified that administrative discretion in making downward adjustments was appropriate for reducing the probability that the order would require uneconomic milk shipments. When increased milk shipments are required, the LOL witness said that the call provision already provided for in the order would be superior to revisions of the shipping requirement. The call provision is superior, he said, because it can be limited to a specific area of the market to serve a limited need in the market. Moreover, the call carries a force not available with a shipping requirement revision; i.e., to evade a call carries the penalty of losing pool status. LOL's brief reiterated this view, saying that the call provision is a superior tool for securing additional milk shipments when needed, while administrative discretion was a better tool for avoiding unneeded milk shipments. These views on giving the market administrator the discretionary authority to make such downward changes to reserve supply plant shipping requirements were supported by all who testified and in all subsequent briefs.

The LOL witness testified that the order's current diversion allowance, which is the combined Class II and Class III utilization for the same month of the preceding year, is a reasonable mechanism, provided that the Class I use rate doesn't change much from year to year. Since the shipping requirement will likely be too high this fall, the diversion allowances will likely be too low. The witness also testified that physical receipt of more milk than is needed at a pool plant before diverting it to another plant is expensive because it must be measured and tested twice, pumped into the plant and pumped out again as it is transferred to a nonpool plant. Therefore, according to the witness, administrative discretion is also the best way to make needed changes and provide the flexibility to deal with unexpected changes in future market conditions and avoid costly and unneeded handling of milk. Broad support of this proposal was voiced at the hearing by all who testified and in subsequent briefs.

The order currently provides a great deal of discretionary authority to the market administrator in issuing a call for reserve supply plants to make needed milk shipments if market conditions so warrant. Before the market administrator make/s such a determination, he must first issue a notice that such action is being considered to those who would be affected by such a decision and invite data, views, and arguments. This decision continues this requirement. Evidence in the record indicates support, trust, and confidence in the ability of the market administrator for making call decisions to secure additional milk shipments needed by the market.

The order now provides the Director of the Dairy Division limited discretionary authority to change reserve supply plant shipping requirements within prescribed limits for specific months. However, since these requirements are being replaced with other requirements, there is no need to maintain this authority.

The record indicates that the penalty associated with a call is a very effective tool for ensuring milk deliveries by reserve supply plants to distributing plants. This was a central reason why discretionary authority for only downward revision of reserve supply plant shipping requirements was proposed and is adopted in this decision.

It appears that there is a need to provide flexibility of supply plant performance standards and diversion limits when market conditions change

rapidly, as they have in the past two years. These changes have been noted elsewhere in this decision. Under such conditions, which could develop again in the future, the normal mechanism for change in the order program, which is the hearing process, may not provide the best response. The process simply takes too much time.

Thus, the proposals to give the market administrator discretionary authority to revise the supply plant shipping standards and the diversion allowances to nonpool plants are adopted. There is no doubt that the market participants are willing to have this responsibility and authority rest with the market administrator. Doing so will provide a means of making appropriate adjustments in these pooling provisions as market conditions indicate a need for adjustments. It must be recognized that the most timely response to changed conditions can be provided under such a provision.

Although some concern was expressed that the market administrator's authority to change such provisions should be limited, there is no apparent reason why restrictions should be imposed. It is intended and expected that this authority will be exercised with impartiality and integrity. Moreover, without restrictions more appropriate responses over a broader range of changed conditions may be obtained. Limitations on the authority to revise shipping and/or diversion percentages could result in the market administrator being unable to either increase or decrease the requirements or allowances to the full extent necessary in a given situation.

It should be noted that, to the extent appropriate shipping requirements for supply plants can be determined in advance, it is desirable for the market administrator to revise the requirements for several months. If conditions subsequently changed, the market administrator would again review the situation and make further adjustments as necessary. It is hoped that such an arrangement will serve the market well and provide less uncertainty as to what the requirements will be.

Whenever the market administrator believes that a change in the shipping standards or diversion allowances may be needed, whether by request or on his own initiative, he will give written notice that such a change is being considered and invite interested persons to comment. This procedure will assure that all potentially affected persons can have their views and other pertinent information fully considered by the market administrator before a decision is made and announced. Such a

procedure now is followed when a "call" for additional shipments by reserve supply plants is contemplated, and also is an appropriate requirement for the new authority provided herein.

3. *The administrative assessment rate.*

The maximum administrative rate paid by handlers for the administration of the order is hereby increased to 5 cents per hundredweight for milk pooled under the order. The order currently provides for a maximum administrative assessment of 3 cents per hundredweight. The proposal to increase the administrative assessment rate was proposed by AMPI, LOL and Mid-Am. Their proposal was also supported in testimony by NFO and Marigold Foods.

The LOL representative testified that the amount of milk that will be pooled under the Upper Midwest order has become unpredictable and, as a consequence, the financial resources to the market administrator with which to adequately administer the order may be unpredictable. Citing evidence submitted at the hearing, the LOL representative said that market developments in the latter half of 1989 caused several reserve supply plants to voluntarily not pool their milk on the Upper Midwest order, thus reducing the volume of milk pooled. Even though the administrative assessment rate was increased from 1.75 cents per hundredweight to the maximum of 3 cents per hundredweight, the LOL representative said that this was not sufficient to restore the market administrator's office to needed financial levels.

In further testimony, the LOL representative said that they would be concerned if the market administrator found it necessary to curtail its operations and services because of inadequate financial resources. Services such as audits that ensure proper payments are being made to producers, the checking of milk weights and tests, and providing market information that is useful year round in making business plans, are services provided by the market administrator too valuable to not be adequately funded.

The representative from AMPI also testified in support of increasing the administrative assessment to a maximum of 5 cents per hundredweight. According to the AMPI representative, the decline in the volume of milk pooled under the order, due to pooling milk on other Federal orders and because the M-W milk price was higher than the blend price in August through December 1989, caused the market administrator to

increase the assessment to the legal maximum of 3 cents per hundredweight. The AMPI representative said they shared the same concerns expressed by the LOL representative on the negative impact that could result from inadequate funding of the market administrator's office.

The representative from Mid-Am also offered support for increasing the assessment, saying that it is important for the order to be maintained in a status that provides a proper auditing function and so that the market administrator can properly administer the order.

The representative from Marigold Foods testified that, in light of the benefits and services provided by the market administrator, they favored adoption of the proposal to increase the administrative assessment.

The representative from NFO testified as having no objection to the market administrator's office being adequately funded, but expressed doubts as to whether emergency action was needed since milk volumes appeared to be, in their view, returning to normal levels.

Briefs filed by LOL, AMPI, and NFO reiterated their support for the need to increase the maximum administrative assessment rate to 5 cents per hundredweight. No hearing testimony or briefs filed opposed the assessment increase proposal.

The reduction in the amount of funds generated from assessing milk pooled under the Upper Midwest order to fund the operations of the market administrator's office was the result of milk being pooled under other Federal milk orders and the fact that during the months of September, October, and November 1989 the manufacturing price for milk was greater than the blend price. The market administrator attempted to avert operating at a deficit by increasing the assessment rate up to the current order maximum of 3 cents per hundredweight for the months of August through December 1989. Additionally, the market administrator's office trimmed its staff from 45 employees to 38 employees and as an economy measure shares auditing staff with the Chicago Regional (Order 30) milk order. In spite of these efforts, the office still operated at a deficit of about \$233,000 for 1989.

The record supports increasing the administrative assessment rate to a maximum of 5 cent per hundredweight. The rebound in milk production in 1989 from 1988, and a return of blend prices higher than the M-W milk price, have not resulted in a return to "normal" volumes of milk being pooled under the order. In fact, the volume of milk pooled

under the order during the first two months of 1990 continues to be well below the volume pooled under the order in 1988. Moreover, there is no certainty about expected market conditions for the upcoming autumn of 1990. Increasing the maximum administrative assessment rate would give the market administrator the flexibility to generate the financial resources necessary to properly administer the order, to maintain its financial reserve within specified guidelines, and to mitigate any possible operational deficit should a repeat of the market conditions in the autumn of last year occur in the autumn of 1990 and beyond. For these reasons, the proposal to increase the administrative assessment rate to a maximum of 5 cents per hundredweight is adopted.

Finally, it is noted that although the rate may be a maximum of 5 cents per hundredweight, the market administrator may set the rate lower or even waive the assessment if he can maintain an adequate financial reserve of between 85-115 percent of office operating expenses for a six-month period, a Department guideline followed by all market administrator offices nationwide.

4. Removal of obsolete order language.

Two sections of the order, § 1068.7(a)(1) and § 1068.13(d)(2), contain language that were adopted when the Upper Midwest order was formed by merging four orders. This language initially was necessary to instruct the market administrator how to compute the monthly shipping requirements for regular supply plants and the allowable diversions of milk from pool plants.

In each of the sections noted above, there is a parenthetical instruction explaining how to calculate the weighted average marketwide utilization from data for the four merged milk orders. These parenthetical instructions are obsolete and serve no useful purpose. Therefore, in the amendatory language attached to this decision, such language is removed.

5. The need for emergency action.

Proponents of the proposals considered in this proceeding urged that emergency procedures be followed so that any resulting amendments to the order could be implemented by July 1, 1990. Such action is necessary, in their view, so that supply plant operators, who by July 15, 1990, must notify the market administrator of their unit pooling intentions and elect to pool their supply plants as either regular supply plants or reserve supply plants, can

make those decisions based on full knowledge of what the order's performance requirements will be. They primarily were concerned that the milk prices experienced in the fall months of last year, along with other factors, have resulted in shipping standards for regular supply plants that are abnormally high for the fall months of 1990. In their view, if these shipping standards are not revised, considerable uneconomic movements of milk could result.

Most other participants at the hearing agreed on the need for expedited action. However, the NFO witness indicated that emergency action was justified only with respect to changing for the fall months of 1990 the shipping standards for regular supply plants and the diversion allowances. In NFO's view, the other issues should be handled following the regular procedures.

If some action is not taken on an expedited basis, the market likely would not operate in any semblance of the normal situation. First, if the shipping standards for the fall months are not changed, it is likely that many, maybe most, supply plant operators would elect to pool their plants as reserve supply plants. This would increase the likelihood that the market administrator would find it necessary to call for more milk shipments by reserve supply plants in order to satisfy distributing plants' needs for fluid milk. Such a scenario would not contribute to the maintenance of orderly marketing conditions. Rather, we believe that the entire market situation will best be served by omitting a recommended decision and proceeding directly to implement the adopted changes as soon as possible. Any other course of action, given the conditions in the Upper Midwest market, would do a disservice to handlers and producers.

In this regard, it should be noted that the proposals dealing with pooling matters are interrelated. Earlier, the rationale for adopting various changes to the order was discussed. Without belaboring any points, if supply plant operators have the option to form units, it will be helpful in that process to know whether a net shipments provision will be applicable, and whether shipments of milk to other order plants by reserve supply plants will be fully or partially recognized as qualifying shipments in response to a call. Similarly, cooperatives probably would find it helpful in planning units to know whether direct shipments (9(c) milk) will count as qualifying shipments. In short, we see little reason to adopt only some of the changes now and others later. It

must be kept in mind that units are formed to operate from August through the following July. If the amendments are not adopted now, it could be disruptive for cooperatives and other handlers to change the order's pooling provisions after the unit pooling decisions have been made. An alternative to making the changes later this year is to implement the changes just before units are formed next year. However, there is no basis to conclude that such changes should be held in abeyance until units are formed in 1991.

Similarly, the decision to increase the maximum administrative assessment rate should be implemented at the same time the other changes are made. This issue also was discussed earlier in this decision. In this case, uncertainty about the amounts of milk that will be pooled during the remaining months of 1990 is a sufficient reason to expedite implementation of a higher maximum rate. This will provide greater assurance that the market administrator's reserve funds will not be further depleted if receipts of producer milk drop off again later this year.

Therefore, for the reasons cited above, it is concluded that it is imperative and unavoidable that a Recommended Decision be omitted in this proceeding if the amendments are to be implemented in a due and timely fashion.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(d) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1068.85 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk and an Order amending the order regulating the handling of milk in the Upper Midwest marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

The month of March 1990 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Upper Midwest marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1068

Milk marketing orders.

Dated: May 30, 1990.

John E. Frydenlund,
Deputy Assistant Secretary, Marketing and
Inspection Services.

Order Amending the Order, Regulating the Handling of Milk in the Upper Midwest Marketing Area

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

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) It is hereby found that the necessary expense of the market administrator for the maintenance and

functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1068.85.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. The authority citation for 7 CFR part 1068 continues to read as follows:

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

2. Section 1068.7 is amended by revising paragraphs (a)(1) and (b) and amending paragraph (d) by removing and reserving paragraphs (d)(1) and (d)(2), revising paragraphs (d)(4) and (d)(5)(ii)(B), redesignating paragraph (d)(7) as (d)(8) and adding a new (d)(7) to read as follows:

§ 1068.7 Pool plant.

* * * *

(a) * * *

(1) The total route disposition (except filled milk) as a percent of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator is at least equal to the marketwide Class I utilization percentage for the same month of the preceding year; and

* * * *

(b) Any plant (which, if qualified pursuant to this paragraph, shall be known as a "pool supply plant") that is approved by a duly constituted regulatory agency for the handling of Grade A milk, subject to the following conditions:

(1) The volume of fluid milk products delivered to pool distributing plants as a percent of the total Grade A milk received at the plant from dairy farmers during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant) is not less than the marketwide Class I utilization percentage for the same month of the preceding year, subject to the following conditions:

(i) These shipping percentages may be increased or decreased by the market administrator if the market

administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping percentage might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective;

(ii) A cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1068.9(c);

(iii) A proprietary handler may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1068.13(d);

(2) In order to meet the requirements of this paragraph, two or more supply plants operated by one or more handler(s) may qualify for pooling as a unit during the following months of August through July by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant, provided that:

(i) The handler(s) file a request with the market administrator for such unit status no later than July 15 of each year. Such a request should specify the order in which plants would cease to be considered part of the unit if the unit fails to meet the applicable percentage requirements of this paragraph. Any plant that ceases to be part of a unit will not be eligible to rejoin a unit until the following August. No plant may become part of a unit after the unit is formed and the market administrator has been notified; and

(ii) Each handler operating supply plant(s) for which the shipping percentages are met as part of a unit must ship at least 5 percent of the Grade A milk received at its plant(s) from dairy farmers during the month (including milk delivered to the handler's plant(s) from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant(s) by the plant operator but excluding milk diverted to the plant(s) from another pool plant) to pool distributing plant(s) in one of the months of August through December in order for

the handler's plant(s) to be a supply plant(s) for the month of December; and

(iii) Each plant in the unit is located in the marketing area, or was a pool plant pursuant to § 1068.7(b) for each of the three months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status.

(3) The quantity of fluid milk products moved from a supply plant to a pool distributing plant or pool distributing plant unit that shall count toward meeting the shipping requirements of paragraphs (b)(1) and (b)(2) of this section shall be a net quantity which shall exclude the pounds by which the quantity specified in paragraph (b)(3)(i) of this section exceeds the quantity specified in paragraph (b)(3)(ii) of this section:

(i) The pounds of bulk fluid milk products transferred from the pool distributing plant or pool distributing plant unit during the month that are not to another pool distributing plant or pool distributing plant unit or to a commercial food processing establishment pursuant to § 1068.40(b)(3).

(ii) 1,000,000 pounds.

* * * *

(d) * * *

(1) [Reserved]

(2) [Reserved]

* * * *

(4) The volume of bulk fluid milk products shipped from the plant to pool distributing plants as a percent of the total Grade A milk received at the plant from dairy farmers during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant) is not less than 10 percent for each of the months of January through June and, for each of the months of July through December, is not less than the marketwide Class I utilization percentage for the same month of the preceding year, subject to the following conditions:

(i) These shipping percentages may be decreased by the market administrator on the basis that such revision is necessary to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision of the shipping percentage might be appropriate, the market administrator shall issue a notice stating

that the revision is being considered and invite data, views, and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective;

(iv) Shipments from a reserve supply plant to a distributing plant regulated under another Federal order may count as if delivered to a pool distributing plant if the market administrator is notified of the amount of any such commitments to ship milk no later than the 15th day of the prior month. Total credit for shipments to plants regulated under other Federal orders shall be limited to the quantity of milk delivered from the plant to pool distributing plants during the month. Qualifying shipments to another order plant may not be classified pursuant to § 1068.42(b)(3).

(5) * * *

(ii) * * *

(B) Shipments from a reserve supply plant within the call area to a pool distributing plant outside the call area or to a comparable plant regulated under another Federal order may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to announcement of a shipping requirement pursuant to this paragraph. Total credit for shipments to plants regulated under other Federal orders shall be limited to the quantity of milk delivered from the plant to pool distributing plants during the month. Qualifying shipments to another order plant may not be classified pursuant to § 1068.42(b)(3); and

(7) The quantity of fluid milk products moved from the reserve supply plant to a pool distributing plant or pool distributing plant unit that shall count toward meeting the shipping requirements of paragraphs (d)(4), (d)(5), and (d)(6) of this section shall be a net quantity which shall exclude the pounds by which the quantity specified in paragraph (d)(7)(i) of this section exceeds the quantity specified in paragraph (d)(7)(ii) of this section.

(i) The pounds of bulk fluid milk products transferred from the pool distributing plant or pool distributing plant unit during the month that were not to another pool distributing plant or pool distributing plant unit or to a commercial food processing establishment pursuant to § 1068.40(b)(3).

(ii) 1,000,000 pounds.

3. In § 1068.13, amend paragraph (d) by revising paragraph (d)(2), redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively, and adding a new paragraph (d)(4) to read as follows:

§ 1068.13 Producer milk.

(d) * * *

(2) The total quantity of milk diverted by a cooperative association during the month as a percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month shall not exceed the market's combined Class II and III utilization percentage for the same month of the prior year;

(4) The diversion limitations specified in paragraphs (d)(2) and (d)(3) of this section may be increased or decreased by the market administrator on the basis that such revision is necessary to prevent uneconomic handling or shipments of milk. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of diversion limitations shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective;

§ 1068.85 [Amended]

4. In § 1068.85, amend the introductory text by changing "3 cents" to "5 cents".

Marketing Agreement Regulating the Handling of Milk in the Upper Midwest Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1068.1 to 1068.86, all

inclusive, of the order regulating the handling of milk in the Upper Midwest marketing area (7 CFR part 1068) which is annexed hereto; and

II. The following provisions:

§ 1068.87 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of March 1990, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1068.88 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

By _____
(Name)

(Title)

(Address)

(Seal)

Attest _____

Date _____

[FR Doc. 90-13048 Filed 6-5-90; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 309, 310 and 317

[Docket No. 89-031P]

RIN 0583-AB18

Policy for Differentiating Between Calves and Adult Cattle

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to provide standard criteria by which inspectors will determine

whether a bovine animal or animal carcass declared to be a calf or calf carcass is properly identified as such under the Federal Meat Inspection Act. This provision would assure that appropriate inspection procedures are applied and better assure that products labeled as coming from calves are labeled accurately.

DATES: Comments must be received on or before August 6, 1990.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under "SUPPLEMENTARY INFORMATION".)

FOR FURTHER INFORMATION CONTACT: Dr. Wilson S. Horne, Deputy Administrator, Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-5190.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to the FSIS Hearing Clerk. They should refer to Docket No. 89-031P.

Executive Order 12291

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

The proposed regulation would provide criteria by which inspectors will determine whether a bovine animal or animal carcass declared to be a calf or calf carcass is properly identified as such under the Federal Meat Inspection Act (FMIA). This determination would assure that appropriate inspection procedures are applied and promote more consistency and accuracy in the application of FMIA labeling provisions to such calves and their products. This proposal would provide that an animal is considered a "calf" if its live weight does not exceed 750 pounds, the calf's "dressed weight" with the hide on does

not exceed 450 pounds, or, with the hide off, 425 pounds. For purposes of this proposed regulation, the term "dressed weight" would mean weight of a carcass minus the head, skin (unless the hide is on), blood, and viscera. The proposed regulation also would provide that inspectors may, at their discretion, request a USDA Veterinary Medical Officer to observe certain physical characteristics to determine whether a bovine animal carcass is that of a calf. These observations would be made in cases where an inspector has reason to believe that the animal in question was an adult animal.

This regulation would positively affect calf producers, inspected establishments and consumers by providing uniform, objective criteria by which inspectors would identify animals offered for inspection as "calves".

Effects on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule would not have a significant economic impact on a substantial number of small entities.

It is assumed that the majority of calf producers and establishments slaughtering calves are small entities. This action is expected to positively affect small entities such as calf producers, packers, and consumers. By providing relatively simple, objective criteria by which inspectors may identify calves, the proposed rule will permit more consistent and accurate labeling of products, and promote fair play in the marketplace.

Background

The United States has had mandatory inspection for meat and meat products prepared for commerce since 1907. The FMIA requires the inspection by an inspector appointed by the Secretary of Agriculture of certain domesticated animals such as cattle, prior to their entering an establishment for slaughter, and the post-mortem inspection of their carcasses and parts thereof in any establishment preparing such articles for commerce. The purpose of both ante-mortem and post-mortem inspection is to assure that the carcass and parts thereof of the animal slaughtered are wholesome and not adulterated. In addition, the FMIA requires that the Federal inspector inspect meat products from animals slaughtered in a federally inspected establishment to assure that they are not adulterated and are properly labeled, marked and packaged.

FSIS has been petitioned by the Southwest Meat Association to establish criteria to differentiate between beef cattle and calves. The

petitioner is requesting that weight be the principal factor in differentiating between calves and adult animals. The petitioner requests that the weight limits for calves be established at 750 pounds live weight or 450 pounds carcass weight and that the animal in question be an obviously young animal.

FSIS inspectors frequently must differentiate calves from adult bovine animals to assure the application of appropriate inspection procedures, including those relating to the labeling of inspected products. The meat derived from "calves", when so labeled, generally commands a premium price. This is because the tissues of immature cattle have flavor and texture properties that are unique and considered desirable.

In the vast majority of instances, there is no question that animals presented for inspection as calves are in fact calves. However, there are instances when it is not clear whether certain animals are adult bovine animals or calves. If a question arises, the inspector must make a subjective determination which will be influenced greatly by the inspector's knowledge, skills and experience with such animals.

Current policy on what constitutes a calf for FSIS inspection and labeling purposes is based on custom and practice in the industry. Inspectors may assess a number of factors including weight of the animal, age of the animal, meat color and texture, teeth formation and bone formation. FSIS inspectors generally consider a bovine animal to be a calf if the animal's weight is 600 pounds or less. However, custom and practice on what other criteria are appropriate to use has varied in different parts of the country, resulting in inconsistencies among Agency determinations of what animals and products are appropriately labeled "calf".

In addition to the FSIS mandatory inspection of bovine animals and their carcasses and parts thereof to assure that such carcasses and parts thereof are wholesome, not adulterated, and properly labeled, marked, and packaged, the USDA's Agricultural Marketing Service (AMS) provides, pursuant to the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621 *et. seq.*), voluntary grading services to producers and packers to determine the quality as opposed to wholesomeness of carcasses and parts thereof for marketing purposes. The services are provided by AMS at the producer or packer's request for a fee. AMS graders are specially trained for this purpose, and they apply more complex criteria, than criteria used

by FSIS inspectors, when making grading determinations concerning the quality of an animal—which necessarily includes making a determination such as whether a live animal is a calf (7 CFR 53.120–53.124) or an animal carcass is that of a calf (7 CFR 54.112–54.117).

These more complex criteria are necessary for an AMS grader to make a grading decision. These criteria are not necessary for an FSIS inspector to determine the age of an animal such as a calf for purposes of determining at ante-mortem or post-mortem inspection that the carcass and parts thereof of the calf are wholesome and not adulterated or to assure that meat products are truthfully labeled. FSIS inspectors have in the past relied upon the USDA grading determinations concerning the age of a bovine because of the expertise of the AMS grader and because the AMS criteria are more complex to apply.

The Proposal

FSIS is proposing to define "calf", for inspection purposes, as a young bovine animal whose weight does not exceed 750 pounds live, or whose dressed carcass weight does not exceed 450 pounds with the hide on, or 425 pounds with the hide removed. Research conducted by the Texas Agricultural Extension Service indicates that producers are capable of producing 7 month old calves with weaning weights of up to 700 pounds. The Agency is informed that some producers routinely are producing calves with weaning weights as high as 750 pounds. It is estimated that the dressed weight (hide on) for a 750 pound calf would be no more than 450 pounds. Because the hide itself would weigh at least 25 pounds, if the hide was removed before post-mortem inspection, the dressed carcass would be permitted to weigh as much as 425 pounds.

Since the degree of maturation may be indicated by factors other than weight, physical indicators of maturity may be used in conjunction with weight limits to differentiate "calves" from adult cattle. These physical indicators of maturity are teeth formation, bone formation, and pregnancy. If an inspector has reason to believe that an animal or animal carcass whose weight is within the proposed weight limitation for a calf is actually that of an adult animal, he may segregate the carcass and request that a Veterinary Medical Officer examine it for physical indicators of maturity and make a determination of whether it is "calf". If the Veterinary Medical Officer examines the bovine animal and determines that the bovine animal is

pregnant, or has any permanent teeth other than the first molar, or has mature bone structure, the bovine would not be considered to be a "calf" for purposes of this proposed regulation.

Product from animals weighing no more than 750 pounds live, or 450 pounds dressed with the hide on or 425 pounds dressed with the hide removed, still may not be labeled as "calf" if the physical characteristics of the carcass, as determined by a USDA Veterinary Medical Officer, indicate that it is the carcass of an adult animal.

FSIS has consulted with AMS concerning these proposed regulations and AMS agrees that the proposed FSIS regulations are consistent with the AMS regulations. Under FSIS's proposed regulations, FSIS inspectors will still accept AMS grading determinations as to the age of a bovine animal, for purposes of ante-mortem inspection, post-mortem inspection and labeling requirements of the FMIA.

List of Subjects

9 CFR Part 309

Calf, Meat inspection, Requirements, Definitions.

9 CFR Part 310

Calf, Meat inspection, Requirements, Definitions.

9 CFR Part 317

Calf labeling.

For the reasons set forth in the preamble, the following amendments to the Federal meat inspection regulations 9 CFR chapter III are proposed as follows:

1. The authority citation for Part 309 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903 as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 601 *et seq.*, 33 U.S.C. 1254(b).

2. New paragraphs (c) and (d) would be added to § 309.1 to read as follows:

§ 309.1 Ante-mortem inspection in pens of official establishments.

* * * * *

(c) As set forth in this part, ante-mortem inspection is intended primarily to prevent the use in commerce of meat and meat food products which are adulterated. Inspectors also may be required to inspect animals in accordance with other sections of this chapter.

(d) In order to be classified as a calf, for any purpose other than for residue testing under § 309.16(d), a bovine animal must be young (not adult) and weigh 750 pounds or less at the time it is

presented for ante-mortem inspection. If the inspector has reason to believe the animal may be an adult animal, the inspector may request a USDA Veterinary Medical Officer to undertake an examination of the carcass to detect the following physical indicators of maturity: permanent teeth (other than first molar), mature bone structure and pregnancy. When in the judgment of the Veterinary Medical Officer, one or more physical indicators of maturity are present, the carcass of the animal shall, regardless of weight, be considered that of an adult animal and shall be inspected pursuant to § 310.1(a)(2) of the subchapter and labeled accordingly. Provided, however, that if an Agricultural Marketing Service (AMS) grader has provided services pursuant to the authority of the Agricultural Marketing Act of 1946, as amended, and has determined that the bovine is a calf for grading services under 7 CFR 53.120 through 53.124, the FSIS inspector will rely upon such AMS determination for purposes of whether or not the bovine is a calf for inspection and labeling purposes.

3. Paragraph (d) of § 309.16 would be revised to read as follows:

§ 309.16 Livestock suspected of having biological residues.

* * * * *

(d) Calves shall not be presented for ante-mortem inspection in an official establishment except under the provisions of this paragraph, and the provisions of section 309.1.

4. The authority citation for part 310 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254 (b).

5. Section 310.1 would be amended by revising the section heading and by redesignating paragraph (a) as paragraph (a)(1) and adding new paragraphs (a)(2) and (a)(3) to read as follows:

§ 310.1 Extent, scope and time of post-mortem inspection; staffing standards.

(a) * * *

(2) As set forth in this part, post-mortem inspection is intended primarily to assess whether the carcass and parts of slaughtered animals are wholesome and not adulterated. Inspectors also may be required to inspect carcasses and parts in accordance with other sections of this chapter.

(3) In order to be classified as a calf, for any purpose other than for residue

testing under § 310.21(b), the dressed weight of a carcass may not exceed 450 pounds including the hide, or 425 pounds with the hide removed. For purposes of this paragraph, the term "dressed weight" shall mean the weight of the carcass minus the head, skin (unless the hide is on), blood, and viscera. In addition, if an inspector has reason to believe that a carcass represented as that of a calf when presented for post-mortem inspection may be that of an adult animal, the inspector may request the Veterinary Medical Officer to undertake an examination of the carcass to detect the following physical indicators of maturity: permanent teeth (other than first molar), mature bone structure, and pregnancy. When, in the judgment of the Veterinary Medical Officer, one or more physical indicators of maturity are present, the carcass shall, regardless of weight, be considered that of an adult animal and shall be inspected and labeled accordingly. Provided, however, that if an Agricultural Marketing Service (AMS) grader has provided services pursuant to the authority of the Agricultural Marketing Act of 1946, as amended, and has determined that the bovine carcass is that of a calf for grading services under 7 CFR 54.112-54.117, the FSIS inspector will rely upon such AMS determination for purposes of whether or not the carcass is considered that of a calf for inspection and labeling purposes.

* * * * *

6. The authority citation for part 317 would continue to read as follows:

Authority: Sec. 7(c), 34 Stat. 1262, as amended, 21 U.S.C. 607; Sec. 8, 71 Stat. 444, as amended, 21 U.S.C. 457; 42 FR 35625, 35626, 35631.

* * * * *

7. A new paragraph (b)(38) would be added to § 317.8 to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

(b) * * *

(38) Product labeled with the term "calf" shall not be used in such a manner as to be false or misleading and shall comply with the provisions of §§ 309.1 and 310.1 of this subchapter.

Done at Washington, DC, on May 31, 1990.

Ronald J. Prucha,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 90-12999 Filed 6-5-90; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 308

[Docket No. R-132; RIN 2133-AA83]

War Risk Insurance; Foreign-Flag Vessel Types, Application Procedure and Fees

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary of Transportation (Secretary) is authorized under the Merchant Marine Act, 1936, as amended (Act), to provide war risk insurance and reinsurance to insure vessels against damages and liabilities resulting from war or warlike actions when commercial war risk insurance is unavailable on reasonable terms and conditions. The Maritime Administration (MARAD) is proposing to amend its regulations for the administration of the war risk insurance program, under authority delegated by the Secretary. The principal proposed amendment would extend eligibility to obtain war risk insurance interim binders to additional types of foreign-flag vessels that are effectively United States controlled (EUSC vessels). This would make it possible for MARAD to requisition additional vessels, now ineligible, that are considered to be essential in time of war or national emergency. This would be accomplished by the execution by each applicant for war risk insurance of an agreement to make the vessel available to the United States during a U.S. national emergency. The availability of war risk insurance facilitates the flow of U.S. waterborne foreign commerce during these times. This rulemaking also proposes to consolidate the responsibility for processing war risk insurance applications for foreign, as well as U.S.-flag vessels, and to make some minor procedural changes. These changes include that of imposing a fee for each application for war risk insurance, rather than for each vessel included on a single application. This would reduce the cost for applicants that are seeking interim war risk insurance for more than one vessel, while more accurately reflecting the administrative cost to the government. The Owner's Contract of Commitment form, found in 46 CFR part 308, is also being amended to delete obsolete references to the Department of the Navy and to require that shipowners under the contract provide for the potential requisition of their vessels by

the U.S. Government by adding a clause to their charters.

DATES: Comments must be received on or before August 6, 1990.

ADDRESSES: Address original and two copies of comments to the Secretary, Maritime Administration Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Interested persons may inspect these comments during normal working hours in room 7300, Department of Transportation. A commentator wishing acknowledgement that MARAD has received the comments should include a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, Washington, DC 20590 or telephone (202) 366-2400.

SUPPLEMENTARY INFORMATION: The Authority of the Secretary of Transportation (Secretary) to provide insurance and reinsurance under title XII, of the Act (46 App. U.S.C. 1281-1293), was extended until June 30, 1995, by Pub. L. 101-115, which was enacted on October 13, 1989. As authorized by section 1202 of the Act (46 App. U.S.C. 1282), the Secretary may provide war risk insurance adequate for the needs of the waterborne commerce of the United States, if such insurance coverage cannot be obtained on reasonable terms and conditions from companies authorized to conduct an insurance business in a state of the United States. The U.S. Government's war risk insurance program is a standby emergency program. It becomes effective simultaneously with the automatic termination of commercial ocean marine war risk insurance policies. These policies are automatically terminated upon the outbreak of war, whether declared or not, among any of the five great powers (United States, United Kingdom, France, People's Republic of China, or the Union of Soviet Socialist Republics) or upon the hostile detonation of a weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

A war risk insurance interim binder is a contract under which the U.S. Government agrees to provide the applicant with war risk insurance coverage in the interim period, after termination of commercial insurance coverage, until regular policies of insurance are issued under the Government War Risk Insurance Program, for a fee and upon the conditions set forth in 46 App. U.S.C. 1283. An agent of MARAD issues the

interim binders. War risk insurance is available for hull, protection and indemnity and second seamen's crew life, disability, loss of effects and detention.

This proposed regulation would amend 46 CFR part 308 to eliminate references to the past reinstatement of interim binders "until June 30, 1990," since MARAD's authority has been extended until June 30, 1995. The fee that is now imposed for each vessel for which an application for war risk insurance is made would be imposed for each application, irrespective of the number of vessels for which application is being made. This would more accurately reflect the administrative cost of processing an application. Another proposed amendment would allow the American War Risk Agency to process foreign-flag applications for interim binders. This would consolidate the application process, since the American War Risk Agency currently is responsible for processing applications for war risk insurance interim binders for U.S.-flag vessels.

MARAD is also proposing to amend the Owner's Contract of Commitment, found at 46 CFR part 308, by deleting references to the Department of Navy's authority to requisition vessels. That authority has been terminated, and only MARAD has such authority under section 902 of the Act. Under the Contract of Commitment the shipowner agrees that any charter or contract covering the use of the vessel will be terminated or suspended in the event the United States requests use of the vessel. MARAD is proposing an amendment to require shipowners to incorporate a clause in their charters or contracts to reflect this requirement.

The principal proposed amendment concerns eligibility requirements for foreign-flag vessels applying for war risk interim binders. MARAD's existing war risk insurance regulations limit foreign-flag vessel eligibility for obtaining war risk insurance interim binders. Vessels that are currently eligible to apply under MARAD regulations are those that are documented under the laws of the United States (except sport fishing vessels), as well as vessels not more than 20 years old that are registered under the laws of Panama, Honduras, Liberia, the Bahamas and the Republic of the Marshall Islands. These foreign-flag vessels must either be owned by U.S. citizens, or U.S. citizen-owned corporations, or under the long term operational control of U.S. citizens. They cannot be subject to requisition for title or use by any national government, other than the U.S. Government. Further,

the foreign country in which the vessel is registered may not have a statutory restraint preventing the U.S. Government from requisitioning a U.S. citizen-owned or controlled vessel registered in that foreign country.

Foreign-flag vessels that are eligible for war risk insurance interim binders under the existing regulation are further limited to those that are: (1) Substantially engaged in the foreign commerce of the United States (considered to be so if they carry 30 percent of net cargo tonnage, on a semiannual basis, in the U.S. foreign commerce); (2) product tankers up to 90,000 deadweight tons; (3) dry bulk cargo vessels; (4) heavy lift vessels; (5) refrigerated vessels and other classes of vessels in short supply in the U.S.-flag fleet; and, (6) other vessels with special capabilities.

The owner of a vessel that meets any of these criteria must execute a Voluntary Contract of Commitment (VCC) by which it affirms that it will: (1) Make the vessel available during a U.S. national emergency to serve the U.S. economy or cooperate with U.S. military authorities under section 902 of the Act (46 App. U.S.C. 1242); (2) maintain the vessel in its eligible category; and (3) comply with the vessel location reporting procedure set out at 47 CFR part 307.

Vessels owned or controlled by U.S. citizens and registered under the laws of a foreign government are subject to the laws of the country of registry. Such laws may prevent U.S. citizens or U.S. available to the U.S. Government during periods of U.S. national emergency. Accordingly, MARAD's regulations require that, prior to the execution of a VCC with the U.S. Government, applicants for war risk insurance on a foreign-flag vessel submit with their application a certified copy of the evidence of any official action or approval by the Country of registry which may be required as a prerequisite to the execution of a VCC (46 CFR 308.3(d)(4)). The VCC between the U.S. Government and the vessel's U.S. citizen applicant makes that vessel available to the United States during any period in which vessels may be requisitioned under 46 App. U.S.C. 1242, i.e., whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President.

MARAD is proposing an amendment that would revise the existing limitations on eligibility for war risk interim binders (which are based on vessel type or area of employment) for

otherwise eligible foreign-flag vessels. Under the proposed amendment, MARAD would extend eligibility for interim war risk insurance to additional vessels (including passenger ships and all tankers above 90,000 deadweight tons), that are considered essential to the economic support of the United States during a period of declared war or national emergency and that are subject to requisition at such time.

Under a Memorandum of Understanding between the Departments of Defense and Transportation on shipping support of military operations, MARAD acquires ships to meet DOD requirements under the requisitioning authority of 46 App. U.S.C. 1242(a).

Under the provisions of 46 CFR part 308.1(b) and 308.2(a), specified categories of U.S.-owned ships registered in Panama, Liberia, Honduras, the Bahamas, and the Republic of the Marshall Islands are eligible for U.S. Government war risk insurance. Access to war risk interim binders by more types of Effective U.S. Control (EUSC) vessels that are suitable in time of war or national emergency could hasten the availability and utilization of EUSC vessels in such times of crisis. The vessels in the EUSC fleet are predominantly employed in the U.S. foreign trade in direct support of the U.S. economy. In the event of a military crisis, certain classes of vessels would likely be requisitioned to provide sealift in support of military operations, while the remainder would remain employed in support of the civil economy. However, there is inadequate U.S.-flag tonnage to satisfy the defense and commercial needs of the United States in the event of a war or national emergency.

Prior to 1975 all EUSC ships were automatically eligible for war risk insurance coverage in exchange for the owners, contractual commitment to make such vessels available to the U.S. Government for use, requisition or charter in the event of war or national emergency.

The program lapsed on September 7, 1975, and was reenacted on October 17, 1976, under Public Law 94-523. This legislation amended the Act with respect to the title XII program and provided new criteria that the Secretary shall consider before granting war risk insurance or reinsurance to foreign-flag vessels, namely, "the characteristics, the employment, and the general management of the vessel by the owner or charterer."

This new provision was the result of compromise, since an amendment had

been put forth during hearings to completely eliminate foreign flag participation in the program. The compromise was to limit participation in the reenacted program to approximately 25% of the EUSC tonnage entered in the program which expired on September 7, 1975. On November 20, 1978, final regulations were issued containing the present foreign eligibility criteria. The vessel types specified in the existing regulations as qualifying for interim insurance evolved from the compromise. However, the precise limits of that compromise have been mitigated by changed circumstances over time. The reliance on EUSC vessels for the national defense and the national economy remains, but the contractual commitment arising out of the war risk program has been unavailable for many classes of vessels, including all passenger ships, crude oil tankers and product tankers of greater than 90,000 deadweight tons.

The National Security Sealift Policy approved by President Bush on October 5, 1989, directs the Department of Transportation to ensure that the appropriate legal and procedural mechanisms for exerting effective control over "effective U.S. control" ships are in place. However, as noted, the authority to requisition EUSC vessels has been questioned in an opinion by the Comptroller General of the United States.

The Comptroller General was asked for a legal opinion by Senator Ernest F. Hollings, Chairman, Committee on Commerce, Science, and Transportation, on the scope of section 902(a) of the Act (46 App. U.S.C. 1242(a)), which provides the Secretary of Transportation with the authority, under specified conditions, to requisition vessels "owned by citizens of the United States." The Comptroller General was specifically asked to determine whether, assuming a proper Presidential proclamation of emergency, the Secretary of Transportation has the authority to requisition a vessel owned by a corporation that does not meet all the citizenship requirements of 46 App. U.S.C. 802; in particular, the requirement that the corporation be "organized under the laws of the United States or of a State, Territory, District, or possession thereof." The Comptroller General also indicated that, in further conversation with Senate staff, the General Accounting Office was asked whether a vessel owned or controlled by an American corporation's foreign subsidiary would be within the reach of the requisitioning provision.

In a Comptroller General's Opinion, dated April 14, 1988 (Opinion B-229258),

the Comptroller General cast doubt on MARAD's legal authority to requisition vessels owned or controlled by an American corporation's foreign subsidiary. The opinion stated in part:

Although an argument can be made in support of the Maritime Administration's view that it could disregard the corporate entity in the case of a wholly owned dummy corporation whose only asset is a single ship, it is uncertain whether the courts would agree. The application of "piercing the corporate veil" depends upon the facts of each case in which it is sought to be applied. If you wish to eliminate this uncertainty, we would suggest that either the requisitioning authority be amended to make clear whether ships owned through foreign subsidiaries are covered or that the Maritime Administration enter into contractual agreements providing for requisitioning in accordance with section 1242(a) with the owners of the vessels not specifically covered by the requisitioning provision.

On June 1, 1989, the then Maritime Administrator, John Gaughan, responded to a letter of April 18, 1988, of Senator Hollings, which cited the Comptroller General's opinion and its conclusion that a vessel would be subject to requisition only if the owner met all the requirements of section 902. Mr. Gaughan's letter to Senator Hollings stated in part:

We cooperated with GAO in the course of its study and the decision fairly states our position. However, we hold to the opinion that vessels owned and controlled through overseas subsidiaries and flying foreign flags are subject to requisition by the United States.

Without receding in the least bit from our position, I have directed my staff to examine some of the GAO suggestions. One area in particular is the possibility of administrative action whereby agreements can be entered into with American owners of foreign-flag vessels acknowledging the requisitioning powers over such vessels. At the very least, such acknowledgements would have the benefit of facilitating exercise of that power in times of crisis.

While this Agency continues to disagree with the Comptroller General's opinion, it believes that it would be prudent to enter into contractual agreements providing for requisitioning in accordance with section 1242(a). The availability of interim war risk insurance binders for all EUSC vessels represents a vehicle for securing such contractual agreements.

Public Law 101-115 amended section 1202 of the Act (46 App. U.S.C. 1282) to require that as a condition for obtaining war risk insurance on foreign-flag vessels, such vessels be available to the United States in time of war or national emergency. That provision is incorporated in the VCC which MARAD requires to be executed under these

regulations by the owner of each vessel applying for war risk insurance. Absent this commitment, MARAD will not issue war risk insurance for a foreign-flag vessel.

Because the vessels in the EUSC fleet are considered to be vital to the national defense and the national economy, and would be eligible for war risk insurance in times of national emergency, and in view of the Comptroller General's opinion and the directive to the Department of Transportation in the National Security Sealift Policy statement, MARAD proposed that eligibility of interim war risk insurance binders be granted to all EUSC vessels. The Department of the Navy, in a letter from its Director, Strategic Sealift Division, dated November 29, 1988, to MARAD's Director, Office of Trade Analysis and Insurance, supports making interim war risk insurance binders available to all EUSC vessels, since EUSC vessels will either be requisitioned in support of military operations or in support of the wartime economy.

Analysis of Regulatory Impact

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of \$100 million or more. MARAD estimates that there are approximately 215 EUSC vessels which currently do not have war risk interim binders. If the owners or operators of these vessels submitted applications for binders, the total amount of fees collected would probably be less than \$20,000. There will be no increase in production costs or prices for consumers, individual industries, Federal, state or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, the economic impact has been found to be minimal.

This rulemaking does not involve any change in important Departmental policies, and is not considered significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

Since the rule principally affects the owners and operators of large commercial ships, the Maritime Administrator certifies that it will not have a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612).

This rulemaking does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

This rule would amend the regulations at 46 CFR part 308, which contain information collection requirements in §§ 308.3 and 308.6. The information collection for vessels has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These new forms were approved for use in May 1989 (under OMB Control No. 2133-0011) and are now entitled: War Risk Insurance Application (Form MA-528); War Risk Insurance Binder (Form MA-942); Vessel Data (Form MA-828); and Underwriting Agency Agreement (Form MA-355).

List of Subjects in 46 CFR Part 308

Maritime carriers, Reporting and recordkeeping requirements, War risk insurance.

Accordingly, 46 CFR part 308 is proposed to be amended as follows:

PART 308—[AMENDED]

1. The authority citation for part 308 would be revised to read as follows:

Authority: Secs. 204, 1202, 1203, 1209, Merchant Marine Act 1936, as amended (46 App. U.S.C. 1114, 1282, 1283, 1289; 49 CFR 1.66).

2. Section 308.2(b) is proposed to be revised to read as follows:

§ 308.2 Requirements for eligible vessels.

(b) *Special rules—foreign-flag vessels.* For the purpose of providing interim insurance on vessels described in § 308.1(b), the Maritime Administrator shall consider the characteristics, employment, and general management of the vessel. The Maritime Administrator formally determines that the following vessels are engaged in a service in the interest of the national defense or the national economy of the United States and qualify for an interim binder:

(1) Vessels substantially engaged in the foreign commerce of the United States or which would be required in the event of war or national emergency;

(2) Tankers of not less than 2,000 deadweight tons;

(3) Dry cargo vessels, including containerships, breakbulk, and dry bulk vessels;

(4) Heavy lift vessels;

(5) Refrigerated vessels and other classes of ships in short supply in the United States-flag fleet;

(6) Passenger vessels; and

(7) Other vessels with special capabilities, as determined by the Maritime Administration.

* * * * *

3. Section 308.3(c) is proposed to be revised to read as follows:

§ 308.3 Applications for insurance; warranties; supporting documents; payment of binder fees.

* * * * *

(c) *Filing applications for insurance.* All applications for insurance on a vessel shall be made to the American War Risk Agency, 14 Wall Street, New York, New York 10005, underwriting agent for the Maritime Administration.

* * * * *

§ 308.3 [Amended]

3a. Section 308.3 is proposed to be amended by adding a parenthetical phrase at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2133-0011)

§ 308.5 [Amended]

4. Section 308.5 is proposed to be amended as follows:

a. By amending paragraph (1) of the Owner's Contract of Commitment found therein, by adding the following sentence at the end of the paragraph: "The Owner will also incorporate in all charters or contracts covering the use of the Vessel a clause providing for termination or suspension without notice of the charter or contract in the event the United States requests the use of the Vessel under this Voluntary Contract of Commitment."

b. By amending paragraph (2) of the Owner's Contract of Commitment by removing the words "or through the Department of the Navy, pursuant to authorization from the Department of Transportation, Maritime Administration,".

c. By removing paragraph (3) of the Owner's Contract of Commitment in its entirety and redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively.

5. Section 308.6 is proposed to be revised to read as follows:

§ 308.6 Period of interim binders, updating application information and new applications.

(a) All existing interim binders remain in full force and effect without the necessity of re-application or the payment of additional fees so long as the Secretary of Transportation's authority to provide such insurance has been extended and is continuous.

(b) Assureds under interim binders are required to notify the American War Risk Agency annually, by June 30th, of any change in the information provided in their original binder applications including, but not limited to, change of address, vessel name or vessel characteristics.

(c) New applications for interim binders on U.S.-flag vessels, with necessary attachments (as specified in 308.3), as well as checks for the binder fees prescribed made payable to "Maritime Adm.-Transportation," shall be filed with the American War Risk Agency, 14 Wall Street, New York, New York 10005. All interim binders on U.S.-flag vessels shall become effective as of the date of determination of eligibility by the Maritime Administration.

(d) New applications for interim binders on U.S. citizen-owned or controlled foreign-flag vessels, with necessary attachments (as specified in § 308.3), as well as checks for the binder fees prescribed made payable to "Maritime Adm.-Transportation," shall be filed for review in accordance with eligibility requirements specified in § 308.2, and mailed to the American War Risk Agency, 14 Wall Street, New York, New York 10005. All interim binders for foreign-flag vessels will become effective on the date the owner's contract of commitment is executed by the Maritime Administration.

(Approved by the Office of Management and Budget under control number 2133-0011)

6. Section 308.102 is proposed to be revised to read as follows:

§ 308.10 Issuance of interim binders; terms and conditions; fees.

Upon acceptance of an application, an interim binder in the form set forth in § 308.106, will be issued and there shall be deemed to be incorporated therein by references all the terms, conditions, and warranties contained in the application for war risk hull and disbursements insurance and the standard war risk hull insurance policy (set forth in § 308.107), to the same extent as if such application and policy were made a part of the binder. The binder fee (not refundable) for U.S.-flag vessels shall be \$25 per application for vessels under 500 gross tons; \$100 per application for vessels 500

gross tons or over; and \$100 per LASH or similar type barge application. The binder fee (not refundable) for foreign-flag vessels shall be \$50 per application for vessels under 500 gross tons; \$200 per application for vessels 500 tons or over; and \$200 per LASH or similar type barge application. All fees are payable in U.S. funds by check to order of the "Maritime Adm.-Transportation."

7. The concluding text of S 308.202 is proposed to be revised and added to the end of the first paragraph, to read as follows:

§ 308.202 Issuance of Interim binder; its terms and conditions.

* * * Binder fee (not refundable) shall be \$100 per application for U.S.-flag LASH or similar type barges; \$25 per application for all other U.S.-flag vessels; \$200 per application for foreign-flag LASH or similar type barges; and \$50 per application for all other foreign-flag vessels. All fees are payable in U.S. funds by check to the order of "Maritime Adm.-Transportation."

8. The last two sentences of S 308.302 are proposed to be revised to read as follows:

§ 308.202 Issuance of Interim binder; its terms and conditions.

* * * Binder fee (not refundable) shall be \$75 per application for U.S.-flag vessels and \$150 per application for foreign-flag vessels. All fees are payable in U.S. funds by check to the order of "Maritime Adm.-Transportation."

By order of the Maritime Administrator,
Maritime Administration.

Dated: May 31, 1990.

James E. Saari,
Secretary.

[FR Doc. 90-13070 Filed 6-5-90; 8:45 am]

BILLING CODE 4910-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-282, RM-7169]

Radio Broadcasting Services; McComb, MS and Kentwood, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Dowdy Broadcasting Co., Inc., licensee of Station WXL(TFM); Channel 231C1, McComb, Mississippi, proposing to change the community of license for

Channel 231C1 from McComb, Mississippi, to Kentwood, Louisiana, and to modify its license. The coordinates for Channel 231C1 at Kentwood are 30-51-18 and 90-39-59.

DATES: Comments must be filed on or before July 23, 1990, and reply comments on or before August 7, 1990.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Lawrence J. Bernard, Jr., Ward & Mendelsohn, P.C., 1100 17th Street NW., Suite 900, Washington, DC 20036. (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-282, adopted May 3, 1990, and released June 1, 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 section 1.1204(b) for rules governing permissible *ex parte* contacts. 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.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 90-13067 Filed 6-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-283, RM-7222; RM-7313]

Radio Broadcasting Services; Southampton and Bridgehampton, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on two mutually exclusive petitions for rule making. Harrison Gray seeks the allotment of Channel 225A to Southampton, New York, as the community's second local FM service. Channel 225A can be allotted to Southampton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 225A at Southampton are North Latitude 40-53-18 and West Longitude 72-23-06. Garnet Tuttle seeks the allotment of Channel 225A to Bridgehampton, New York, as its first local FM service. Channel 225A can be allotted to Bridgehampton with a site restriction of 1.6 kilometers (1 mile) southwest to avoid a short-spacing to the construction permit of Station WBOS, Channel 225B, Brookline, Massachusetts. The coordinates for Channel 225A at Bridgehampton are North Latitude 40-55-51 and West Longitude 72-19-04.

DATES: Comments must be filed on or before July 23, 1990, and reply comments on or before August 7, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harrison Gray, 33 Flying Point Road, Southampton, New York 11968 (Petitioner for Southampton); Ms. Garnet Tuttle, 533 Ashbury Drive, Fond du Lac, Wisconsin 54935 (Petitioner for Bridgehampton).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket 90-283, adopted April 30, 1990, and released June 1, 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 contractor, 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* contacts.

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.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 90-13066 Filed 6-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-265, RM-7235]

Radio Broadcasting Services; Hannibal, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Seven Ranges Radio Company, Inc., seeking the allotment of Channel 258A to Hannibal, Ohio, as the community's first local FM service. Petitioner is requested to furnish sufficient information to demonstrate that Hannibal is a community for allotment purposes since it is neither incorporated nor listed in the 1980 U.S. Census. Channel 258A can be allotted to Hannibal in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 39-40-00 and West Longitude 80-52-06. Canadian concurrence is required since Hannibal is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before June 23, 1990, and reply comments on or before August 7, 1990.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant,

as follows: D. Robert Eddy, President, Seven Ranges Radio Co., Inc., Box 374, Greens Run Road, Saint Marys, West Virginia 26170 (Petitioner).

FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-285, adopted April 30, 1990, and released June 1, 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 contractor, 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* contacts.

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.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 90-13065 Filed 6-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-286; RM-7285]

Radio Broadcasting Services; Woodward, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Fuchs Communications, Inc., seeking the substitution of Channel 261C1 for Channel 228A at Woodward, Oklahoma, and the modification of its license for Station KWFX to specify the higher powered channel. Channel 261C1 can be

allotted to Woodward with a site restriction of 12.2 kilometers (7.6 miles) southwest to accommodate petitioner's desired site. The coordinates for this allotment are North Latitude 36-20-40 and West Longitude 99-28-00. Channel 292C1 can be allotted to Woodward if competing expressions of interest in use of the C1 channel are expressed. Channel 292C1 can be allotted to Woodward in compliance with the Commission of a site restriction. The coordinates for Channel 292C1 are North Latitude 36-26-12 and West Longitude 99-23-36.

DATES: Comments must be filed on or before July 23, 1990, and reply comments on or before August 7, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: A.R. Fuchs, Corporate Secretary, Fuchs Communications, Inc., P.O. Box 1246, Woodward, Oklahoma 73802 (Petitioner).

FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-286, adopted April 30, 1990, and released June 1, 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 contractor, 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* contacts.

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.
Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
 [FR Doc. 90-13068 Filed 6-5-90; 8:45 am]
 BILLING CODE 6712-01-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1509, 1510, 1512, 1527 and 1552

[FRL: 3785-1]

Acquisition Regulation Concerning Conflicts of Interest

AGENCY: Environmental Protection Agency (EPA).
ACTION: Extension of comment period.

SUMMARY: This notice announces an extension of the public comment period on EPA's proposed acquisition regulation concerning conflicts of interest. This proposed rule was published in the *Federal Register* on April 26, 1990, (55 FR 17724) and established a closing date for the receipt of public comments of May 29, 1990.

DATES: The public comment period is extended 30 days and will remain open through June 28, 1990.

ADDRESSES: Comments should be addressed to Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street, SW., Washington, DC 20460, attn: Katherine J. Seikel.

FOR FURTHER INFORMATION CONTACT: Katherine J. Seikel at (202) 475-7000.

Dated: May 30, 1990.
John C. Chamberlin,
Director, Office of Administration.
 [FR Doc. 90-13106 Filed 6-5-90; 8:45 am]
 BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[RIN 1018-AB42]

Endangered and Threatened Wildlife and Plants; Extension of Comment Period and Notice of Public Hearing on Proposed Endangered Status for the Golden-Cheeked Warbler

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held and the comment period extended on the proposal to list the golden-cheeked warbler (*Dendroica chrysoparia*) as an endangered species. The hearing will allow all interested parties to submit oral or written comments on the proposal.

DATES: The public hearing will be held from 6:30 p.m. to 11 p.m. on June 27, 1990, in Austin, Texas. The comment period for this proposal is extended and now closes on July 9, 1990. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Lyndon Baines Johnson Auditorium, Lyndon Baines Johnson Library Complex, 2315 Red River Street, University of Texas campus, Austin, Texas. Written comments and materials should be sent directly to the Fort Worth Field Office, U.S. Fish and Wildlife Service, Stadium Centre Building, 711 Stadium Drive East, suite 252, Arlington, Texas 76011. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Short, Field Supervisor, Ecological Services Field Office, at the above address (telephone (817) 885-7830 or FTS 334-7830).

SUPPLEMENTARY INFORMATION:

Background

The golden-cheeked warbler (*Dendroica chrysoparia*) is a small, insectivorous bird whose entire nesting range occurs in central Texas. This species requires mature Ashe juniper-mixed oak woodland or forest for nesting and feeding. The warbler is threatened by habitat loss and fragmentation, which result from widespread clearing of juniper as a range management practice, and urban encroachment into the range of the warbler. An emergency rule designating the golden-cheeked warbler as an endangered species, and a proposed rule to designate endangered status, were both published in the *Federal Register* (55 FR 18844, 55 FR 18846) on May 4, 1990.

Subsection 4(b)(5)(E) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. Because the Service anticipates receiving at least

one request for a public hearing, the decision was made to schedule one now.

The Service has scheduled this public hearing for June 27, 1990, from 6:30 p.m. to 11 p.m. in the Lyndon Baines Johnson Auditorium, Lyndon Baines Johnson Library Complex, 2315 Red River Street, University of Texas campus, Austin, Texas. Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period on the proposed rule is extended to July 9, 1990. Written comments should be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, (505) 766-3972 or FTS 474-3972.

Authority

The authority for this action is the Endangered Species Act (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.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: May 31, 1990.

Michael J. Spear,
Regional Director.

[FR Doc. 90-13060 Filed 6-5-90; 8:45 am]
 BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plants, *Blennosperma bakeri* (Baker's sticky seed), *Limnanthes vincularis* (Sebastopol meadowfoam), and *Lasthenia burkei* (Burke's goldfields)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status for *Blennosperma bakeri* (Baker's sticky seed), *Limnanthes vincularis*

(Sebastopol meadowfoam), and *Lasthenia burkei* (Burke's goldfields). These three plant species occur in vernal pools, and shallow streams or swales in the Cotati Valley of Sonoma County, California. *Lasthenia burkei* is also known from Lake and Mendocino Counties. These species are in danger of extinction principally as the result of urban development, conversion of native habitats to agriculture ("ag-land conversion"), wastewater discharge, and livestock grazing. If made final, this proposed rule would implement Federal protection of the Endangered Species Act of 1973, as amended (Act). Comments from the public regarding the accuracy of this proposed rule are sought.

DATES: Comments from all interested parties must be received by August 6, 1990. Public hearing requests must be received by July 23, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E-1823, Sacramento, California 95825. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Bartel at the above address (916/978-4866 or FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

Limnanthes vincularis, *Blennosperma bakeri*, and *Lasthenia burkei* are annual plants that occur in vernal pools and intermittent swales (California Natural Diversity Data Base (CNDDB) 1989; Waaland 1989; Wainright 1984; Ornduff 1977a, 1977b; Brown and Jain 1977). Vernal pools form in regions with Mediterranean climates where swallow depressions fill with water during fall and winter rains. Downward percolation is prevented by the presence of an impervious subsurface layer, such as a clay bed, hardpan, or volcanic stratum (Holland 1976). Plant species occurring in vernal pools are adapted to this seasonal inundation. The temporary inundation makes the pools too wet for nearby upland species, while the seasonal drying makes the pool basins unsuitable for marsh or aquatic species that require a permanent source of water. Plant species that occur in vernal pools often germinate when the ground is inundated and flower as the pool dries.

Vernal pools form in several regions of California. Generally vernal pool habitat is found west of the Sierra

Nevada and extends from southern Oregon into northern Baja California. However, the distribution of vernal pools is highly discontinuous and the plant species that grow in vernal pools are frequently endemic to relatively small geographic regions. Urban development and age land conversion threaten the vernal pools in southern California (San Diego and Riverside Counties), the Central Valley, and north of the San Francisco Bay area (Sonoma, Lake, and Mendocino Counties).

Limnanthes vincularis, *Blennosperma bakeri*, and *Lasthenia burkei* primarily occur in the Cotati Valley of Sonoma County, California (Waaland 1989), where these species are associated with other vernal pool plants such as *Downingia concolor*, *Navaretia* spp., *Lasthenia glaberrima* and *Ranunculus lobbii*. *Lasthenia burkei* is also known from Lake and Mendocino Counties. *Blennosperma bakeri* also occurs in the Sonoma Valley, which is adjacent to the Cotati Valley. The portion of the Cotati Valley harboring these plants is approximately 16 miles long and from 5 to 11 miles wide. The valley encompasses approximately 90,000 acres. This area extends north to the town of Windsor, and south to the town of Hessel. The range of these plants within the Cotati Valley is bounded on the west by the Laguna de Santa Rosa (a broad tributary of the Russian River), and on the east by the foothills of the Sonoma and Mayacmas Mountains. This area is locally known as the Santa Rosa plains. Urban or agricultural developments, and grazing by livestock have already altered about 90 percent of the Cotati Valley's original native habitats.

In the Cotati Valley, vernal pools form on Huichica loam and Clear Lake clay soil types where a clay layer or hardpan approximately 2 to 3 feet below the soil surface prevents downward percolation (Miller 1972). These soils occur on approximately 9,000 acres in Sonoma County (Miller 1972). This figure likely overestimates the total habitat that was once available for the three plant species because these soils occur in other parts of the county where the *Limnanthes vincularis*, *Lasthenia burkei*, and *Blennosperma bakeri* have not been recorded. Furthermore, not all of these soils occur on the appropriate topography (i.e. relatively flat, with slight depressions) needed for vernal pool formation. At Manning Flat in Lake County, a volcanic layer prevents downward percolation and permits the formation of vernal pools.

Most of the vernal pools or swales of the Cotati Valley are privately owned. One site, the Todd Road Reserve, is

owned by the California Department of Fish and Game and is managed for the protection of two of the three species, *Blennosperma bakeri* and *Limnanthes vincularis*. Three sites are probably within rights of way owned by the California Department of Transportation. Four sites are owned by county or city agencies. All Lake County sites are privately owned. The precise location of the Mendocino site is unknown.

Limnanthes vincularis (Sebastopol meadowfoam) is a small 2-12 inches) multi-stemmed annual herb of the false mermaid family (Limnanthaceae). The first foliage leaves of seedlings are narrow and undivided. Mature plants bear long-petioled pinnately divided leaves with three to five undivided leaflets. The shape of the mature leaves separates *L. vincularis* from other members of the genus. The white flowers are born singly at the ends of stems. Robert Ornduff (1969) described *L. vincularis*, using several collections including the type specimen collected along Todd Road in Sonoma County by Peter Rubtsoff on April 30, 1966.

Limnanthes vincularis has not been recorded outside of the Cotati Valley, where it is known from 19 locations extending from Hessel northwards to the vicinity of the city of Santa Rosa, a distance of 6 miles (Wainright 1984, Waaland 1989).

Lasthenia burkei (Burke's goldfields) is a small branched annual herb of the sunflower family (Asteraceae). The plant blooms from April through June. Both ray and disk flowers are bright yellow. The pappus of *L. burkei* usually consists of one long awn and several short scales. In similar members of the genus, the pappus usually is absent or consists of two long awns. *Lasthenia burkei* was described as *Baeria burkei* by E. L. Greene in 1887 from a specimen collected by J. H. Burke in 1886 from near Ukiah in Mendocino County, California (Greene 1887). Ornduff (1966) placed the species in *Lasthenia* in his revision of the genus. *Lasthenia burkei* is known from 33 sites in the Cotati Valley. This species also occurs at Manning Flat in Lake County. In the Cotati Valley, locations of *L. burkei* are concentrated in the northern portion of the Cotati Valley near the community of Windsor (California Natural Diversity Data Base (CNDDB) 1989, Waaland 1989).

Blennosperma bakeri (Baker's sticky seed), an annual herb of the sunflower family, reaches 12 inches in height. The plant blooms from March through April bearing yellow daisy-like flowers. The yellow disk flowers have white pollen

and stigmas. The sterile ray flowers, which are yellow or sometimes white, bear red stigmas. The presence of red stigmas separates *B. bakeri* from other members of the genus. The alternate leaves are narrow, with one to three lobes. The stems and leaves are mostly hairless. *Blennosperma bakeri* was first collected on April 2, 1946, by Milo Baker and described by C. H. Heiser (1947). *Blennosperma bakeri* is known from 30 sites in the Cotati Valley, as well as four sites from the adjoining Sonoma Valley. Cotati Valley locations are concentrated in the southern portion of the valley between Hessel and the city of Santa Rosa (CNDDB 1989, Waaland 1989).

Federal government actions on these three plants began as a result of 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, 1974. In the report, *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vincularis* were listed as endangered species. On July 1, 1975 (40 FR 27823), the Service published a notice in the Federal Register of its acceptance of the report as a petition within the context of Section 4(c)(2) [now Section 4(b)(3)] of the Act, and of the Service's intention thereby to review the status of the plant taxa named within. *Limnanthes vincularis*, *Blennosperma bakeri*, and *Lasthenia burkei* were included in that notice. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1974 Federal Register publication. *Limnanthes vincularis*, *Blennosperma bakeri*, and *Lasthenia burkei* were included in the proposed rule. General comments received in relation to the proposal were summarized in an April 26, 1978, Federal Register publication, which also determined 13 plant species to be endangered or threatened (43 FR 17909). On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had expired due to a procedural requirement of the 1978 Amendments. The withdrawal notice included *Limnanthes vincularis*, *Blennosperma bakeri*, and *Lasthenia burkei*. On

December 15, 1980, the Service published a revised notice of review of native plants in the Federal Register (45 FR 82480); *Limnanthes vincularis*, *Blennosperma bakeri*, and *Lasthenia burkei* were included as category 1 candidates (species for which data in the Service's possession indicate proposals for listing were warranted). On November 28, 1983, the Service published in the Federal Register (48 FR 53640) a supplement to the 1980 notice of review. This supplement treated *Limnanthes vincularis*, *Blennosperma bakeri*, and *Lasthenia burkei* category 2 candidates (species for which data in the Service's possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). *Limnanthes vincularis*, *Blennosperma bakeri*, and *Lasthenia burkei* were included in category 2 in the September 27, 1985, revised notice of review for plants (50 FR 39526). Subsequently, additional survey information has been provided on these three species by Marco Waaland (1989). In addition, staff from several agencies have provided information on pending projects that would adversely affect these plants. This proposed rule for *Limnanthes vincularis*, *Blennosperma bakeri*, and *Lasthenia burkei* is also based on occurrence data from numerous botanists that have been collated by the California Natural Diversity Data Base (CNDDB).

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain 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 date. This was the case for *Limnanthes vincularis*, *Blennosperma bakeri*, and *Lasthenia burkei* because the 1975 Smithsonian report was accepted as a petition. In October 1983, 1984, 1985, 1986, 1987, 1988, and 1989, the Service found that the petitioned listing of *Limnanthes vincularis*, *Blennosperma bakeri*, and *Lasthenia burkei* was warranted, but that the listing of these species was precluded due to other higher priority listing actions. Publication of the present proposed rule constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 524) 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 *Blennosperma bakeri* Heiser (Baker's sticky seed or Sonoma sunshine), *Lasthenia burkei* (Greene) Greene (Burke's goldfields), and *Limnanthes vincularis* Ornduff (Sebastopol meadowfoam) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* *Limnanthes vincularis*, *Lasthenia burkei* and *Blennosperma bakeri* were once discontinuously distributed in the vernal pools and interconnecting vernal swales in the Cotati Valley between the towns of Hessel and Windsor, a distance of approximately 16 miles (CNDDB 1989, Waaland 1989, Wainright 1984). The area supporting these plants is threatened by urbanization, ag-land conversion, and grazing (CNDDB 1989, Waaland 1989). About 40 percent of this valley has already been urbanized and about 50 percent of the land is irrigated for agricultural purposes (Waaland 1989). Little overlap between irrigated and urbanized portions of the Cotati Valley exists, consequently 80 to 90 percent of the land has been altered to the detriment of these three plants.

The County of Sonoma has approved the Windsor Specific Plan that directs development in Windsor. This plan does not provide adequate protection of the plants. The complete development of the Windsor Specific Plan would result in the loss of most, if not all, of the northern remaining localities of *Lasthenia burkei*, and, therefore, approximately 35 percent of the plant's known range. Santa Rosa also is undergoing rapid urbanization.

Many ongoing housing development projects near the city of Santa Rosa (located approximately 9 miles south of Windsor) are resulting in the further losses of *Lasthenia burkei*, *Limnanthes vincularis*, and *Blennosperma bakeri*. Because housing in the Cotati Valley is relatively inexpensive, individuals working in the San Francisco Bay area are discovering that affordable housing is available in Santa Rosa and Windsor. The demand for such housing has resulted in the rapid urbanization of much of the Cotati Valley. These ongoing developments may reduce the remaining ranges of the three species by 50 to 70 percent.

Habitat loss is not limited to the direct destruction caused by grading and leveling or other activities that fill the pools for urban or agricultural purposes.

Plant species that occur in vernal pools are dependent upon the existing hydrologic regime—inundation during wet winters, following by spring and summer drying. The plant species composition present in vernal pools or swales can change if the hydrologic regime is altered. The subsurface clay layer or hardpan can be broken during construction or plowing. Water would drain from such pools, rather than remain ponded for a few months. Upland invasive plant species can spread into these pools when conditions become sufficiently dry. Conversely, if water from urban or agricultural run-off continues to fill pools during spring and summer months, invasion by plant species adapted to permanent inundation can be expected.

The city of Santa Rosa proposes to increase the capacity of its sewage treatment plant to facilitate the ongoing urbanization. Waste water is used to irrigate 4,500 acres and the expanded facility would provide irrigation to an additional 7,500 acres (Griffes *et al.* 1989). The treatment facility design includes the use of terraces that would be planted with a grass species that is tolerant of inundation. Sewage effluent would be used to irrigate the terraces for treatment purposes. The resulting run-off would be reclaimed and used for further irrigation. The potential area designated for the placement of terraces or receipt of reclaimed wastewater extends from the northern boundary of the city of Santa Rosa to the south covering the southern two-thirds of the range of these plant species. Although direct impacts of vernal pools could be avoided, impacts of vernal pools would occur indirectly from increased urbanization, conversion of additional native habitats to agriculture, invasion by grasses tolerant of inundation, and prolonged spring and summer inundation.

These plant species are similarly threatened outside of the Cotati Valley. The extirpation of *Blennosperma bakeri* from three of its four historic sites in the Sonoma Valley was caused by the construction of houses and the planting of a vineyard (CNDDB 1989). The Manning flat locality for *Lasthenia burkei* is threatened by erosion. The locality data for the Ukiah population of *Lasthenia burkei* are too vague to determine precisely where the site was, or to assess its current status (CNDDB 1989).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not now known to be applicable. However, all three species possess attractive flowers, and some

plant species have become vulnerable to collection by curiosity seekers following Federal listing. Furthermore, most of these pools or swales are fairly small and vulnerable to destructive acts. For example, one landowner planted sod in a vernal pool. About a dozen sites have been graded or filled without appropriate permits in the last few months.

The seeds of the genus *Limnanthes* possess oil that has properties to sperm whale oil (Jain 1976). Although *L. vinculans* may have some economic value as an oil crop, it is likely that only a relatively small quantity of seed would need to be collected in the wild for use in cultivation. Thus, overutilization for this commercial use is unlikely to constitute a threat to *L. vinculans*.

C. *Disease or predation.* Livestock graze many of the sites that support *Limnanthes vinculans*, *Lasthenia burkei*, and *Blennosperma bakeri*. These species have been extirpated or greatly reduced from some of the historic localities as a result of the foraging associated with grazing (CNDDB 1989).

D. *The inadequacy of existing regulatory mechanisms.* Under the Native Plant Protection Act (Chapter 1.5 § 1900 *et seq.* of the Fish and Game Code) and the California Endangered Species Act (Chapter 1.5 § 2050 *et seq.*), the California Department of Fish and Game has listed two of these three species (*Limnanthes vinculans* and *Lasthenia burkei*) as endangered (14 California Code of Regulations § 670.2). Though both statutes prohibit the "take" of State-listed plants (Chapter 1.5 § 1908 and § 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (Chapter 1.5 § 1913).

Part of the environmental review under the California Environmental Quality Act for projects that result in the loss of sites supporting these plant species sometimes includes the development of mitigation plans. Such plans usually involve the transplantation of the plant species to another vernal pool located elsewhere, or the artificial creation of vernal pools. These transplanting and creation efforts are experimental in nature, and thus far have not been successful. Following development of the transplantation plan

the original site is destroyed. When the mitigation effort fails, the resource has already been lost. An area designated by the County of Sonoma as a mitigation site (a receptor site) was destroyed when hay was planted. Thus mitigation efforts have not reduced the rapid ongoing losses.

Under Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill into navigable and other waters and adjacent wetlands of the United States. To be in compliance with the Clean Water Act, potential applicants are required to notify the Corps prior to undertaking any activity (grading, discharge of soil or other fill material, etc.) that would result in the fill of wetlands. Nationwide Permit Number 26 has been issued to regulate the fill of wetlands that are relatively small, less than 10 acres. Most proposals that involve the fill of wetlands that are smaller than one acre in size would qualify under Nationwide Permit Number 26. Where fill would occur in a wetland between one and ten acres in size, the Corps circulates for comment a predischage notification to the Service and other interested parties prior to determining whether or not the proposed fill activity qualifies under Nationwide Permit 26. Individual permits are required for the discharge of fill into wetlands that are greater than 10 acres in size. The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental impacts. The Corps has discretionary authority and can require an applicant to seek an individual permit if the Corps believes that the resources are sufficiently important, regardless of the wetland's size. In practice, the Corps rarely requires an individual permit when a project would qualify for a nationwide permit, unless a threatened or endangered species occurs on the site.

Most vernal pools and swales in the Cotati Valley encompass less than 10.0 acres. With respect to the vernal pools of the Cotati Valley, the San Francisco District of the Corps has been reluctant to assert its jurisdictional authority, and has not required individual permits for projects that involve filling vernal pools or swales. The discontinuous distribution of the pools and swales has allowed landowners to divide large projects into several smaller projects. The wetlands acreage on these smaller projects is usually under 10 acres, and therefore, most projects qualify for Nationwide Permit Number 26. The discontinuous configuration of the pools

and swales further obscures the separation of these wetland losses. In one case, the Corps decided not to take jurisdiction over the fill of wetlands on a property containing vernal pools. The Corps could disclaim jurisdiction over additional pools as well.

The issuance of Nationwide Permit 26 or disclaimers does not allow for the assessment of cumulative impacts to the vernal pools or the three plant species under consideration herein. Thus, *Limnanthes vincularis*, *Lasthenia bakeri*, and *Blennosperma bakeri* are not currently afforded protection under section 404 of the Clean Water Act.

The Corps cannot determine that a project qualifies for a Nationwide Permit if a federally listed endangered or threatened species may be adversely affected by the proposed project until the Corps has complied with section 7 of the Act (see discussion below under Available Conservation Measures). In addition, federally listed species are known to be important to the Nation and its people, and the issuance of further disclaimers would be unlikely if the plants were listed as endangered.

E. Other natural or manmade factors affecting their continued existence. Trampling associated with grazing has reduced many populations of the three plant species (CNDDDB 1989). In addition, a few of the pools supporting these species are adjacent to roadways. Routine maintenance of the road shoulders may adversely affect the plant species through grading or application of herbicides.

The areas supporting these plant species are usually small, and unforeseen catastrophic events could cause the elimination of some sites. One pool was adversely altered when a landowner planted sod in a portion of the pool. In recent months, 12 sites may have been destroyed by land owners or project proponents who did not seek appropriate permits.

Part of the city of Santa Rosa's proposed wastewater discharge program in the Laguna de Santa Rosa includes planting grass species that are tolerant of long-term inundation by water. Such alien grasses likely would eventually invade nearby vernal pools that were not directly destroyed by the project and likely would eliminate native vernal pool taxa through competition.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Blennosperma bakeri*, *Lasthenia burkei* and *Limnanthes vincularis* as endangered.

The habitat that supports these plant species has been reduced by 80 to 90 percent and further reductions are anticipated. No vernal pools exist that are protected from all potential threats discussed above. Existing regulations do not provide sufficient protection to prevent further losses, and many actions are ongoing at the present time. Further, several sites have recently been graded or disced, apparently without appropriate permits. Six of 14 high priority sites identified by Waaland (1989) have been destroyed. For the reasons discussed below, the Service is not proposing to designate critical habitat for these plant species at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that determination of critical habitat is not prudent for these species at this time. The three species occur primarily on private land that is undergoing rapid urban and agricultural development (See Factor A in "Summary of Factors Affecting the Species"), and their habitat areas are usually small and easily identified. The information contained in a status survey prepared by Waaland (1989) may have been used to destroy about 12 sites supporting these species in recent months. Therefore, the publication of precise maps and descriptions of critical habitat in the Federal Register would make these plants more vulnerable to incidents of vandalism and could contribute to the decline of these species. A listing of these species as endangered would also publicize the rarity of these plants and, thus, could make them attractive to researchers or collectors of rare plants. The proper agencies have been notified of the locations and management needs of these plants. Landowners will be notified of the location and importance of protecting habitat of these species. Protection of these species' habitats will be addressed through the recovery process and through the section 7 jeopardy standard. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time, because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

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 activities. 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. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking 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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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 U.S. Army Corps of Engineers would become involved with these plant species, if they are listed, through its permitting authority as described under Section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by the proposed project without first completing formal consultation pursuant to section 7 of the Act. In addition, the presence of listed species would highlight the national importance of these resources, thus rendering future disclaimers of jurisdiction unlikely. In addition, the Department of Housing and Urban Development may wish to insure housing loans in areas that presently support these plants; the funding of these loans would also be subject to review by the Service under section 7 of the Act. The Bureau of Reclamation proposed to lend the city of Santa Rosa funds for the expansion of the wastewater treatment facility. Other

sewage treatment facilities within the range of these species may receive funding through the Bureau of Reclamation or Environmental Protection Agency. This funding would also be subject to the requirements of section 7 of the Act.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to the three vernal pool plants proposed to be listed, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant 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 commerce activity; sell or offer for sale in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. The Service anticipates that few trade permits would ever be sought or issued for any of the three species. 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, 4401 North Fairfax Drive, Room 432, Arlington, VA 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 these species;

(2) The location of any additional populations of these 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 these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ 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 Mr. Wayne S. White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E-1823, Sacramento, California 95825.

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 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

- Brown, C., and S.K. Jain. 1977. Rare plant status report *Limnanthes vincularis*. California Native Plant Society.
- California Natural Diversity Data Base. 1989. Unpublished rare plant occurrence data. Sacramento, California.
- Greene, E.L. 1887. Studies in the botany of California and parts adjacent. *Bull. California Acad. Sci.* 2:125-154.
- Griffes, D., M. Waaland, and R. Smith. 1989. Santa Rosa long-term study—reclamation alternative phase 1 wetland study. Technical Memorandum No. W.6 (dated January 23, 1989). Unpublished report prepared for the City of Santa Rosa.
- Heiser, C.H. 1947. A new species of *Blennosperma* from California. *Madroño* 9:103-104.
- Holland, R.F. 1978. The vegetation of vernal pools: a survey. In Jain, S., (ed.) Vernal pools: their ecology and conservation. A Symposium sponsored by the Institute of Ecology, University of California, Davis, May 1 and 2, 1978. Institute of Ecology Publication No. 9, pp. 11-15.
- Jain, S. 1978. Evolutionary studies in the meadowfoam genus *Limnanthes*: an overview. In Jain, S., (ed.) Vernal pools: their ecology and conservation. A Symposium sponsored by the Institute of Ecology, University of California, Davis, May 1 and 2, 1978. Institute of Ecology Publication No. 9, pp. 50-57.
- Miller, V.C. 1972. Soil survey of Sonoma County, California. U.S. Department of Agriculture. Forest Service and Soil Conservation Service. In Cooperation with University of California Agriculture Experiment Station. U.S. Government Printing Office, Washington, D.C.
- Ornduff, R. 1963. A biosystematic survey of the goldfield genus *Lasthenia* (Compositae: Heleniae). Univ. of California Publ. Bot. 40:1-62.
- . 1969. *Limnanthes vincularis*, a new California endemic. *Britannia* 21:11-14.
- . 1977a. Rare plant status report for *Lasthenia burkei*. California Native Plant Society.
- . 1977b. Rare plant status report for *Blennosperma bakeri*. California Native Plant Society.
- Waaland, M. 1989. Santa Rosa plains endangered plant protection program report, Section A. Unpublished report prepared for Sonoma County Planning Department and California Department of Fish and Game.
- Wainright, T.C. 1984. Status report on Sebastopol meadowfoam, *Limnanthes vincularis* Ornduff. Unpublished report prepared for U.S. Fish and Wildlife Service, Sacramento Endangered Species Office.

Author

The primary author of this proposed rule is Karla J. Kramer, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1823, Sacramento, California 95825 (916/978-4866, FTS 460-4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

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 the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) * * *

Scientific Name	Species	Common Name	Historic range	Status	When listed	Critical habitat	Special rules
Asteraceae—Aster family:							
<i>Blennosperma bakeri</i>	*	Baker's sticky seed	U.S.A. (CA)	E		NA	NA
<i>Lasthenia burkei</i>	*	Burke's goldfields	U.S.A. (CA)	E		NA	NA
Limnathaceae—False mermaid family:							
<i>Limnanthes vincularis</i>	*	Sebastopol meadowfoam	U.S.A. (CA)	E		NA	NA

Dated: May 25, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-13110 Filed 6-5-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 55, No. 109

Wednesday, June 6, 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.

ACTION

Special Volunteer Programs; After-School, Weekend and Summer-Time Youth Illicit Drug Use Prevention Demonstration Grant

ACTION: Notice of availability of funds.

ACTION, the Federal Domestic Volunteer Agency, announces the availability of funds during fiscal year 1990 for illicit drug use prevention grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113, title 1, part C; 42 U.S.C. 4992). The Omnibus Drug Abuse Act of 1988 (Pub. L. 100-690) enables ACTION to make grants to public and nonprofit organizations for innovative, community-based volunteer demonstration projects which provide comprehensive drug abuse education and prevention services and activities to youth after school, on weekends and during the summer.

ACTION, historically a principal source of volunteer leadership in America, has been mandated by the President and Congress to respond to the crisis of illegal drug use by fostering innovative prevention programs that capitalize on volunteer resources on the local level. Volunteers of all ages and from every segment of the community can make vital contributions to drug prevention and awareness programs, and ACTION intends to support programs which encourage and sustain the spirit of voluntarism as a weapon in America's fight against drugs.

Comprehensive illicit drug use prevention requires the involvement of every segment of the community, recognizing that no single approach will work in every locale. Comprehensive approaches assure that clear, consistent "no use" messages are delivered and reinforced by a variety of community resources. There is growing recognition of the importance of involving youth in

illicit drug use prevention activities after school, on weekends and during the summer months when schools are not in session and school-related prevention information and support is unavailable. There is particular need for such programming in many low income communities, as the needs in such communities that may be met through voluntary service are often great and the youth who live in these areas are generally considered at extremely high risk for illicit drug involvement.

National youth-serving organizations that have local affiliates or that have networks of local organizations are in a unique leadership position to involve youth in meaningful after-school, weekend and summer programs that provide illicit drug use prevention education and alternative activities. These programs can be implemented locally by the affiliates or the members of the network with the assistance of the "parent" organization in a wide variety of geographic areas and diverse high-risk youth populations.

America's youth, who are often confronted by peer pressure and other encouragement to use illegal drugs, constitute the most important target for anti-drug programming. This announcement solicits innovative proposals in response to this need.

A. Eligible Strategy

National youth-serving organizations that have local affiliates or networks of local organizations are encouraged to submit proposals to implement the following proposed strategy by extending or expanding an existing program or developing a new program in each of three jurisdictions, preferably geographically dispersed.

Strategy

The ideal program will, in these three jurisdictions, involve parents, use non-stipended volunteers in its operation, and target youth at high risk of becoming involved in the use of illegal drugs, especially youth from low-income communities, public housing developments, single parent or broken homes, and children of substance abusers. The proposed after-school, weekend and summer-time program may include group presentations, workshops, rallies, leadership training, mentoring, peer counseling, theatrical or musical performances that involve the

presentation of accurate anti-drug information, and alternative drug-free social and recreational activities for these high-risk youth.

B. Eligible Applicants

Only applications from private non-profit incorporated organizations and public agencies will be considered. ACTION strongly encourages national youth-serving organizations with local affiliates or a network of local organizations to develop applications for funding under this Notice. Applicants must evidence willingness and capacity to:

1. Provide leadership and encouragement to local affiliates or member organizations to implement the program at the local level.
2. Provide technical assistance, curricula, materials, support and publicity to assist the local affiliates and organizations to work with local illicit drug use prevention coalitions and networks to implement the program in their communities using non-stipended volunteers.

Any applicant who does not adhere to a strict policy of the non-use of illicit drugs will not be eligible for consideration. Furthermore, an application will be ineligible if it refers to philosophy, proposed activities, or training or educational materials implying that the initial or responsible use of any illicit drug, or the illicit use of any legal drug, will be tolerated by the applicant. This issue must be addressed in the application.

Pursuant to the Domestic Volunteer Service Act of 1973, as amended, priority shall be given to programs that serve high-risk youth, that provide opportunities for parent involvement and that serve communities, including rural communities, that have not previously received ACTION Program Demonstration/Drug Alliance funding. The applicant must clearly identify in the application all previous and current ACTION funding.

C. Available Funds and Scope of the Grant

The amount of a grant is not to exceed \$250,000. The project funded under this announcement must operate over a 3-year period. It is anticipated that approximately three-fourths of the grant funds would be passed through to the three local affiliates/member

organizations to support implementation of the after-school, weekend or summer-time illicit drug use prevention programs for high-risk youth. The remaining funds would be used by the national organization to provide the needed leadership and assistance identified in Section B, above.

Publication of this announcement does not obligate ACTION to award any grant or to obligate any specific amount of money.

D. General Criteria for Grant Review and Selection

Grant applications will be reviewed and evaluated based on the criteria outlined below, as appropriate, as well as conformance with the eligible strategy outlined in this announcement and to instructions included in the application. Preference will be given to applicants with a demonstrated competence in conducting after-school, weekend or summer programs for at-risk youth, particularly with volunteers.

1. Ability and overall plans to develop or expand an illicit drug use prevention after-school, weekend or summer-time program for high-risk youth that provides illicit drug use prevention education and alternative activities.

2. Ability and site-specific plans to support the implementation of the prevention program by the three local affiliates or member organizations.

3. Ability and plans of local affiliates and organizations to recruit, train, utilize and retain non-stipended volunteers.

4. Ability and plans to provide services to youth at high risk of illicit drug use.

5. Ability and plans to involve parents in the provision of services to at-risk youth.

6. Plans to continue the illicit drug use prevention activities after ACTION funding ends.

7. Ability and plans for local affiliates and organizations to work with local prevention networks and coalitions to implement the prevention program.

8. Carefully formulated workplan which includes time-phased and quantified objectives, including objectives for evaluation of the local projects' community impact and for continuation of the project, as well as feasibility of methods for meeting those objectives.

9. Evidence of local support for this particular project including letters of commitment from specific affiliates or network organizations designated to participate in the program and from collaborating local organizations and agencies which could be expected to contribute to the value or success of the local projects.

10. Evidence of public and private sector support (financial and in-kind) at the local and national level. While specific levels of matching funds are not mandatory, the level of financial matching support will be considered in the decision-making process. Applicants capable of such contributions should specify the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements and be supported by a detailed budget narrative listing the source of that support and the formula used to compute those costs.

11. Detailed description of methods to be used in evaluating the impact of the program on the drug abuse problem within the communities in which the program is being carried out and assessing its replicability. Failure to respond to this criteria will result in disqualification of the application.

E. Additional Factors

The Associate Director of Domestic and Anti-Poverty Operations may use additional factors in choosing among applicants that meet the minimum criteria specified above, such as:

1. Geographic distribution;
2. Applicants accessibility to alternate resources, both technical and financial; and
3. Allocation of Program Demonstration/Drug Alliance resources in relation to other ACTION funds

F. Application Review Process

Applications submitted under this announcement will be reviewed and evaluated by ACTION's Program Demonstration and Development Division. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

G. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to ACTION's Program Demonstration and Development Division/Drug Alliance no later than 5 p.m. Day-Light Saving Time on August 1, 1990. Only those applications that are received at ACTION Headquarters by 5 p.m. Day-Light Saving Time on this date will be eligible.

All grant applications must consist of:
a. Application for Federal Assistance (ACTION Form A-1036) with narrative budget justification and a narrative of

project goals and objectives, and assurances. An original signature is required on at least one of the three copies that are to be submitted.

b. CPA certification of accounting capability on the letterhead of the CPA firm.

c. Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

Items b, c, and d above are not required for public agencies of state and local government.

e. Signed and dated Certification of a Drug-Free Workplace, ACTION Form A-1452 (2/89).

f. Signed and dated Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions, ACTION Form A-1455 (6/89).

g. Current résumé of the candidate for the position of project director, if available, or the current résumé of the director of the applicant agency or project.

h. Organizational chart of the applicant organization showing how the project is related to the organization and how participating affiliates are related to the organization.

i. List of the current board of directors showing their names, addresses and organizational and community affiliations.

j. Letters of local support and commitment as set forth in section D.

k. Statement that clearly identifies previous and current ACTION funding, identifying type of project(s) funded, periods of funding and amounts, or a statement that the applicant has not previously received funding from ACTION.

To receive an application kit, please contact ACTION's Program Demonstration and Development Division/Drug Alliance. The application kit can be obtained by writing to: ACTION, Program Demonstration and Development/Drug Alliance, room 8200, 1100 Vermont Avenue, NW., Washington, DC 20525, or by telephoning (202) 634-9757.

Signed at Washington, DC, this 30th day of May 1990.

Jane A. Kenny,

Director.

[FR Doc. 90-13069 Filed 6-5-90; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE**Rural Telephone Bank****Voting by Proxy at Meetings of Stockholders of the Rural Telephone Bank****AGENCY:** Rural Telephone Bank, USDA.**ACTION:** Notice of revised bylaws.

SUMMARY: Notice is hereby given of amendments to the bylaws of the Rural Telephone Bank (RTB) pertaining to voting by proxy at the RTB stockholders meetings.

EFFECTIVE DATE: This action was effective October 26, 1989.

FOR FURTHER INFORMATION CONTACT:

Blaine D. Stockton, Jr., Assistant Secretary, Rural Telephone Bank, Room 4064, South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250 (202) 382-9552.

SUPPLEMENTARY INFORMATION: The Rural Telephone Bank Board of Directors adopted amendments on October 26, 1989, to the bylaws of the Rural Telephone Bank to increase the number of proxies a Voting Representative may vote from 10 to 20, exclusive of the proxies confirming the right of a stockholder in an affiliated group to vote for the group.

Section 3.6, Proxies, of the RTB bylaws was amended to read as follows:

SEC. 3.6, Proxies. Subject to §§ 2.7 and 3.7(a), at all meetings of stockholders, a stockholder may vote by proxy executed in writing by the stockholder. Such proxy shall be filed with the Secretary before or at the time of the meeting. No proxy shall be voted at any meeting of stockholders unless it shall designate the particular meeting at which it is to be voted, and no proxy shall be voted at any meeting other than the one so designated or any adjournment of such meeting. Any stockholder which has granted a proxy may vote in person through the individual designated as its Voting Representative pursuant to § 3.7(a) and such vote shall revoke the proxy theretofore given and shall have the same effect as if the proxy shall not have been executed. A proxy may only be voted by a Voting Representative of another stockholder in the same segment of the industry as the grantor of the proxy. Public bodies, for the purpose of these bylaws, shall be considered part of the cooperative segment. No Voting Representative may vote more than twenty (20) proxies, exclusive of proxies confirming the right of a stockholder in an affiliated group to vote for the group.

Dated: May 30, 1990.

Gary C. Byrne,

Governor, Rural Telephone Bank.

[FR Doc. 90-13045 Filed 6-5-90; 8:45 am]

BILLING CODE 3410-15-M

COMMISSION ON CIVIL RIGHTS**Arizona Advisory Committee; Agenda and Notice of Public Forum**

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Arizona Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 1 p.m. on June 22, 1990, at the Sun Land Inn, 7190 South Land Gin Road, Casa Grande, Arizona 85222. The Committee will discuss civil rights issues and concerns in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Manuel Pena or Philip Montez, Director of the Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office 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, May 30, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90-13073 Filed 6-5-90; 8:45 am]

BILLING CODE 6335-01-M

New Hampshire Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee (Committee) to the Commission will convene at 2:30 p.m. and adjourn at 5 p.m. on June 22, 1990, at the Sheraton-Wayfarer Inn, U.S. 3 at Bedford Interchange, Manchester, NH 03102. The purpose of the meeting is (1) To discuss the status of the Commission; (2) hear a report on Civil Rights progress and/or problems in the State; and (3) to plan a project for Fiscal Year 1990.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Helen Bethel (603/434-0494) or Bobby D. Doctor, Commission Staff at (202) 523-5264; TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern 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, May 30, 1990.

Wilfredo Gonzalez,

Staff Director.

[FR Doc. 90-13074 Filed 6-5-90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE**Bureau of Export Administration**

[Docket No. 900406-0106]

Foreign Availability Assessment; Initiation of an Assessment of Polyimides

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment and request for comments.

SUMMARY: Pursuant to section 5(f) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) initiated an assessment of foreign availability of certain polyimide resins and manufactures to Western destinations. OFA is seeking public comments on the foreign availability of these items worldwide.

DATES: The period for submission of information will close July 6, 1990.

ADDRESSES: Submit information relating to this foreign availability assessment to: Anatoli Welihozkiy, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, room SB-701, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, room 4518, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Parker, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-3564.

SUPPLEMENTARY INFORMATION:

Under sections 5(f) and 5(h) of the EAA, OFA assesses the foreign availability of goods and technology whose export is controlled for national security reasons. Part 791 of the Export Administration Regulations (EAR) (15 CFR 730 et seq.) establishes the foreign availability procedures and criteria.

OFA is publishing this notice pursuant to sections 5(f)(3) and 5(f)(9) of the EAA.

On 28 February 1990, OFA accepted for filing a foreign availability submission pursuant to section 5(f) of the EAA relating to the decontrol of pyromellitic dianhydride-oxydianiline resin, a polyimide polymer, and parts and shapes manufactured thereof, to Western destinations. These items are controlled for national security reasons under paragraph (a) of Export Control Commodity Number (ECCN) 1746A of the Commodity Control List (CCL) (15 CFR 799.1, Supp. 1): Polymeric substances and manufactures thereof.

Upon acceptance of the submission, OFA initiated a foreign availability assessment of the item. By 28 July 1990, consistent with the requirements of the EAA, the Department intends to submit for publication in the **Federal Register** its determination of the foreign availability of the item.

To assist OFA in assessing such foreign availability, any person may submit relevant information to OFA at the above address.

The following information would be especially useful:

- Product names and designations of the U.S. and non-U.S. items.
- Names and locations of non-U.S. sources;
- Key performance elements, attributes, and characteristics of the items on which quality comparisons may be made;
- Non-U.S. sources' production quantities and/or sales of any allegedly comparable item;
- An estimate of market demand and the potential economic impact of the control on the U.S. item;
- Extent to which any allegedly comparable item is based on U.S. technology; and
- Information supporting the proposition that the foreign item is in fact available to the country or countries for which foreign availability is certified.

Evidence supporting such relevant information may include, but is not limited to: Foreign manufacturers' catalogs, brochures, or maintenance manuals; articles from reputable trade publications; photographs; and depositions based upon eyewitness accounts. Supplement No. 1 to part 791 of the EAR provides additional examples of evidence that would be helpful to the investigation.

OFA will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The

information for which confidential treatment is requested should be submitted to OFA separately from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." OFA either will accept the submission in confidence or, if the submission fails to meet the standards for confidential treatment, return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information OFA accepts as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552) will be kept confidential and will not be available for public inspection, except as authorized by law. Communications between the United States Government and foreign governments will not be made available for public inspection.

All other information received in response to this notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which also will be a matter of public record and will be available for public review and copying.

The public record of information received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4518, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close July 6, 1990. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages

persons who wish to provide information related to this foreign availability submission to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: May 31, 1990.

James L. LeMunyon,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 90-13005 Filed 6-5-90; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket No. 20-90]

Proposed Foreign-Trade Zone in Culpeper County, VA, Including Subzones for ITT Auto Parts Plant and Rochester Steel Wire Plant; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400), by the Culpeper County Chamber of Commerce, Inc., (a Virginia non-profit corporation), requesting authority to establish a general-purpose foreign-trade zone and two subzones in Culpeper County, Virginia, adjacent to the Front Royal Customs port of entry. It was formally filed on May 25, 1990. The applicant is authorized to make this proposal under chapter 14, § 62.1-160 of the Code of Virginia.

The proposed general-purpose zone will involve two sites in the Culpeper area, 75 miles southwest of Washington, DC, and some 35 miles southeast of the new Customs port of entry at Front Royal. The primary site (2,067 acres) is adjacent to the Culpeper County Airport on U.S. Route 29, some 5 miles northeast of Culpeper. It includes the Culpeper County Industrial Airpark (107 acres) and an additional 2,500 acres (owned by five private parties), located adjacent to the Airpark, that would be available for future zone growth. The second site involves the Montanus Trade Center (78 acres) owned by the Alphin Corporation, located on Route 29 at Route 666.

The application contains evidence of the need for general-purpose zone services in the Culpeper area. Several Airpark tenants have expressed an interest in using zone procedures for warehousing/distribution of products such as structural materials, industrial vehicles, film processing equipment and tools. No specific manufacturing

approvals are being sought for the general-purpose zone sites at this time. Such requests would be made to the Board on a case-by-case basis.

The proposal also requests subzone status for the auto components manufacturing plant of ITT Teves America Division of ITT Corporation, located at 111 West Lovers Lane in Culpeper. The plant (69 acres) supplies auto brake components for the world automotive industry, including calipers, boosters, rotors, parking brakes and pump housings. Some 25 percent of the subcomponents are sourced abroad, including such items as housings, castings, valves, springs, clips, screws, bushings, seals, pistons and brake shoe linings. Some 30 percent of the finished products are exported.

Zone procedures would exempt ITT Teves from Customs duty payments on the foreign materials used in its exports. On its domestic shipments, the company would be able to choose the lower finished product duty rate (3.1%). The duty rate on the subcomponents range from 3.5 to 3.9 percent. If the items are shipped to auto assembly plants with subzone status the auto duty rate (2.5%) would apply.

Subzone status is also requested for the wire rope and cable manufacturing plant (39 acres) of the Rochester Corporation (subsidiary of British Tire and Rubber, London), located on Route 727 at Route 697. Its product lines including steel wire rope, steel electrical cable, and fiber optic cable. Some 35 percent of the materials are sourced abroad including such items as steel rod, steel wire and wire strand. Some 16 percent of the finished products are exported.

Zone procedures would exempt Rochester from Customs duty payments on the foreign materials used in its exports. On its domestic shipments, the company would be able to choose the lower finished product duty rates (5.3-5.8%). The duty rates on the foreign materials range from 4 to 7 percent.

The application indicates that subzone status for ITT Teves and Rochester would improve their international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 909 SE. First Avenue, Miami, Florida 33131-2595; and Colonel Joseph J. Thomas, District Engineer, U.S.

Army Engineer District, Norfolk, 803 Front Street, Norfolk, VA 23510-1096.

As part of its investigation, the examiners committee will hold a public hearing on June 13, 1990, beginning at 1:00 p.m. in the County Board Room, Culpeper County Courthouse, 135 West Cameron Street, Culpeper, Virginia.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by June 12, 1990. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through July 30, 1990.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Culpeper County Chamber of Commerce, 133 West Davis Street, Culpeper, Virginia 22701.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., room 2835, Washington, DC 20230.

Dated: May 29, 1990

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 90-13008 Filed 6-5-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-351-804]

Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that imports of industrial nitrocellulose from Brazil are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of industrial nitrocellulose from Brazil, as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially

injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: June 6, 1990.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Joel Fischl, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2613 or (202) 377-1778, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of industrial nitrocellulose from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since publication of the preliminary determination (55 FR 7760, March 5, 1990), the following events have occurred.

On March 7, 1990, the sole respondent, Companhia Nitro Quimica Brasileira (Nitro Quimica), requested that we postpone making our final determination for a period of two weeks pursuant to section 735(a)(2)(A) of the Act. On March 16, 1990, we issued a notice postponing the final determination until May 29, 1990 (55 FR 11417, March 28, 1990).

We verified the questionnaire response in Brazil between March 19 and 23, 1990.

On April 18, 1990, respondent withdrew its March 15, 1990, request for a hearing.

Petitioner and respondent submitted comments for the record in case briefs dated April 23, 1990, and in rebuttal briefs dated April 30, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are

provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States* (TSUS). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Period of Investigation

The period of investigation is April 1, 1989 through September 30, 1989.

Such or Similar Comparisons

For the purposes of this investigation we have determined that all industrial nitrocellulose comprises a single category of such or similar merchandise. Product comparisons were made on the basis of the following criteria: nitrogen percentage, viscosity rating, wetting agent type, cellulose source, physical form, and wetting agent percentage.

Where there were no sales of identical merchandise in the home market with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. In those instances, we made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of industrial nitrocellulose from Brazil to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based United States price on purchase price in accordance with section 772(b) of the Act because all sales were made directly to unrelated parties prior to importation into the United States. We calculated purchase price based on packed, c.i.f., United States port prices. We made deductions for foreign inland freight, foreign

brokerage and handling, marine insurance, and ocean freight. In accordance with section 772(d)(1)(C) of the Act, U.S. price includes the amounts of the Program of Social Integration (PIS), the Social Investment Fund (FINSOCIAL), and the Industrialized Products (IPI) taxes that would have been collected on the export sale had it been subject to these taxes. We computed the hypothetical amounts of these taxes added to United States price by applying the home market tax rates to a United States price net of all charges and expenses that would not have been incurred had the product been sold in the home market.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, foreign market value was based on home market sales. We calculated foreign market value based on packed, ex-factory prices to unrelated customers in the home market. Because we determined Brazil's economy to be hyperinflationary, we calculated separate foreign market values for the effective period of each home market price list applicable during the period of investigation. Since prices were constant within each period, the use of period averages eliminates much of the distortive price effect of inflation.

In calculating foreign market value, we deducted a quantity discount where applicable, pursuant to section 353.55 of the Department's regulations (19 CFR 353.55).

We made circumstance of sale adjustments for differences in credit expense, commissions, and indirect taxes, other than the Tax on Circulation of Merchandise (ICM), pursuant to section 353.56 of the regulations (19 CFR 353.56). The ICM rate varies with the destination of the merchandise in the home market. Rather than make assumptions about the appropriate tax rate to apply to United States price, as best information available, we deducted the ICM tax from foreign market value and made no addition to United States price. The PIS and FINSOCIAL taxes are included in the home market price. We, therefore, adjusted for PIS and FINSOCIAL taxes by deducting them from the home market price and adding the hypothetical tax on the U.S. sales to both the United States price and the foreign market value. Because the home market prices were reported net of the IPI tax, we adjusted for the IPI tax by adding the hypothetical tax on the U.S. sale to both the United States price and the foreign market value.

Where commissions were paid in the Brazilian market and not in the U.S. market, we did not deduct the

commission or make an adjustment for indirect selling expenses incurred in the U.S. market to offset the commission because Nitro Quimica did not provide its U.S. indirect selling expenses. Where there was a commission on the U.S. sale, and none in the Brazilian market, we added the U.S. commission, but did not offset it with indirect selling expenses in the Brazilian market, because Nitro Quimica did not provide its home market indirect selling expenses.

Finally, we made an adjustment for differences in packing costs by subtracting home market packing costs from the foreign market value and adding all U.S. packing costs.

Currency Conversion

When calculating foreign market value, we normally make currency conversions in accordance with § 353.60 of our regulations (19 CFR 353.60), using the exchange rates certified by the Federal Reserve Bank of New York. Since the Federal Reserve Bank of New York stopped providing exchange rate information for Brazil prior to the period of this investigation, we used daily "selling" exchange rates published by the Bank of Brazil.

Verification

As provided in section 776(b) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Interested Party Comments

Comment 1. Respondent argues that we should make a circumstance of sale adjustment, pursuant to 19 CFR 353.56, to home market prices to compensate for the lag between the Brazilian government-managed exchange rate and hyperinflation in Brazil as measured by the General Price Index. We disallowed this adjustment at our preliminary determination, and the petitioner argues that we should continue to disallow it for our final determination.

DOC Position. We agree with petitioner and have disallowed this adjustment. During the period of investigation, Nitro Quimica was aware that it was increasing its home market prices faster than the Brazilian government was devaluing the Brazilian currency vis a vis the U.S. dollar. Because Nitro Quimica increased its home market prices faster than the rate of devaluation, Nitro Quimica received fewer New Cruzados on its U.S. export sales than on its home market sales. To

avoid dumping, Nitro Quimica could have adjusted its U.S. price, its home market price, or both. When Nitro Quimica made sales to the United States it received New Cruzados at the government-controlled exchange rate. By requesting the Department to make such an unconventional circumstance of sale adjustment, Nitro Quimica is in effect proposing that we substitute a hypothetical exchange rate for the actual government-controlled rate. Just as the Department cannot substitute a hypothetical exchange rate for the government-controlled rate that was actually used, it would be inappropriate for the Department to make a circumstance of sale adjustment which would have the identical effect. To the extent possible, the Department has attempted to take account of Brazil's hyperinflation by using daily exchange rates, by calculating a separate foreign market value for each home market price list period, and by converting New Cruzado-dominated movement charges associated with U.S. sales as of the date such charges were incurred, rather than the date of each U.S. sale. See *Frozen Concentrated Orange Juice from Brazil*, 52 FR 8327 (March 17, 1987); See *Oil Country Tubular Goods From Israel*, 52 FR 1511 (Jan. 14, 1987); and *Steel Wheels From Brazil*, 54 FR 21456 (May 18, 1989). Nitro Quimica cites as precedent for making such an adjustment the Department's Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order; *Tubeless Steel Disc Wheels from Brazil* (53 FR 34566, September 7, 1988). However, we do not find the Disc Wheels precedent applicable to this case. In Disc Wheels, foreign market value was based on constructed value. To compensate for hyperinflation, we constructed six different foreign market values—one for each month of the period of investigation. For each U.S. sale, we compared the United States price with the constructed value applicable to the month of shipment of the U.S. sale. We converted the constructed value to U.S. dollars using the exchange rate applicable to the month of the U.S. sale. This resulted in non-contemporaneous comparisons in cases where the month of the U.S. sale preceded the month of shipment. To counter the inequity caused by these non-contemporaneous comparisons we made a circumstance of sale adjustment. In the present case, home market price is the basis for foreign market value. There are no non-contemporaneous comparisons because both United States price and foreign market value are

established in the same month. Therefore, no adjustment is necessary.

Comment 2

Petitioner argues that Nitro Quimica should not be allowed to claim a negative credit expense for certain U.S. sales.

DOC Position

For the sales in question, Nitro Quimica claimed that the customer paid in advance. Therefore, for these particular sales, since the date of payment preceded the date of shipment, Nitro Quimica's U.S. credit expense calculation resulted in a negative amount. However, at verification, we determined that the so-called date of payment for these sales was, in fact, the date that Nitro Quimica borrowed money which was to be repaid with the proceeds from future unspecified export sales. Since we have determined that these U.S. sales were not, in fact, paid for in advance, we agree with petitioner that there should not be a negative credit expense adjustment. Accordingly, we have disallowed this adjustment, and, as best information available, pursuant to section 776(b) of the Act, have assigned to the sales in question the highest amount of U.S. credit expense calculated for any other sale.

Comment 3

Petitioner argues that home market packing expense should not include the amount calculated by Nitro Quimica for "financial cost."

DOC Position

In its home market, Nitro Quimica sells industrial nitrocellulose packed in steel drums which are returned to Nitro Quimica for re-use.

For the purpose of answering our questionnaire, as part of its home market packing cost, Nitro Quimica included the imputed "financial cost" for carrying reusable drums in inventory. Nitro Quimica calculated this financial cost by multiplying the replacement cost of the drums each month by the short-term interest rate applicable to home market receivables. We disallowed this hypothetical "financial cost" at our preliminary determination and agree with petitioner that we should continue to disallow it for our final determination.

By using reusable drums, Nitro Quimica actually incurs a much lower packing cost on its home market sales compared to its packing cost on U.S. sales of products packed in single-use drums. To include this hypothetical "financial cost" in Nitro Quimica's home market packing cost would mask the

true packing cost and distort our dumping analysis.

Comment 4

Petitioner argues that we should disallow the quantity discount adjustment claimed by Nitro Quimica on the home market sales.

Respondent argues that we should continue to allow this adjustment.

DOC Position

We allowed this adjustment in our preliminary determination pending verification. At the verification, we determined that the number of sales on which Nitro Quimica granted quantity discounts was sufficient to satisfy the requirements of our regulation (19 CFR 353.55(b)) concerning differences in quantities. We, therefore, have allowed this quantity discount.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of industrial nitrocellulose from Brazil, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after March 5, 1990, the date of publication of the preliminary determination in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Brazil exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Margin percentage
Companhia Nitro Quimica Brasileira.....	61.25
All others.....	61.25

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative

protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will determine within 45 days from the date of this final determination whether there is material injury, or the threat thereof, to the domestic industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on industrial nitrocellulose from Brazil entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: May 29, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-13007 Filed 6-5-90; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the CISA Export Trade Group, Inc. Notice of issuance of the Certificate was published in the *Federal Register* on October 26, 1988 (53 FR 43253).

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. sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to

publish a summary of a Certificate in the *Federal Register*. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate:

Export Trade Certificate of Review No. 88-00013 was issued to the CISA Export Trade Group, Inc. (CISAETG) on October 19, 1988. Notice of issuance of the Certificate was published in the *Federal Register* on October 26, 1988 (53 FR 43253).

The CISAETG has amended its Certificate to: 1. Delete the Herman Corporation, Zelienople, PA, and the Wedron Silica Company, Wedron, IL as "Members" of the Certificate.

2. Add the following "Members" to the Certificate: Ajax Magnethermic Corporation, Warren, OH; Ashland Chemical Company, Columbus, OH; Hickman, Williams & Company, Livonia, MI; National Engineering Company, Chicago, IL; SandMold Systems, Inc., Nawaygo, MI; and Jervis B. Webb Company, Farmington Hills, MI.

EFFECTIVE DATE: March 2, 1990.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 31, 1990.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-13109 Filed 6-5-90; 8:45 am]

BILLING CODE 3510-DZ-M

[Docket No. 900534-0134]

Foreign Buyer Program; Support for Domestic Trade Shows

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of implementation of the Foreign Buyer Program for October 1, 1991, through September 30, 1992.

SUMMARY: This notice sets forth objections, circumstances and application review criteria associated with the Department's Foreign Buyer Program (FBP) to support domestic trade shows. The FBP was established to promote selected leading U.S. trade shows in industries with high export

potential. The FBP emphasizes cooperation between the Department of Commerce and trade show organizations to benefit U.S. firms exhibiting at selected events. The FBP provides practical, hands-on assistance to U.S. companies interested in exporting. The assistance provided includes export counseling, marketing analysis, and overseas promotion to potential foreign buyers, end-users, agents and distributors. Shows selected for the Foreign Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets.

DATES: Applications must be received by July 6, 1990.

ADDRESSES: Export Promotion Services/ Foreign Buyer Program, U.S. and Foreign Commercial Service (US&FCS), International Trade Administration, U.S. Department of Commerce, room 2118, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0871/2.

FOR FURTHER INFORMATION CONTACT:

Director, Marketing Development Branch, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW. 20230, (202) 377-0871/2.

SUPPLEMENTARY INFORMATION: The International Trade Administration of the U.S. Department of Commerce is accepting applications for the FBP for events taking place between October 1, 1991, and September 30, 1992.

Under the Foreign Buyer Program, the Department will select and promote domestic trade shows in industries with high-export potential in order to bring foreign buyers together with U.S. firms. Selection of a trade show is one-time, i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. If the event occurs more than once in the 12 month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Department will select 18 events to support during this 12 month period. The Department will select those events which in its judgment most clearly and best meet the Department's objectives as well as satisfy the selection criteria. For this reason, non-selection of an event should not be viewed as a finding that the event will not be successful in promoting U.S. exports.

The collection of the information required in an application is authorized by law (15 U.S.C. 1512 *et seq.*). A trade

show will not be considered for the Foreign Buyer Program unless a completed application has been received.

The Office of Management and Budget has approved the information collection requirement contained in this notice under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) (OMB number 0625-0151 approved for use through September 30, 1991).

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Reports Clearance Officer, International Trade Administration, room 4001, U.S. Department of Commerce, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625-0151), Washington, DC 20503.

General Selection Criteria.

Subject to Departmental budget and resource constraints, selection will be granted to those events which, in the judgment of the Department, most clearly and best meet the following criteria:

(a) *Export Potential:* The products and services to be promoted at the trade show should be from U.S. industries which have high export potential as determined by U.S. Department of Commerce sources.

(b) *International Interest:* Trade shows will be selected which meet the needs of a significant number of overseas markets covered by the US&FCS, correspond to marketing opportunities as identified by these posts, and which warrant the attention and promotional effort by those overseas posts. Previous foreign attendance at the show may be used as an indicator.

(c) *Scope:* The event must offer a broad spectrum of U.S. made products and/or services. Trade shows with a majority of U.S. firms exhibiting will be given preference.

(d) *Stature:* The trade show must be clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or techniques in that industry.

(e) *Exhibitor Interest:* There must be a clearly demonstrated interest on the part of U.S. exhibitors to receive international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand sales into additional foreign markets.

(f) *Logistics:* The trade show site, facilities, transportation services and availability of accommodations must be in keeping with the stature of an international-class trade show.

(g) *Cooperation:* Successful applicants will be required to enter into a Memorandum of Understanding (MOU) which sets forth the specific actions to be performed by the show producer/owner and the USDOC. There must be a willingness on the part of the trade show organizer to cooperate with the US&FCS to further ITA export expansion goals, adhere to target dates set out in the MOU and all other program requirements covered by the MOU and this announcement. Special consideration will be given to show organizers willing to offer preferential treatment/incentives to members of delegations of buyers recruited through US&FCS overseas posts. Examples of this preferential treatment/incentives include waived or reduced admission fees to the event, competitive travel packages, plant tours, international receptions, complimentary accommodations for delegation leaders, etc.

Department of Commerce Support of Foreign Buyer Program Events

The support provided for selected events may differ depending on the specific needs identified and agreed upon by the Department and the show organizer. Services may include, but are not limited to special overseas marketing efforts by staff of the US&FCS. Such marketing activities include contacting key foreign government and private sales prospects and providing publicity in appropriate Departmental periodicals.

Specific Department Actions

For selected shows the Department of Commerce will: (a) Designate a Project Manager as central contact to work with the show organizer on all aspects of promotion abroad and foreign buyer assistance at the show. The Project Manager will work closely with the show organizers' contact to develop an overall promotional timetable to promote the event.

(b) Advise and work closely with all interested U.S. Embassies and Consulates to assure maximum trade

show promotion and exposure for those companies indicating export interest.

(c) Promote industry trade show participation through announcements in key domestic and international publications (e.g., regional, posts and embassy commercial newsletters, and Commercial News USA).

(d) Provide show organizer with specifications of a DOC-designed hard panel system International Business Center (IBC), including furniture requirements, DOC office, conference rooms, storage area, etc.

(e) Provide show organizer with specifications for a multi-language brochure, U.S. Embassy/Consulate address labels, shipping instructions and quantities required for overseas shipment.

(f) Provide show organizer with promotional articles about the Foreign Buyer Program and the services available to U.S. exhibitors and foreign visitors at the International Business Center.

(g) Provide a final show report to the show organizer not later than 120 days after the show. This report will include data collected by show organizer in a post show survey reflecting FBP results.

(h) Request US&FCS District Offices in the U.S. to provide export counseling or specific marketing information to those U.S. participants that have indicated a need for such counseling before and during the show.

(i) Review all printed materials bearing the Foreign Buyer Program logo for substantive and legal accuracy of statements regarding the Program or DOC activities and event support.

Services Provided at Trade Show Site

(a) One or more Project Managers, depending upon event size, will provide primary management of the International Business Center (IBC) and assist with on-site registration (if appropriate) of foreign buyers and post-organized groups, facilitate matching foreign buyers with exhibiting U.S. companies at the trade show, and inform U.S. companies about U.S. Department of Commerce products and services and other International Trade Administration programs. At least one Trade Specialist from a US&FCS District Office will be available during the show to provide additional export counseling.

(b) The Department of Commerce will provide export counseling at the International Business Center to exhibitors and assist foreign buyers to meet their purchasing/representation objectives during the show.

(c) US&FCS staff will participate, if appropriate, in special export promotion

seminars specifically aimed at new-to-market/new-to-export firms exhibiting at the trade show.

Specific Responsibilities of the Show Organizer

Show organizers selected for the FBP must: (a) Designate an official authorized to work with the US&FCS Project Manager on all aspects of the show promotion as well as a contact person during the show to assist with foreign visitor information and product referral.

(b) Produce and distribute a multilingual promotional brochure in the quantities specified by the Project Manager for overseas distribution. Draft of the brochure must be approved by the Project Manager prior to printing. These brochures must be printed not less than six months prior to the show. When mailing brochures to overseas posts, show organizer will also include names of attendees to most recent show (by country and on mailing labels if possible), show directory/exhibits guide of most recent show and a press release directed to prospective international attendees.

(c) With guidance from Project Manager, prepare and distribute an information letter and survey to U.S. exhibitors to determine interest in exporting/international business. Information collected should include products or services which U.S. exhibitors wish to export, international marketing objective and geographic areas of interest to the company. Organizer will incorporate this information into the show directory/exhibits guide or a separate Export Interest Directory. At least three copies of this directory will be distributed to all Department of Commerce posts overseas as soon as the directory is published.

(d) Provide all U.S. exhibitors information about the IBC and Department of Commerce services prior to the show. Show organizer will also include a one-page advertisement in the show directory/exhibits guide highlighting the FBP and the IBC and publish in the show daily an article describing the FBP and the services provided at the IBC. The copy will be supplied by the Department of Commerce.

(e) Provide overseas posts with hotel information at least 6 months prior to the event. Coordinate hotel reservations arrangements directly with overseas posts. The Department of Commerce strongly urges show organizer to provide complimentary rooms for USDOC personnel leading delegations from overseas of more than 15 foreign buyers.

(f) Establish a registration system to assure US&FCS Project Managers access to all foreign attendees at time of registration, and on a daily basis during the show, provide names, addresses, business and product interests of registered foreign attendees. This information will be posted at the International Business Center for the benefit of U.S. exhibitors interested in international business. The information will also be disseminated at the conclusion of the event to all exhibitors indicating interest in international business and listed as such in the show directory/exhibit guide.

(g) Establish an International Business Center (IBC) at the show in a prominent location, adjacent to the main registration area. Show organizer agrees to construct the IBC (minimum of 1,500 sq. ft.) according to DOC-designed specifications which include: (a) A separate registration area for foreign visitors, (b) appropriate furniture and office equipment, telephone, telex, photocopier, telefax, etc.; (c) interpreters, (d) registration staff and support; (e) DOC office and a minimum of 2 conference rooms, storage area, refreshments and lounge. The IBC must be given high visibility in show catalog/program daily newsletters, floor plans, and by strategically placed signs at the exhibition entrance, registration area and on the exhibition floor. DOC design specifications do not allow for pipe and drape at the IBC. A hard panel system is required.

(h) Provide to the Project Manager a Convention Center floor layout indicating the location and dimensions of the International Business Center at least six (6) months prior to the event.

(i) Within 2 months following the show, provide the Project Manager with a registration printout of the names and addresses of the foreign attendees, by country. Show organizer will also survey all U.S. exhibitors to determine international business results. Survey will include the number of useful international contacts at the event, number of agent/distributor agreements made or pending, joint venture/licensee type arrangements made or pending, dollar value of overseas orders booked at event, and projected overseas sales as a result of contacts made at the event. This information will be incorporated into the final report to be prepared by the DOC project manager.

(j) Upon notification of acceptance into the Foreign Buyer Program, remit the appropriate contribution. For this recruitment period the contribution is \$3,500.

(k) The show organizer will allow for a one page advertisement in the show

catalog highlighting the Foreign Buyer Program and the International Business Center. The copy will be supplied by the Department.

(1) Provide for interpreters at the International Business Center, as appropriate.

Important: The Show Organizer must provide a cashier to process all registration and seminar fees. DOC employees are not bonded and, therefore, cannot handle currency.

Selection: Selection indicates that the Department has found the event to be a leading international trade show worthy of participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of success of the show or of the undertakings or obligations of the show organizer. Selection is not an endorsement of the show organizer except as to its Foreign Buyer activities. Each successful applicant will be given copies of an official U.S. Department of Commerce logo and/or logo of the U.S. and Foreign Commercial Service for use in its advertising promotional materials. Further, DOC review is necessary of any materials using these logos.

Exclusions: Trade shows which will not be considered are those which are either first time events or are horizontal, that is, not industry specific. Annual trade shows will not be selected more than twice in any three year period (e.g., shows selected for calendar years 1990 and 1991 are not eligible for inclusion in calendar year 1992, but will be considered in subsequent years).

When, Where and How To Apply for Selection in the 1992 Foreign Buyer Program

Except to the extent required by laws, no information of a proprietary nature reported on this application will be disclosed without the prior written consent of the relevant firm.

Please type the information requested below on company letterhead and mail two (2) complete sets of your application to: Marketing Development Branch, room 2118, Office of Marketing Programs, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

Applications must be received at the above address by June 29, 1990.

Answer to the questions listed below constitutes the formal application: (1) Name of show.

(2) Site of show.

(3) Dates of show. Indicate if show is held annually, biennially, or other.

(4) Name, address, and phone number of applicant.

(5) Name, address, and phone number of applicant contact.

(6) Name, address, and phone number of show sponsor (trade association, national or state government, etc.)

(7) Basic history or description of show. Applicant must demonstrate that subject is a leading international trade show for the industry. Include copies of previous show promotion materials.

(8) Resume of applicant's show experience.

(9) Planned number of total exhibitors (show U.S. and foreign separately). A majority of show exhibitors must be of U.S.A. origin.

(10) Specify gross area of show (sq. ft. or sq. mtrs.). Also specify net area for exhibit space (show U.S. and foreign separately.)

(11) Specify the number of foreign attendees at the past two shows, the number of countries they represented, and the total number of attendees at the past two shows.

(12) State any admission fees for show visitors and indicate if there will be reduced or waived fees for international visitors or FBP delegations.

(13) Give a description of any technical program offered and the cost to attend (if applicable).

(14) State product categories to be displayed.

(15) State the audience profile of potential foreign customers (target countries, industries, profession or technical level).

(16) Specify incentive plan/preferential treatment offered to FBP delegations.

(17) Submit two (2) sets of all show promotional literature, including show catalog, for previous show.

Applicant must type the following and submit with the appropriate signature:

"The above information is correct and the applicant will abide by the terms set forth in this Notice of Implementation of the Foreign Buyer Program for October 1, 1991, through September 30, 1992."

Applications will be processed by the Marketing Development Branch, Export Promotion Services, and final selection of events will be made by August 10, 1990. *Contribution:* A contribution of \$3,500 is required for shows selected and promoted during the October 1, 1991, through September 30, 1992, period.

ITA has determined that this action is not a major rule within the meaning of section 1(b) of Executive Order 12291. Therefore a Regulatory Impact Analysis

has not nor will be prepared. Because a notice of proposed rulemaking and an opportunity for public comment is not required for this agency action relating to practice and procedure under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, no initial or final Regulatory Flexibility Analysis has to be or will be prepared. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Ann H. Watts,

Director, Marketing Development Branch,
Export Promotion Services, U.S. and Foreign
Commercial Service, International Trade
Administration, U.S. Department of
Commerce.

Dated: May 22, 1990.

FR Doc. 90-13076 Filed 6-5-90; 8:45 am]

BILLING CODE 3510-PP-M

Withdrawal of Request For Short-Supply Determination on Certain Type 430 Stainless Steel Wire Rod

AGENCY: Import Administration/
International Trade Administration,
Commerce.

ACTION: Notice of Withdrawal of a
Request for a Short-Supply
Determination on Certain Type 430
Stainless Steel Wire Rod.

SUMMARY: On May 29, 1990, the American Wire Producers Association (AWPA) submitted a letter to the Secretary withdrawing its July-December 1990 request for a short-supply allowance for 1,650 metric tons of certain type 430 stainless steel wire rod.

SHORT-SUPPLY REVIEW NUMBER: 17.

EFFECTIVE DATE: May 29, 1990.

SUPPLEMENTARY INFORMATION: On May 18, 1990, the Secretary of Commerce ("the Secretary") received an adequate short-supply petition from the AWPA under Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America and Article 8 of the arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel products for 1,650 metric tons of certain type 430 stainless steel wire rod. The Secretary established an official record on this short-supply request on May 21, 1990 (Case Number 17) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, NW., Washington, DC 20230. Section 4(b)(4)(B)(i) of the Steel Trade Liberalization Program Implementation Act, Pub. L. No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and Section 357.106(b)(1) of the Department of Commerce's Short-Supply Regulations, published in the *Federal Register* on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations") require the Secretary to apply a rebuttable presumption that a product is in short supply and to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: 1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; 2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or 3) the requested steel product is not produced in the United States. The Secretary finds that the importation of certain sizes of type 430 stainless steel wire rod was authorized during each of the two immediately preceding years and that, on the basis of available information, this grade of wire rod is not available domestically. On May 23, 1990, the Secretary published a notice in the *Federal Register* announcing a review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. This notice stated that unless domestic steel producers provided proof that they could and would supply the requested quantity of this product within the desired period of time, provided it represented a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than June 1, 1990.

On May 29, 1990, the AWPA submitted a letter to the Secretary indicating that it was withdrawing its short-supply petition.

Conclusion

The Secretary considers the AWPA's petition for a short-supply allowance to be withdrawn. The Secretary's short-supply review with respect to certain type 430 stainless steel wire rod is hereby terminated.

Francis J. Sailer,

Acting Assistant Secretary for Import
Administration.

May 30, 1990.

[FR Doc. 90-13009 Filed 6-5-90; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Modification in the Procedures for Issuing Visa Waivers

May 30, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Nathaniel Cohen, International Trade Specialist, Trade Data Division, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements will modify its procedures for issuing visa waivers, effective on January 1, 1991. CITA, at the request of the exporting country, will only issue visa waivers for classification issues and for one-time, special purpose shipments that are not part of an ongoing commercial enterprise. A classification issue arises when U.S. Customs and the foreign government's visa issuing authorities do not agree on the proper category classification for a product.

CITA will no longer issue visa waivers for shipments denied entry due to other visa deficiencies, including missing visas, invalid visa numbers, wrong units of quantity, insufficient quantities, alteration of the visa, and typographical errors. These types of problems will have to be rectified by the exporting country authorities issuing a new original visa containing correct information which can be presented to the U.S. Customs port where the shipment is detained.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-13006 Filed 6-5-90; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

The Chicago Mercantile Exchange's Amendments to Its Proposed Rule 549

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule amendments.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted amendments to its proposed Rule 549, which would allow a large order execution ("LOX") procedure. This rule currently is under review by the Commission. The amendments to proposed Rule 549 primarily would require cancellation of an entire LOX order in cases where the initiating customers order would not be exposed to the pit. The Commodity Futures Trading Commission ("Commission") has determined that publication of the proposed rule amendments will assist the Commission in considering the views of interested parties and is consistent with the purposes of the Commodity Exchange Act ("Act").

DATES: Comments must be received by July 6, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Shauna L. Turnbull, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Background

The CME originally submitted proposed Rule 549 to the Commission by letter dated September 27, 1989. The Commission published a notice of the proposed rule and request for comment on December 5, 1989. 54 FR 50266 (Dec. 5, 1989). Ten comments were received. This proposed rule is under review by the Commission.

By letter dated March 15, 1990, the CME submitted amendments to its proposed Rule 549, pursuant to Commission Regulation 1.41(c). Based on subsequent discussions between Commission and Exchange staffs, the CME agreed, by letter dated March 23, 1990, to change the filing status of the proposed amendments to a submission made pursuant to Commission Regulation 1.41(b). The amendments would alter certain procedures that would be followed when executing a LOX trade. The Commission has determined to publish the Exchange's proposed action for comment.¹

¹ In addition, by letter dated March 30, 1990, the CME submitted a petition to amend Commission Regulation 1.39 to eliminate possible restrictions on

II. The CME's Amendments to Its Proposed Rule 549

Under the CME's original rule submission, a member who received an order or orders for 300 or more Standard & Poor's 500 ("S&P 500") Stock Index futures contracts and had the prior consent of the customer would be able to solicit interest off the Exchange floor in the opposite side of the trade prior to its execution in the pit. During pre-trade negotiations, the member would arrange the "intended execution price" and maximum quantity of the LOX. After these negotiations, a broker with LOX orders would notify a designated Exchange official of his intention to execute such a trade.

The broker then would announce to the pit that he was executing a LOX to buy or sell and would state the quantity of the order. If the intended execution price was at or below the existing bid, the broker would announce the full quantity of the order to sell. Alternatively, if the intended execution price was at or above the existing offer, the broker would announce the full quantity of the order to buy. In cases where the intended execution price was between the existing bid and offer and both sides of the proposed LOX consisted exclusively of customers' orders, the broker either would bid the full quantity of the order to buy or offer the full quantity of the order to sell at his discretion. If the intended execution price was between the existing bid and offer, however, and only one side of the proposed LOX was composed entirely of a customer's order, then the broker would bid or offer the customer's order to the pit.

Following the announcement of a LOX to the pit, the broker would hit existing bids or accept offers until he reached the intended execution price. At that point, the broker would fill all bids or offers in the pit. He then would announce his intention to "cross" the balance at that price and would effect the "cross" without any further announcement by matching the two sides of the LOX.

Under the original rule proposal, the relationship between the "intended execution price" and the current market price would determine which side of the LOX would be exposed to the market. It would be impossible, therefore, to determine with certainty prior to execution of the trade which side of the LOX order would be exposed to the market. In certain circumstances, the

the proposed LOX procedure. The Commission intends to publish this petition for comment in a separate Federal Register release.

order of the customer who had initiated the LOX trade would not be exposed to the market while the order on the opposite side would have the advantage of such exposure. The CME's proposed amendments to its LOX rule submission address this situation. Under the proposed amendments, CME Rule 549 requires cancellation of a LOX order in cases where the initiating customer's order would not be exposed to the pit.

The proposed amendments provide that, in cases where the initiating customer placed a LOX order to sell S&P 500 futures and the intended execution price was below the existing offer, the broker would inform a designated Exchange official that he had a LOX to sell involving a specified number of contracts. If the intended execution price for this sell order was at or above the existing offer in the pit prior to execution of the order, however, the broker would not proceed with the LOX trade. Likewise, if the initiating customer placed a large order to buy S&P 500 futures and the intended execution price was above the existing bid, the broker would proceed with the trade. If the intended execution price for this buy trade was at or below the existing bid in the pit prior to execution of the trade, however, the broker would not proceed with the trade. In effect, the broker would not proceed with the trade unless the "intended execution price" of the initiating party's order would result in placement of the best bid or offer. Accordingly, the initiating customer's order would be exposed to the pit.

For example, assume that the S&P 500 pit was trading at a bid-ask spread of 330.75 bid and 330.80 ask and a broker held a LOX order to sell 300 S&P 500 futures contracts at an "intended execution price" of 330.65. If the pit was still trading at 330.75 bid and 330.80 ask when the broker informed the CME official that he was going to execute the LOX, then the Exchange official would display information about the LOX to the pit and the LOX broker would execute the transaction. If the bid-ask spread moved to 330.60 bid and 330.65 ask prior to informing the Exchange official of the LOX, however, the broker would not proceed with the trade. Likewise, if the bid-ask spread moved to 330.60 bid and 330.65 ask after the Exchange official had announced the trade to the pit but before its execution, then the LOX broker would withdraw the order from the LOX process and notify the Exchange official that he had done so.

In addition to changes made for purposes of ensuring that the initiating customer's order would be exposed to

the market, the CME also proposed amendments which would require written consent to the execution of a LOX trade from any customer who chose to act as a contra party. As noted above, the proposed rule already would require consent from the initiating customer. The amendments also would require that a LOX broker record the exact time of execution on a cross trade form upon completion of a LOX cross trade.

IV. Request for Comments

The Commission requests comments on any aspect of CME's proposed Rule 549 as amended. In particular, the Commission invites comment on the following specific matters:

1. The need for a mechanism to increase market liquidity for large orders and facilitate the execution of large futures orders;
2. The likelihood that the amended LOX procedure would increase market liquidity for large orders and facilitate large order execution;
3. The consistency of the amended LOX procedure with the price discovery function of the futures market;
4. The consistency of the amended LOX procedure with sections 15, 4b(D), 4c(a), 6(b), and 9(b) of the Act and Commission Regulations 1.33, 1.39, 155.2, and 155.3.
5. The need to address the possibility that brokers solicited to take the other side of LOX orders may attempt to enter proprietary trades based on their knowledge of the impending LOX trade;
6. The adequacy of provisions in the amended LOX proposal for notice to and consent from customers whose orders are executed through the LOX procedure, including the adequacy of provisions for notice to customers about the possibility that their orders may be announced to the floor and then withdrawn;
7. The adequacy of surveillance procedures contained in the amended LOX proposal; and
8. The viability of any alternative means to achieve the purposes of the amended LOX proposal.

Copies of the CME's submissions are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254-6314.

Any person interested in submitting written data, views, or arguments on the proposed regulation should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW.,

Washington, DC 20581, by the specified date.

Issued in Washington, DC on May 31, 1990.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-13057 Filed 6-05-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Final Johnston Atoll Chemical Agent Disposal System (JACADS)—Second Supplemental Environmental Impact Statement (SEIS) for Storage and Ultimate Disposal of European Chemical Munition Stockpile

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice of availability.

SUMMARY: This announces the notice of availability of the Final Second Supplemental Environmental Impact Statement (SEIS) covering the potential impacts of the near island transportation (docking), on-island handling, on-island transportation, on-island storage and ultimate destruction of the U.S. Army's European stockpile on chemical munitions at facilities located on Johnston Atoll in the Pacific Ocean. The Final Second SEIS also assesses interim storage locations and alternate destruction facilities for the ultimate destruction of the munitions including the preferred alternative of destruction by incineration at the existing JACADS. This final Second SEIS supplements the original 1983 JACADS EIS by evaluating potential incremental environmental impacts from handling, storage, and ultimate destruction of the additional chemical munitions. The "no action" alternative is considered to be the destruction of only the Johnston Island inventory of unitary chemical munitions at the JACADS facility. In a related action, the movement of the munitions from Europe to Johnston Atoll is addressed in a classified Global Commons Environmental Assessment completed under the provisions of Executive Order 12114.

SUPPLEMENTARY INFORMATION:

Movement of the chemical munitions within Europe will be completed under the auspices of the host nation and are not addressed in this Final Second SEIS. This Final Second SEIS assesses the effects of near island transportation (docking), on-island handling, on-island transportation, on-island storage and ultimate destruction of the United

States' European stockpile of unitary chemical munitions at facilities located on Johnston Island in the Pacific Ocean. The preferred alternative for ultimate destruction is at the Army's JACADS facility.

The U.S. Army prepared an EIS in 1983 to assess construction and operation of the JACADS facility and prepared the first supplemental EIS (SEIS) in 1988 to examine the disposition of solid and liquid waste generated by the JACADS facility. This Final Second SEIS addresses the effects of the following proposed European stockpile activities:

- (1) The near island transport of the European stockpile from the territorial limit (12 miles) to Johnston Island,
- (2) The unloading of munitions from transportation ships,
- (3) The on-island transportation and handling of these munitions;
- (4) On-island storage of these munitions,
- (5) The ultimate destruction of these munitions in the JACADS facility and,
- (6) The disposal of the additional incineration wastes. This final Second SEIS also updates information in the 1983 EIS and the 1988 SEIS as appropriate and assesses alternate destruction facilities and interim storage locations. The "no action" alternative is considered to be the destruction of only the Johnston Island inventory of unitary chemical munitions at the JACADS facility.

Copies of the Final Second SEIS are available from the Office of the Program Manager for Chemical Demilitarization, ATTN: SAIL-PMM (COL Ralph Carestia), Aberdeen Proving Ground, Maryland 21010-5401. This Final Second SEIS will have a 30-day comment period from the date that EPA files a notice of availability in the *Federal Register*. Comments on the Final Second SEIS will be considered by the Army in their Record of Decisions and should be provided in writing to Colonel Carestia at the address given above.

Lewis D. Walker,

*Deputy Assistant Secretary of the Army,
(Environment, Safety, and Occupational Health) OASA (I, L&E).*

[FR Doc. 90-13072 Filed 6-5-90; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Assessments in Non-Mandated Subject Areas

May 23, 1990.

AGENCY: National Assessment Governing Board.

ACTION: Assessment in non-mandated areas.

SUMMARY: The National Assessment Governing Board is announcing interest in conducting assessments in non-mandated subject areas in 1993. The Board, in accordance with its statutory mandate, is authorized to approve assessments in subject areas other than those specifically listed in Public Law 100-297. The mandated subjects for 1992, 1994, and 1996 are:

1992	1994	1996
Reading	Reading	Reading
Writing	Science	Writing
Mathematics	Mathematics	Mathematics
	History	
	Geography	

This announcement is intended to notify interested individuals and organizations of their opportunity to petition the Board to consider a particular academic subject for assessment in 1996. Responses should be addressed to Roy Truby, National Assessment Governing Board, 1100 L Street NW., suite 7322, Washington, DC 20005-4013. All responses should be received by June 30, 1990.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-13071 Filed 6-5-90; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No: 84.180]

Technology, Educational Media and Materials for the Handicapped Program; Inviting Applications for New Awards Under the Compensatory Technology Priority for fiscal year 1990

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities.

Deadline for Transmittal of Applications: July 23, 1990.

Applications Available: June 8, 1990.

Available Funds: \$800,000.

Estimated Average Size of Awards: \$200,000 per year.

Estimated Number of Awards: 4 grants.

Project Period: up to 24 months.

Deadline for Intergovernmental Review: September 21, 1990.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; and (b) the regulations for this program in 34 CFR part 333.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of a notice of proposed priority because the Department must initiate the request for awards at this time in order for an award to be made in fiscal year 1990.

On April 18, 1990 a Notice of Proposed Priority was published in the *Federal Register* at 54 FR 14808. The public was given thirty days in which to comment. No comments were received. Therefore, applicants should prepare their applications based on the notice of proposed priority. If any changes are made in the final priority, applicants will be allowed to amend or resubmit their applications.

For Applications or Information Contact: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., (Switzer Building, room 3524), Washington, DC 20202.

Telephone: Linda Glidewell (202) 732-1099.

Program Authority: 20 U.S.C. 1461.

Dated: May 31, 1990.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-13078 Filed 6-5-90; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 6, 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 Maryland 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 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: May 31, 1990.

George P. Sotos,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Procedures for Certification of Need Analysis Service's Systems.

Frequency: Annually.

Affected Public: Businesses or other for-profit.

Reporting Burden:

Responses: 70.

Burden Hours: 35.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: Individuals and organizations that operate need analysis systems will enter into agreement with the Department and complete procedural requirements in order to become certified. The Department will use the information to administer the need

analysis system for campus-based programs (Perkins Loan, Supplemental Educational Opportunity Grant and College Work-Study), Income Contingent Loan and Guaranteed Student Loan Programs under part F of the Higher Education Act of 1965, as amended.

Office of Planning, Budget, and Evaluation

Type of Review: New.

Title: Study of Chapter I Implementation.

Frequency: One-time.

Affected Public: State or local governments.

Reporting Burden:

Responses: 2,355.

Burden Hours: 2,355.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: The purpose of this survey is to provide the Department with detailed information on state implementation of Chapter I Provisions. The Department will use the information collected for program management.

Office of Postsecondary Education

Type of Review: Existing.

Title: The Interim Report and the Performance Report for the Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships and the Public Service Education Fellowships.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden:

Responses: 500.

Burden Hours: 1250.

Recordkeeping Burden:

Recordkeepers: 250.

Burden Hours: 5.

Abstract: The Interim Report and the Performance Reports are utilized to assess the accomplishment of project goals and objectives for the Graduate and Professional Study Fellowships and the Public Service Fellowships, and to aid in effective program management.

[FR Doc. 90-13079 Filed 6-5-90; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed

information collection requests as required by the Paperwork Reduction Act of 1990.

DATES: Interested persons are invited to submit comments on or before July 6, 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 3108, 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 Maryland 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 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: May 31, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: New.

Title: 1991 Recent College Graduates Survey.

Frequency: One time.

Affected Public: Individuals or households; non-profit institutions.

Reporting Burden:

Responses: 1940.

Burden Hours: 13467.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This survey will collect information from recent college graduates to determine their employment and labor force status. The Department will use the data collected to analyze the post degree employment and education experiences of bachelor's or master's degree recipients with major emphasis on graduates who are qualified to teach at the elementary or secondary level.

[FR Doc. 90-13080 Filed 6-5-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 et seq.) The listing does not include a collection of information contained in a new or revised regulation which is to be submitted under section 3504(h) of the Paperwork Reduction Act, nor a management and procurement assistance requirement collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An

estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before July 6, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:

Jay Casselberry, Office of Statistical Standards (EI-73) Forrestal Building, U.S. Department of Energy, Washington, DC 20580. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-1-F
3. 1902-0029
4. Annual Report for Nonmajor Public Utilities and Licensees
5. Extension
6. Annually
7. Mandatory
8. State or local governments, Business or other for profit
9. 24 respondents
10. 24 responses
11. 30.00 hours per response
12. 720 hours (total)
13. Comprehensive financial and operating report needed by the Commission to carry out its regulatory responsibilities under the Federal Power Act and PURPA. To be used to establish rates, in rate proceedings, in formal investigations, financial audits and continuous review of the financial conditions of the regulated utilities.

Statutory Authority: Sec. 13(b), 5(a), 5(b), and 52, Public Law 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. subsections 764(a), 764(b), and 790a.

Issued in Washington, DC, June 1, 1990.

Yvonne Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90-13101 Filed 6-5-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Fusion Policy Advisory Committee and Technical Panel on Magnetic Fusion; Joint 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 joint meeting:

Name: Fusion Policy Advisory Committee and Technical Panel on Magnetic Fusion.

Date and Time: June 28, 1990—8:30 a.m.—5 p.m., June 29, 1990—8 a.m.—5 p.m.

Place: Department of Energy, 1000 Independence Avenue SW., room 1E-245, Washington, DC 20585, (202) 586-5444.

Contact: William Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5767.

Purpose of the Committees: The purpose of the Fusion Policy Advisory Committee is to review the conduct of the Department of Energy's magnetic and inertial confinement fusion programs and to recommend to the Department a policy for the development of fusion energy for civilian applications. The purpose of the Technical Panel on Magnetic Fusion is to perform a review of the conduct of the national magnetic fusion energy program as mandated by the Magnetic Fusion Engineering Act of 1980 (Pub. L. 96-386). The Committee and the Panel memberships are identical and both charters cover the magnetic fusion research programs of the Department of Energy.

Tentative Agenda: The specific agenda items are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the date of the joint meeting.

June 28, 1990

8:30 a.m.—Administrative Items
8:45 a.m.—Discussion of the Interim Report
12 Noon—Lunch
1 p.m.—Discussion of the Interim Report
4:50 p.m.—Public Comment (10 minute rule)
5 p.m.—Adjourn

June 29, 1990

8 a.m.—Administrative Items
8:15 a.m.—Discussion of the Interim Report
12 Noon—Lunch
1 p.m.—Discussion of the Interim Report
4:50 p.m.—Public Comment (10 minute rule)
5 p.m.—Adjourn

Public Participation: The joint meeting is open to the public. Written statements may be filed with the Committee either before or after the joint meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5

days prior to the joint meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: The transcript of the joint meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, 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 June 1, 1990.

J. Robert Franklin,
Deputy Advisory Committee, Management
Officer.

[FR Doc. 90-13102 Filed 6-5-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-22-NG]

Williams Gas Marketing Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy,
Department of Energy.

ACTION: Notice of an Order Granting a
Blanket Authorization to Import Natural
Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting William Gas Marketing Company (Williams) authorization to import natural gas from Canada. The order issued in FE Docket No. 90-22-NG authorizes Williams to import up to 200 Bcf of natural gas over a two-year term beginning on June 1, 1990.

A copy of the order is available for inspection and copying at the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 31, 1990.

Clifford P. Tomaszewski,
Acting Deputy Assistant Secretary for Fuels
Programs Office of Fossil Energy.

[FR Doc. 90-1309 Filed 6-5-90; 8:45 am]

BILLING CODE 6450-01-M

Certification of the Radiological Condition of Wayne Interim Storage Site Vicinity Properties Wayne, NJ

AGENCY: Office of Environmental
Restoration and Waste Management,
Department of Energy.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed radiological surveys and undertook a decontamination research and development project to decontaminate the following properties in Wayne, New Jersey, in the years noted beside each. These properties were found to be contaminated with radioactive wastes as a result of the waste disposal practices of W.R. Grace Company and of predecessor companies at its manufacturing plant. Decontamination was completed under the Formally Utilized Sites Remedial Action Program (FUSRAP). Excavated contaminated materials are being stored at the original manufacturing plant site, now referred to as the Wayne Interim Storage Site (WISS). Radiological conditions at the properties are certified to be in accordance with applicable radiological guidelines for the protection of the public or property occupants.

Right-of-way property located on Pompton Plains Cross Roads, Wayne Township, Passaic County, identified as Block 614, Lot 4A (1986)

Property located at 88 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 23 (1986)

Property located at 92 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 23 (1986)

Property located at 96 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 24 (1986)

Property located at 100 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 26 (1986)

Property located at 104 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 27 (1986)

Property located at 108 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 28 (1986)

Property located at 112 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 29 (1985-1987)

Property located at 125 Pompton Plains Cross Road, Wayne Township, Passaic County, identified as Block 591C, Lots 30, 31, 35 (1986)

Property located at 97 Pompton Plains Cross Road, Wayne Township, Passaic County, identified as Block 591C, Lot 36 (1986)

Property located on Pompton Plains Cross Road, Wayne Township, Passaic County, identified as Block 591C, Lot 37 (1986)

Recreational property bordering Sheffield Brook between Farmingdale Road and the Pompton River, Wayne Township, Passaic County, identified as Wayne Township Park (1985-1987)

Property located at 34 Farmingdale Road, Wayne Township, Passaic County, identified as Block 591J, Lot 7 (1985-1987)

Property located at 826 Black Oak Ridge Road, Wayne Township, Passaic County, identified as Block 613, Lot 4C (1985-1987)

Aqueduct west of and parallel to Farmingdale Road, Wayne Township, Passaic County (1985-1987)

Property located at 10 Farmingdale Road, Wayne Township, Passaic County, identified as Block 591J, Lot 5 (1985-1987)

FOR FURTHER INFORMATION CONTACT;
James J. Fiore, Acting Director,
Decontamination and Decommissioning
Division, Office of Environmental
Restoration and Waste Management,
U.S. Department of Energy, Washington,
DC 20545, 301-353-2802.

SUPPLEMENTARY INFORMATION: The Department of Energy, Office of Environmental Restoration and Waste Management, has initiated a decontamination research and development project (the project) at WISS and at certain vicinity properties. This project initially was authorized by Congress in the Energy and Water Development Appropriations Act for Fiscal Year 1984. The ultimate objective of the project is to ensure that any properties contaminated as a result of activities at the former W. R. Grace facility can be certified to be within applicable radiological guidelines for protection of the public or property occupants. These guidelines are used to establish DOE decontamination criteria and standards for specific site remedial actions.

In 1948, Rare Earths, Inc., began its operation at the Wayne, New Jersey, site (currently known as WISS) to extract thorium from ore for use in the manufacture of mantles for gas lanterns.

In processing to extract rare earths and thorium, various waste streams were produced. Some of the wastes (e.g., tailings, yttrium sludges, and sulphate residues) were buried on site. Sheffield Brook, running west of WISS, was the discharge point for treated liquid effluents.

Between 1985 and 1987, as part of the project conducted at WISS under FUSRAP, radioactive contamination was removed from a portion of WISS and from some WISS vicinity properties. The excavated contaminated material from these properties is currently being stored at WISS.

A post-decontamination survey has adequately demonstrated and DOE has certified that radiological conditions at the affected properties are in compliance with guidelines established to protect members of the general public and occupants of the site. Furthermore, future use of the properties will result in no radiological exposures above applicable radiological guidelines for the protection of the general public or property occupants. These findings and copies of the radiological guidelines are supported by the DOE Certification Docket for the Remedial Action Performed at the Wayne Interim Storage

Site Vicinity Properties, Wayne, New Jersey, from 1985 through 1987. Accordingly, these properties are released from FUSRAP.

The certification docket will be available for review between 9 a.m. and 4 p.m., Monday through Friday (except on Federal holidays), in the DOE Public Reading Room located in Room 1E-190 of the Forrestal Building, 1000 Independence Avenue SW., Washington, DC. The certification docket will also be available at the Wayne Public Library, 475 Valley Road, Wayne, New Jersey, and at the DOE Public Document Room, Oak Ridge Operations Office, Oak Ridge, Tennessee.

Statement of Certification: Wayne Interim Storage Site Vicinity Properties Wayne, New Jersey

The U.S. Department of Energy (DOE), Oak Ridge Operations Office, Technical Services Division, has reviewed and analyzed the radiological data obtained following the decontamination of the WISS vicinity properties that were contaminated by thorium and rare earth extraction wastes. Based on this review, DOE has certified that these properties are in compliance with current applicable guidelines for the protection of the general public or property occupants. Accordingly, the subject vicinity properties are released from the Formerly Utilized Sites Remedial Action Program:

- Right-of-way property located on Pompton Plains Cross Road, Wayne Township, Passaic County, identified as Block 614, Lot 4A
- Property located at 88 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 23
- Property located at 92 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 24
- Property located at 96 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 25
- Property located at 100 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 26
- Property located at 104 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 27
- Property located at 108 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 28
- Property located at 112 Deerfield Road, Wayne Township, Passaic County, identified as Block 591C, Lot 29
- Property located at 125 Pompton Plains Cross Road, Wayne Township, Passaic County, identified as Block 591C, Lots 30, 31, 35
- Property located at 97 Pompton Plains Cross Road, Wayne Township, Passaic County, identified as Block 591C, Lot 36
- Property located on Pompton Plains Cross Road, Wayne Township, Passaic County, identified as Block 591C, Lot 37

Recreational property bordering Sheffield Brook between Farmingdale Road and the Pompton River, Wayne Township, Passaic County, identified as Wayne Township Park

Property located at 34 Farmingdale Road, Wayne Township, Passaic County, identified as Block 591J, Lot 7

Property located at 826 Black Oak Ridge Road, Wayne Township, Passaic County, identified as Block 613, Lot 4C

Property located at 10 Farmingdale Road, Wayne Township, Passaic County, Block 591J, Lot 5.

Aqueduct west of and parallel to Farmingdale Road, Wayne Township, Passaic County, identified as Block 591J, Lot 5.

Dated: May 23, 1990.

R.P. Whitfield,

Associate Director, Office of Environmental Restoration.

[FR Doc. 90-13100 Filed 6-5-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-42039D; FRL-3734-1]

Kansas State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amendments to the Kansas State Plan.

SUMMARY: The State of Kansas has submitted to EPA proposed amendments to the Kansas State Plan for Certifying Pesticide Applicators. Kansas is proposing the establishment of a dealer registration and recordkeeping program, additional supervision and training requirements for some commercial pesticide applicators, exercise of civil authority over commercial applicators and some private applicators, and establishment of new commercial applicator subcategories.

DATES: Written comments must be submitted on or before July 6, 1990.

ADDRESSES: Send written comments identified by the docket control number OPP-42039D, to: Robert Jackson, Toxics and Pesticides Branch, U. S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.

Copies of the Kansas State Plan and the proposed amendments are available for review at the following locations: -

1. Toxics and Pesticides Branch, - U. S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, - Kansas City, KS 66101.

2. Plant Health Division, Kansas State Board of Agriculture, 109 SW. 9th St., Topeka, KS 66612.

FOR FURTHER INFORMATION CONTACT: Robert Jackson (913-551-7020), or — Dale Lambley (913-296-2263), Director, Plant Health Division, Kansas State Board of Agriculture, 109 SW. 9th St., Topeka, KS 66612.

SUPPLEMENTARY INFORMATION: The Kansas State Plan for Certifying Pesticide Applicators was formally approved by notice in the *Federal Register* of October 28, 1977 (42 FR 56786). Kansas is proposing establishment of a pesticide dealer registration program. Pesticide dealers will be required to register annually. The Pesticide dealers will be required to maintain records of all restricted and general use pesticide sales with the exception of general use pesticides defined by Kansas as household pesticides.

Kansas is proposing additional supervision and training requirements over for hire commercial applicators in the categories of Industrial, Institutional, Structural, and Health Related Pest Control and Ornamental and Turf Pest Control. The application can be done by a trained registered pest control technician under existing supervision requirements. When the individual making the application is not a registered pest control technician, the certified commercial applicator must be physically on site.

Kansas is proposing the establishment of civil authority over all commercial applicators and some private applicators. Civil authority will permit Kansas to inspect, issue citations, and assess fines. Civil authority over private applicators is limited to pesticide applications in designated pesticide management areas. These pesticide management areas have defined geographic boundaries and have special pesticide use requirements based upon such concerns as endangered species and groundwater protection. Kansas will exercise civil authority over both commercial and private applicators using pesticides in these designated pesticide management areas.

Lastly, Kansas is proposing that the following commercial categories be subdivided in the following manner. The proposed subcategories under Agricultural Pest Control are: Agricultural Plant Pest Control, Agricultural Animal Pest Control, and Wildlife Damage Control. The proposed subcategories under Ornamental and Turf Pest Control are: Ornamental Pest Control and Turf Pest Control. The

proposed subcategories under Industrial, Institutional, Structural, and Health Related Pest Control are: Wood-Destroying Pest Control, Stored Products Pest Control, Industrial Weed Control, Health-Related Pest Control, Structural Pest Control, and Wood Preservation and Wood Products Treatment. The proposed subcategories under Regulatory Pest Control are: Noxious Weed Control and Regulated Pest Control.

EPA is now soliciting comments on the proposed amendments to the Kansas State Plan. Interested persons are invited to submit their written comments, to Robert Jackson listed under the ADDRESSES unit above.

Dated: May 25, 1990.

Morris Kay,

Regional Administrator, Region VII.

[FR Doc. 90-13108 Filed 6-5-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-62088; FRL 3767-3]

Receipt of Application for Approval to Dispose of Polychlorinated Biphenyls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of application.

SUMMARY: EPA Headquarters has received an application from Geosafe Corporation for nationwide approval to dispose of polychlorinated biphenyls (PCBs) using a mobile In-Situ Vitrification/Treat/Immobilization/System. This approval process is done under the authority of section 6(e) of the Toxic Substances Control Act (TSCA). EPA is notifying interested persons of the request, and comments may be submitted.

DATES: Comments should be received by July 6, 1990.

ADDRESSES: Three copies of written comments should be addressed to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460. Comments should bear the identifying notation OPTS-62088. The application (without confidential business information) and comments received in response to this notice are available for public inspection and copying in Rm. NE-G004 at the address noted above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm.

E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 761.60(e), the Regional Administrators and the Director, Exposure Evaluation Division (EED), share the approval authority for permitting alternative PCB disposal technologies. A Regional Administrator determines whether to approve an application when the disposal will take place in that region only or, in the case of research and development (R and D), on PCB disposal methods involving less than 500 pounds of PCB material. The Director of EED determines whether to approve applications for mobile and other types of PCB disposal technologies that may be operated in more than one region or, in the case of R and D, on disposal methods involving 500 pounds or more of material.

In general, EPA may approve alternative methods of PCB disposal if they achieve a level of performance equivalent to an incinerator approved under 40 CFR 761.70 or a high efficiency boiler approved under 40 CFR 761.60 and will not present an unreasonable risk of injury to health or the environment. EPA also imposes some protective conditions requiring the application to address such items as testing of all gaseous, liquid, and solid effluent streams for PCBs and any other contaminants which may potentially contribute to the environmental risk of operating the disposal unit. To obtain a permit for an alternative method of PCB disposal, the applicant must supply detailed technical descriptions and drawings of the site, process and control equipment, monitoring and sampling methods, quality assurance plan, and emergency and contingency measures, as well as a full discussion of all cleanup and closure procedures.

When EPA Headquarters receives a permit application, it reviews the application and determines if the permit application is complete. If the application is not acceptable, EPA lists its deficiencies in a letter to the applicant and the applicant can remedy the application. If the application is acceptable, a determination is made whether a process demonstration is needed. If one is needed, the applicant must submit a demonstration test plan to the Agency. After receipt of the process demonstration test plan, EPA either approves, requires modification or additions to the process demonstration test plan, or disapproves it and notifies the applicant. Once the Agency accepts a process demonstration test plan, a demonstration test approval is issued by

EPA. As part of this approval, the applicant will be required to give advance written notice of at least 30 days to the EPA regional office and State and local governments where the process demonstration will take place. This 30 day period provides the public an opportunity to discuss local issues related to the planned disposal operation and provides the EPA regional office with information necessary for effective monitoring for compliance with the demonstration approval. If the application cannot be approved because the process demonstration test fails, the problems with the process demonstration are addressed on a case-by-case basis.

EPA will grant or deny approval for full scale operation based on a review of the application package, demonstration test results, and other submitted information. Approval for operation will contain special conditions that EPA finds necessary to protect human health or the environment. It also requires compliance with all applicable State, local, or other Federal requirements. The PCB disposal approval decision process (from receipt of the permit application to issuance of a final approval) generally can take from 6 months to 1 year, depending on the quality of information submitted by the applicant and the complexities involved. If a permit is issued for more than one site, 30-day notice is required before operation may begin at any site other than where the process demonstration took place.

The application and demonstration plan from Geosafe Corporation proposes to demonstrate the In-Situ Vitrification technology by treating PCB-contaminated soils and articles at a site in Spokane, Washington, owned by the General Electric Company. The demonstration will be conducted under conditions simulating normal commercial operations. The tentative schedule to demonstrate the Geosafe technology is August 1990.

In determining whether to approve this application, EPA will take into consideration, along with other factors, the comments received on the application.

Dated: May 30, 1990.

Joseph J. Merenda,

*Director, Exposure Evaluation Division,
Office of Toxic Substances.*

[FR Doc. 90-13107 Filed 6-5-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL MARITIME COMMISSION**Agreement(s) Filed; Maryland Port Administration Cargo Incentive Agreement 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 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. 224-200364

Title: Maryland Port Administration Cargo Incentive Agreement.

Parties:

Maryland Port Administration (MPA),
Lykes Bros. Steamship Co., Inc.
(Lykes).

Synopsis: The Agreement provides for MPA to pay Lykes an incentive of \$3.00 per loaded container and \$.40 per ton for Ro/Ro Cargo. The Agreement's term expires December 31, 1990. This incentive is restricted to containers and Ro/Ro cargo coming into or going out of the MPA marine terminals by a waterborne movement.

Agreement No.: 224-004038-001

Title: Port of Palm Beach District/Heavy Lift Services, Inc. Terminal Agreement.

Parties:

Port of Palm Beach District (Port),
Heavy Life Services, Inc. (HLSI).

Synopsis: The Agreement provides for the relocation of HLSI's operations office within the Port's Maritime Office Building and provides the rental terms for the new premises.

Agreement No.: 224-2002969-004

Title: City of Long Beach/Golden West Distribution Company Marine Terminal Lease Agreement.

Parties:

City of Long Beach (City),
Golden West Distribution Company
(GWDC).

Synopsis: The Agreement provides for GWDC, as Successor-in-Interest to

Exxon Corporation, to pay to the City, as compensation for use and occupancy of the leased premises, one hundred percent of tariff charges accruing on crude oil, fuel oil, diesel fuel and other petroleum products handled by GWDC in connection with GWDC's permitted operations under this Agreement, up to a guaranteed annual minimum established for each lease year. Rent shall be renegotiated for the lease premises at the end of each five-year segment of the term.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: June 1, 1990.

[FR Doc. 90-13103 Filed 6-5-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Steamship Operates Intermodal Committee

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.: 203-009735-026.

Title: Steamship Operators Intermodal Committee.

Parties:

Associated Container Transportation
(Australia Ltd.)
Barber Blue Sea
Companhia de Navegacao Maritima
Netumar
Evergreen Marine Corp., Ltd.
Farrell Lines, Inc.
Flota Mercante Grancolombiana
Hamburg-Suedamerikknische
Dampfschiffahrts-Gesellschaft
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Yang Ming Line

Zim Israel Navigation Co. Ltd.
American President Lines, Ltd.
Mitsui O.S.K. Lines, Ltd.
Showa Line, Ltd.

Synopsis: The proposed amendment would delete Neptune Orient Lines, Ltd. and Showa Line, Ltd. as parties to the Agreement. It would also change the name of Barber Blue Sea to Wilhelmsen Lines (USA), Inc., effective January 1, 1989.

By Order of the Federal Maritime Commission.

Dated: June 1, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-13104 Filed 6-5-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM**Centura Banks, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies, and Acquisition of Nonbanking Company**

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 1990.

A. Federal Reserve Bank of Richmond
(Lloyd W. Bostian, Jr., Vice President)
701 East Byrd Street, Richmond, Virginia 23261:

1. *Centura Banks, Inc.*, Rocky Mount, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bancorporation, Rocky Mount, North Carolina, and thereby indirectly acquire Peoples Bank and Trust Company, Rocky Mount, North Carolina; Mid-South Bank and Trust Company, Sanford, North Carolina; and Peoples Bank of the Triad, Winston-Salem, North Carolina; and The Planters Corporation, Rocky Mount, North Carolina, and thereby indirectly acquire The Planters National Bank and Trust Company, Rocky Mount, North Carolina.

In connection with this application, Applicant also proposes to acquire Watauga Savings and Loan Association, Inc., Boone, North Carolina, and thereby engage in owning and operating a state-chartered savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 31, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-13054 Filed 6-5-90; 8:45 am]

BILLING CODE 6201-01-M

First Alamogordo Bancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commerce or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Alamogordo Bancorp, Inc.*, Alamogordo, New Mexico; to engage *de novo* through its subsidiary, First Alamogordo Bancorp, Inc.-Commercial Lending, Alamogordo, New Mexico, in making, acquiring, and/or servicing one loan for itself or for others of the type made by a commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Otero and Lincoln Counties, New Mexico.

Board of Governors of the Federal Reserve System, May 31, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-13055 Filed 6-5-90; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorporation, 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 June 29, 1990.

A. Federal Reserve Bank of Richmond
(Lloyd W. Bostian, Jr., Vice President)
701 East Byrd Street, Richmond, Virginia 23261:

1. *Peoples Bancorporation*, Rocky Mount, North Carolina; to acquire 19.9 percent of the voting shares of The Planters Corporation, Rocky Mount, North Carolina, and thereby indirectly acquire The Planters National Bank and Trust Company, Rocky Mount, North Carolina.

2. *The Planters Corporation*, Rocky Mount, North Carolina; to acquire 19.9 percent of the voting shares of Peoples Bancorporation, Rocky Mount, North Carolina, and thereby indirectly acquire Peoples Bank and Trust Company, Rocky Mount, North Carolina; Mid-South Bank and Trust Company, Sanford, North Carolina; and Peoples Bank of the Triad, Winston-Salem, North Carolina.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Country Bank Shares, Inc.*, Milford, Nebraska; to acquire 100 percent of the voting shares of Farmers State Bank of Douglas, Douglas Nebraska; Home State Bank, Beaver Crossing, Nebraska; and Bank of Palmyra, Palmyra, Nebraska.

Board of Governors of the Federal Reserve System, May 31, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-13056 Filed 6-5-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION**[Docket No. 6673]****Culligan, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions****AGENCY:** Federal Trade Commission.**ACTION:** Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1957 consent order with Culligan, Inc. (22 FR 4718), thus deleting a provision prohibiting respondent from using exclusive dealing to foreclose competition in the water softener industry. The Commission concluded that changed factual circumstances merit setting aside the order.

DATES: Consent order issued May 23, 1957. Set Aside Order issued May 14, 1990.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of Culligan, Inc. The prohibited trade practices and/or corrective actions, as set forth at 22 FR 4718, are removed.

Authority: Sec. 3, 38 Stat. 731; 15 U.S.C. 14. BEFORE FEDERAL TRADE COMMISSION Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Deborah K. Owen Mailed May 21, 1990—Document Processing In the Matter of Culligan, Inc., a corporation.

Order Reopening and Setting Aside Final Order

Issued on May 23, 1957.

On December 15, 1989, Culligan International Company ("Culligan") filed a request to reopen and set aside the consent order that was entered in this proceeding on May 23, 1957, in settlement of allegations that Culligan's exclusive dealing contracts violated section 3 of the Clayton Act, 15 U.S.C. section 14.¹ 53 F.T.C. 1072 (1957). Culligan's petition was placed on the public record for 30 days. No comments were received. For the reasons described below, the Commission reopens and sets aside this order pursuant to § 11(b) of the Clayton Act, 15 U.S.C. section 21(b).

Culligan argues that its request is supported by changes of law and of fact as well as the public interest. The Commission has considered Culligan's

request and has concluded that the company has made a sufficient showing of changed conditions of fact to require reopening the order and that on further consideration, these changes of fact justify setting the order aside.

I. Background**A. Culligan's Business At Time of Complaint**

Culligan's petition states that "from 1957-1962 Culligan probably enjoyed as high as a 30% share of the water-softener market based on factory exit shipments." Affidavit of Donald A. Mahlstedt ("Aff.") at 31. Culligan's water softening products were marketed in 1955 to customers as a service, rather than as the sale of a product. Pet. at 15; Aff. ¶ 17. The filters that "softened" water had to be changed regularly and were "regenerated" by the Culligan dealers. Aff. ¶ 17. To provide their service the dealers "often kept keys to the home of customers, had brine pits [for regeneration] and a trucking fleet." Aff. ¶ 19. Most of Culligan's equipment sales are made through franchised dealers, which, for many years before 1957, were required to sign contracts committing themselves to deal exclusively with Culligan. Aff. ¶s 11-16.

B. The Complaint

The complaint alleged that Culligan "sells more water conditioning products for domestic use in the United States than any other manufacturer or distributor of such equipment," and that "it occupies a dominant position in the manufacture, distribution and sale of such products in the United States." The complaint also alleged that Culligan engaged in exclusive dealing by including in its contracts with its retail dealers a condition that they "not use or deal in the products or other commodities of a competitor * * *." According to the complaint, these exclusive dealing contracts extended for periods of twenty-five years and were renewable on agreement of the parties. Finally, the complaint alleged that under section 3 of the Clayton Act, the effect of Culligan's exclusive dealing contracts "may be to substantially lessen competition in the line of commerce in which the respondent is engaged and in the line of commerce in which the customers and purchasers of respondent's products are engaged; and tend to create a monopoly in respondent * * *."

C. The 1957 Order

The Commission's order prohibits Culligan from "selling" or "continuing in operation or effect, any * * *

understanding" that its dealers "shall not use or deal in similar or related products supplied by any competitor of competitors of respondent." It also contained language stating "nothing in this order shall prohibit respondent from entering into an agreement * * * prohibiting [dealers] from using * * * parts * * * which would adversely affect [Culligan's] water conditioning service units." 53 F.T.C. at 1073-4.

II. Standard for Reopening and Modifying a Final Order of the Commission

The Commission has authority to reopen and modify its orders issued pursuant to section 3 of the Clayton Act under section 11(b) of that statute. Section 11(b) states that:

[T]he Commission * * * may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission * * * conditions of fact or of law have so changed as to require such action or if the public interest shall so require * * *.

The Commission has not previously addressed its authority to reopen and modify under this provision. When Congress amended the Clayton Act in 1959,² however, to give the Commission this authority, it chose the same wording it had enacted in 1938 when it authorized the Commission to reopen and modify orders issued under the Federal Trade Commission Act.³ Therefore, the Commission's decisions under section 5(b) of the Federal Trade Commission Act, 15 U.S.C. section 45(b), provide authoritative guidance on the application of section 11 of the Clayton Act.⁴

² Finality Act of 1959, Pub. L. No. 86-107, 73 Stat. 243 (1959).

³ Wheeler-Lea Act of 1938, 52 Stat. 111 (1938). Although section 5(b) was amended in 1980, the new language did not change the standard for order reopening and modification, but "codified" existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made," S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing. Although there is no statutory requirement that the Commission act within 120 days on petitions to modify an order issued pursuant to the Clayton Act, the Commission's Rule 2.51 states that the Commission will act on all petitions to modify orders within 120 days.

⁴ See *Kennecott Copper Corp. v. FTC*, 542 F.2d 801, 803 (1976) (characterizing related portions of sections 5 (b) and (c) of the Federal Trade Commission Act and sections 11 (b) and (c) of the Clayton Act as "substantially the same"); see generally, *United States v. American Building Maintenance Industries*, 422 U.S. 271, 277 (1975) (stating that interpretations of one of these acts is "particularly relevant to a proper interpretation of the [other] * * * since both were designed to deal with closely related aspects of the same problem").

¹ The order that Culligan seeks to have set aside, Docket No. 6673, was based on a consent agreement between Culligan, Inc., and the Commission. Culligan is the successor to Culligan, Inc., the respondent against which the order was entered.

Section 5(b) of the Federal Trade Commission Act states that the Commission "shall reopen" an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986) at 4. See, S. Rep. No. 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); see *Phillips Petroleum Co.*, Docket No. C-1088, 78 F.T.C. 1573, 1575 (1971) (no modification for changes reasonably foreseeable at time of consent negotiations); *Pay Less Drugstores Northwest, Inc.*, Docket No. C-3039, Letter to H.B. Hummelt (Jan. 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship and eliminate dangers order sought to remedy) (unpublished); see also *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932) (modification warranted by "clear showing" of changes that have eliminated reasons for order or are such that the order causes unanticipated hardship).⁶

The language of section 5(b) plainly anticipates that the burden is on the petitioner to make "a satisfactory showing" of changed conditions of fact or law to obtain reopening of the order. See also *Gautreaux v. Pierce*, 535 F. Supp. 423, 426 (N.D. Ill. 1982) (petitioner must show "exceptional circumstances, new, changed or unforeseen at the time the decree was entered"). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. Even, however, where it has concluded that changes of fact or law require (or that the public interest warrants) reopening an order, the Commission need not modify or vacate that order.

⁶ Section 5(b) also provides that the Commission may reopen and modify an order, when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Commission Rule 2.51 therefore invites respondents to show in petitions to reopen how the public interest warrants the requested action. 16 CFR 2.51. In such a case, the respondent normally must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 24, 1983), at 2 (hereafter "Damon Letter") (unpublished).

See, *Louisiana Pacific Corp.*, Docket No. C-2956, Order and Opinion, Nov. 15, 1989, Slip op. at 6-7.

The legislative history makes clear that the petitioner has the burden of showing, by means other than conclusory statements, why an order should be modified.⁶ The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. See *Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality); *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 296 (1974) ("sound basis for * * * [not reopening] except in the most extraordinary circumstances") *RSR Corp. v. FTC*, 656 F.2d 718, 721-22 (D.C. Cir 1981) (applying *Bowman Transportation* standard to FTC order).

III. Changed Conditions of Fact in This Matter Warrant Reopening and Vacation of the Order

Culligan has based its request that the Commission reopen the order on changed conditions of law and of fact and on public interest considerations. For the reasons described below, the Commission concludes that the changes of fact described in the Petition require reopening of the order.⁷

Culligan's Petition shows that changes of fact merit setting aside the order. The water-softener industry is not highly concentrated. See Aff., Exhibit 3. Culligan, which "from 1957-82 * * * probably enjoyed as high as a 30% share of the water-softener market based on factory exit shipments" (Aff. ¶ 31), now has a share of less than 15.6 percent, and its share has been declining in recent years. Aff. ¶ 31. In addition, new entry appears to be easy and not dependent on access to Culligan's distributors. Aff. ¶s 37-38. The percentage of water-softener dealers

⁶ The legislative history of amended section 5(b), S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979), states:

Unmeritorious, time-consuming and dilatory requests are not to be condoned. A mere facial demonstration of changed facts or circumstances is not sufficient * * *. The Commission, to reemphasize, may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order.

⁷ Having decided to reopen the order on the basis of changes of fact, the Commission does not reach the issue whether reopening is required by changes of law, or is warranted in the public interest. See e.g. *Goodyear Tire & Rubber Co.*, Docket No. 6486, Order Reopening and Setting Aside Final Order Issued on March 9, 1961 (June 2, 1989) at 5 (commission may limit decision to a single ground that is clear and well established, rather than discuss all issues raised by a petition).

controlled by Culligan has dropped from an estimated 22% in 1972 based on a total of 4,500 outlets to less than 10% today based on a total of over 8,000 outlets. Aff. ¶ 38. So-called "assemblers" now account for more than 58% of the market. Aff. ¶ 33. Culligan, therefore, appears to lack market power.

The Commission concludes that the order is no longer necessary to prevent Culligan from using exclusive dealing to foreclose competition. Having duly considered Culligan's petition, the Commission concludes that changed factual circumstances not foreseeable when the order was issued warrant setting aside that order. Accordingly, for the reasons above, it is ordered that this matter be, and it hereby is, reopened and that the Commission's order in Docket No. 6673 issued on May 23, 1957, be, and it hereby is, set aside as to Culligan, Inc. as of the date of this Order.

By the Commission, Commissioner Strenio not participating.

Donald S. Clark,
Secretary.

[FR Doc. 90-13088 Filed 6-5-90; 8:45 am]
BILLING CODE 6750-01-M

[Docket No. 9228]

Promodes, S.A., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Red Food Stores, Inc., a subsidiary of Promodes S.A., a French grocery company, to divest six supermarkets; requires the divestiture to be made to a Commission-approved acquirer or acquirers within nine months after the order becomes final; and if the respondents do not divest in that time, requires that the respondents shall consent to the appointment by the Commission of a trustee to divest the properties.

DATES: Complaint issued April 20, 1989. Order issued May 17, 1990.¹

FOR FURTHER INFORMATION CONTACT: Marimichael Skubel, FTC/S-3308, Washington, DC 20580. (202) 326-2611.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On Friday, March 2, 1990, there was published in the *Federal Register*, 55 FR 7567, a proposed consent agreement with analysis in the Matter of Promodes, S.A., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

Donald S. Clark,
Secretary.

[FR Doc. 90-13087 Filed 6-5-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-060-00-4111-09]

Draft Blackleaf Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period.

DATES: The deadline for accepting written comments on the DEIS has been extended from July 13, 1990 to July 20, 1990.

ADDRESSES: Written comments on the DEIS should be addressed to: Area Manager, Great Falls Resource Area, 812 14th Street North, Great Falls, MT 59403.

FOR FURTHER INFORMATION CONTACT: Gary Slagel, Team Leader, Great Falls Resource Area, 812 14th Street North, Great Falls, MT 59403, 406/727-0503.

Dated: May 29, 1990.

Wayne Zinne,

District Manager.

[FR Doc. 90-13059 Filed 6-5-90; 8:45 am]

BILLING CODE 4310-DN-M

[CO-920-90-4111-15; COC43255]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC43255 for lands in Moffat County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from December 1, 1989, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$5 and 16 2/3 percent, respectively.

The lessee has paid the required \$500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this *Federal Register* notice.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236-1772. Janet M. Budzilek, Chief,

Fluid Minerals Adjudication Section.

[FR Doc. 90-13058 Filed 6-5-90; 8:45 am]

BILLING CODE 4310-JB-M

[ES-970-00-4120-11-2410; VAES 37513]

Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Reinstatement of Terminated Oil and Gas Lease VAES 37513.

SUMMARY: Terminated oil and gas lease VAES 37513 located in Highland County, Virginia, George Washington National Forest, Tract No. G-1533, containing 62.40 acres.

FOR FURTHER INFORMATION CONTACT: Ms. Shirlean Beshir on (703) 461-1512.

SUPPLEMENTARY INFORMATION: Federal oil and gas lease VAES 37513 terminated automatically by operation of law on March 1, 1990 (30 U.S.C. 188). A petition for reinstatement of VAES 37513 was filed by Columbia Natural Resources, Inc. (lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

The lessee has met all the following requirements for reinstatement:

(a) \$500: Reimbursement of departmental administrative cost.

(b) \$315: Back rental payment.

(c) \$130: Publication cost.

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to \$5.00 per acre per year, and royalty increased to 16% percent beginning March 1, 1990 for VAES 37513.

G. Curtis Jones, Jr.,
State Director.

[FR Doc. 90-13046 Filed 6-5-90; 8:45 am]

BILLING CODE 4310-40-M

[UT-943-4730-04-2691]

Filing of Plat Survey; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: These plats of survey of the following described land will be filed in the Utah State Office, Salt Lake City, Utah, immediately:

Group	Township	Range	Meridian	Approved	Type
646.....	42 S.	5 W.	SL	04/22/87	Dep. Res.
663.....	42 S.	16 W.	SL	04/22/87	Dep. Res.
663.....	43 S.	15 W.	SL	04/22/87	Dep. Res.
680.....	39 S.	16 W.	SL	06/15/87	Dep. Res.
666.....	29 S.	3 W.	SL	07/14/87	Dep. Res.
666.....	30 S.	3 W.	SL	07/14/87	Dep. Res.
670.....	37 S.	11 W.	SL	07/27/87	Dep. Res.
670.....	37 S.	12 W.	SL	07/27/87	Dep. Res.
704.....	34 S.	5 W.	SL	07/27/87	Dep. Res.
656.....	5 S.	2 E.	SL	7/29/87	Dep. Res.
684.....	36 S.	10 W.	SL	08/12/87	Dep. Res.
685.....	39 S.	13 E.	SL	08/27/87	Dep. Res.
693.....	41 S.	20 E.	SL	10/13/87	Dep. Res.
712.....	17 S.	7 E.	SL	10/20/87	Dep. Res.
688.....	16 S.	9 E.	SL	10/23/87	Dep. Res.

Group	Township	Range	Meridian	Approved	Type
687.....	14 S.	16 E.	SL	11/05/87	Dep. Res.
681.....	41 S.	14 W.	SL	12/09/87	Dep. Res.
681.....	42 S.	14 W.	SL	12/09/87	Dep. Res.
685.....	35 S.	21 E.	SL	12/14/87	Dep. Res.
707.....	37 S.	3 W.	SL	12/18/87	Dep. Res.
707.....	38 S.	4 W.	SL	12/18/87	Dep. Res. and Orig.
707.....	39 S.	4 W.	SL	12/18/87	Dep. Res.
692.....	25 S.	7 W.	SL	02/18/88	Dep. Res.
Supplemental.....	42 S.	14 W.	SL	03/28/88	Supplemental.
682.....	43 S.	4½ W.	SL	05/24/88	Dep. Res.
683.....	43 S.	5 W.	SL	05/24/88	Dep. Res.
672.....	11 N.	5 E.	SL	06/13/88	Dep. Res.
689.....	31 S.	10 E.	SL	06/13/88	Dep. Res.
694.....	22 S.	6 W.	SL	07/05/88	Dep. Res.
694.....	23 S.	6 W.	SL	07/05/88	Dep. Res.
694.....	23 S.	7 S.	SL	07/05/88	Dep. Res.
694.....	23 S.	8 W.	SL	07/05/88	Dep. Res.
696.....	1 S.	7 E.	SL	07/05/88	Dep. Res.
690.....	4 N.	19 W.	SL	08/11/88	Dep. Res.
705.....	28 S.	11 E.	SL	08/22/88	Dep. Res.
703.....	14 N.	11 W.	SL	09/02/88	Dep. Res.
703.....	12 N.	13 W.	SL	09/02/88	Dep. Res.
702.....	16 S.	10 E.	SL	09/23/88	Dep. Res.
702.....	16 S.	11 E.	SL	09/23/88	Dep. Res.
699.....	17 S.	5 W.	SL	10/11/88	Dep. Res.
701.....	42 S.	1 W.	SL	10/11/88	Dep. Res.
710.....	29 S.	3 W.	SL	10/11/88	Dep. Res.
653.....	3 S.	20 E.	SL	10/18/88	Dep. Res.
679.....	3 S.	22 E.	SL	10/18/88	Dep. Res.
711.....	1 S.	13 W.	SL	01/03/89	Dep. Res.
677.....	4 S.	22 E.	SL	01/03/89	Dep. Res.
691.....	8 N.	7 E.	SL	05/05/89	Dep. Res.
Supplemental.....	35 S.	16 W.	SL	05/05/89	Supplemental.
Supplemental.....	13 S.	5 E.	SL	05/15/89	Supplemental.
Supplemental.....	4 S.	24 E.	SL	07/10/89	Supplemental.
Supplemental.....	5 S.	24 E.	SL	07/10/89	Supplemental.
Supplemental.....	2 S.	4 E.	SL	08/07/89	Supplemental.
Supplemental.....	2 N.	8 W.	SL	09/05/89	Supplemental.
695.....	13 S.	3 W.	SL	08/14/89	Dep. Res.
708.....	11 S.	2 W.	SL	08/14/89	Dep. Res.
709.....	10 S.	3 W.	SL	08/28/89	Dep. Res.
737.....	39 S.	12 W.	SL	08/28/89	Dep. Res.
718.....	22 S.	1 W.	SL	09/05/89	Dep. Res.
Supplemental.....	2 S.	4 E.	SL	11/27/89	Supplemental.
Supplemental.....	1 S.	1 E.	SL	12/12/89	Supplemental.
Supplemental.....	2 S.	4 E.	SL	12/12/89	Supplemental.
717.....	15 N.	4 W.	SL	11/06/89	Dep. Res.
728.....	10 S.	5 E.	SL	11/03/89	Dep. Res.
720.....	35 S.	1 E.	SL	11/28/89	Dep. Res.
706.....	39 S.	12 W.	SL	11/29/89	Dep. Res.
706.....	40 S.	12 W.	SL	11/29/89	Dep. Res.
723.....	29 S.	7 W.	SL	11/30/89	Dep. Res.
721.....	41 S.	14 W.	SL	12/05/89	Dep. Res.
729.....	13 N.	13 W.	SL	12/11/89	Dep. Res.
719.....	10 N.	4 W.	SL	12/18/89	Dep. Res.
719.....	10 N.	5 W.	SL	12/18/89	Dep. Res.
Supplemental.....	1 S.	19 W.	SL	03/05/90	Supplemental.
727.....	13 S.	1 E.	SL	01/26/90	Dep. Res.
725.....	14 S.	1 E.	SL	01/26/90	Dep. Res.
722.....	39 S.	11 W.	SL	01/26/90	Dep. Res.
722.....	40 S.	11 W.	SL	01/26/90	Dep. Res.
716.....	13 N.	18 W.	SL	02/16/90	Dep. Res.
715.....	38 S.	12 W.	SL	04/03/90	Survey.
715.....	39 S.	12 W.	SL	04/03/90	Survey.

M. Ross Workman,
 Chief, Cadastral Office Section.
 [FR Doc. 90-13077 Filed 6-5-90; 8:45 am]
 BILLING CODE 4310-DQ-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31664]

**Ashland Railway, Inc., Lease and
 Operation From CSX Transportation,
 Inc., of Line Between Willard and
 Mansfield, OH**

AGENCY: Interstate Commerce
 Commission.

ACTION: Notice of decision accepting
 application for consideration.

SUMMARY: The Commission is accepting
 for consideration the application filed
 May 4, 1990, for approval for Ashland
 Railway, Inc. (ASRY) to lease from CSX
 Transportation, Inc. (CSXT) and operate
 a 24.7-mile line of railroad between
 Willard and Mansfield, OH. Pursuant to
 49 CFR part 1180, the Commission finds
 this to be a minor transaction.

DATES: This notice is effective on June 6, 1990. Written comments must be filed with the Interstate Commerce Commission no later than July 6, 1990. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by July 23, 1990. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of the service list. Applicants' reply is due by August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721]

ADDRESSES: Send original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31664, 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 to each of applicants' representatives:

Docket Clerk, Office of Chief Counsel,
Federal Railroad Administration,
Room 8201, 400 Seventh Street SW.,
Washington, DC 20590

Attorney General of the United States,
Washington, DC 20590

Lawrence H. Richmond, CSX
Transportation, Inc., 100 North
Charles Street, Baltimore, MD 21201

G. David Crane, President, Ashland
Railway, Inc., P.O. Box 479, Stockton,
NJ 08559

SUPPLEMENTARY INFORMATION: By application filed May 4, 1990, Ashland Railway, Inc. (ASRY) and CSX Transportation, Inc. (CSXT), collectively "applicants," seek Commission approval under 49 U.S.C. 11343, *et seq.*, for ASRY to lease from CSXT and operate a 24.7-mile line of railroad between Willard, OH (milepost 85.20) and Mansfield, OH (milepost 60.50) in Huron and Richland Counties, OH. To effect the transaction, ASRY and CSXT entered into a lease agreement on April 3, 1990.¹ Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted an application in accordance with the railroad consolidation procedures at 49 CFR part 1180 for minor transactions.

¹ To facilitate a smooth transition of rail operations and meet the needs of shippers, applicants want to consummate the transaction as soon as possible. Applicants ask that a decision granting this application be made effective 7 days after notice of such a decision is published in the Federal Register.

This request is premature. We will continue any renewed, supported request at the time of our final decision.

ASRY, a Class III carrier controlled by G. David Crane, presently owns and operates a 35-mile railroad between Mansfield and West Salem, OH that is contiguous to the leased line.² CSXT, a Class I carrier, operates approximately 19,000 miles of railroad in the states of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Michigan, Mississippi, New York, North Carolina, Ohio, South Carolina, Tennessee, West Virginia, Kentucky, Pennsylvania, and Virginia, the District of Columbia, and the Province of Ontario, Canada.

According to applicants, the proposed transaction will not substantially lessen intermodal or intramodal competition nor create a monopoly or restrain trade in freight surface transportation. The transaction will merely substitute one rail carrier for another on an existing line. As such, there is no reason why existing intermodal competition should be lessened; in fact, the transaction should enhance such competition by allowing the rail mode to compete more effectively with other modes, including significant area motor carrier service, through provision of responsive rail service on the line. Nor should competition among railroads be lessened by the transaction. Because CSXT and ASRY do not compete for originating and terminating freight traffic on the line, the transaction will not result in the loss of competitive rail service to any patrons served by either of the carriers involved. The transaction should also not have any significant effect on any other area rail carrier because the opportunities for interchanging traffic with Norfolk and Western Railway and Conrail on the line will not be reduced.

Applicants state that the proposed transaction will result in operating economies and efficiencies, improved service, and enhance financial viability for both applicants. The transaction will permit ASRY to expand its existing Ohio market by securing a larger traffic and revenue base through the provision of more frequent, responsive service closely tailored to the needs of the line's patrons. ASRY also anticipates economies from sharing administrative, insurance, and operating costs with the new line. As the same time, CSXT will be relieved of the inefficiencies inherent in operating what is for it a marginal line. Although ASRY's financing of the transaction will result in fixed charges in the form of interest payments on debt, it anticipates that such charges will

² Although ASRY also has a contract to operate a line in Lakehurst, NJ, that line is dormant; ASRY is conducting no operations on it.

easily be covered by revenue generated by originating and terminating traffic on the line. No new securities will be issued.

According to applicants, ASRY will operate the leased line exclusively with its own employees working under its own rates of pay, rules, and working conditions. CSXT's collective bargaining agreements will not be transferred to or assumed by ASRY's.³ Transactions under 49 U.S.C. 11343 carry mandatory labor protection pursuant to 49 U.S.C. 11347. In this regard, in their lease agreement, the parties have stated that claims for Commission-mandated labor protection based on the lease transaction will be borne by CSXT with respect to employees by it prior to closing and by ASRY with respect to employees employed by it prior to closing.

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposal here involves a Class I and a Class III rail carrier. The proposal also has no regional or national significance and will not result in a major market extension. Accordingly, we find the proposal is a minor transaction as defined in 49 CFR 1180.2(c). Since the applicant complies with our regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, copies may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in the proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments 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:

(a) The docket number and title of the proceeding.

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

³ Applicants state that ASRY expects to require four additional employees to operate the new line and that the transaction will have no effect on ASRY's existing employees. The transaction will, however, result in the abolishment of five CSXT positions (one engineer position, two trainmen positions, and two maintenance-of-way-positions).

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this proceeding constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

Decided: May 29, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,
Secretary.

[FR Doc. 90-13085 Filed 6-5-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-32; Sub-No. 42X]

Boston and Maine Corp. and Springfield Terminal Railway Co.; Abandonment and Discontinuance Exemption in Berkshire County, MA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* for B&M to abandon and ST to discontinue service over B&M's 10.5-mile line of railroad between milepost 2.5, at Pittsfield, and milestone 13.0, at Adams, in Berkshire County, MA.

Applicants have certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding

cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 6, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by June 13, 1990. Petitions for reconsideration must be filed by June 26, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representative: David H. Anderson, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 11, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 31, 1990.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 90-13083 Filed 6-5-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 341X)]

CSX Transportation, Inc.; Abandonment Exemption in Wood County, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc., of a 13.37-mile line of railroad between Walker (milepost 369.0) and Parkersburg (milepost 382.37), in Wood County, WV, subject to environmental and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 6, 1990. Formal expressions of intent to file an offer¹ of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 18, 1990, petitions to stay must be filed by June 21, 1990, and petitions for reconsideration must be filed by July 2, 1990. Requests for a public use condition must be filed by June 18, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 341X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and
- (2) Petitioner's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic

¹ See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721].

Decided: May 29, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-13084 Filed 6-5-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31677]

RailTex, Inc.; Continuance in Control Exemption

RailTex, Inc. (RailTex), has filed a notice of exemption to continue to control Chesapeake and Albemarle Railroad Company, Inc. (C&A). RailTex currently controls non-connecting class III rail carriers North Carolina & Virginia Railroad Company, Inc. (NC&V), which operates in Virginia and North Carolina; Mid Michigan Railroad Company, Inc. (MM), which operates in Michigan; San Diego & Imperial Valley Railroad Company, Inc. (SD&IV), which operates in California; Austin & Northwestern Railroad Company, Inc. (A&N), which operates in New Mexico, Texas, and Oklahoma; and South Carolina Central Railroad Company, Inc. (SCC), which operates in South Carolina.

C&A has filed a notice of exemption in Finance Docket No. 31617, *Chesapeake and Albemarle Railroad Company, Inc.—Lease, Acquisition, and Operation Exemption—Southern Railway Company*, to lease and operate Southern Railway Company's 73.5-mile rail line between Chesapeake, VA, and Edenton, NC.

RailTex asserts that: (1) C&A, NC&V, MM, SD&IV, A&N, and SCC will not connect with each other or with any other railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other; and (3) the transaction does not involve a Class I carrier.

This transaction involves the continuance in control of a nonconnecting carrier and comes within the class exemption in 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Frank J. Pergolizzi, Slover & Loftus, 1224 17th Street NW., Washington, DC 20036.

Decided: May 24, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-12868 Filed 6-5-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated September 8, 1989, and published in the *Federal Register* on September 20, 1989 (54 FR 38756), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Rd. 2 Mayaguez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Dextropropoxyphene, bulk (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 18, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-13011 Filed 6-5-90; 8:45 am]

BILLING CODE 4410-09-M

Importers of Controlled Substances; Registration; Mallinckrodt, Specialty Chemicals, Co.

By Notice Dated July 26, 1989, and published in the *Federal Register* on August 15, 1989, (54 FR 33625), Mallinckrodt, Specialty Chemicals Company, Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic class of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Opium poppy (9650)	II
Concentrate of poppy straw (9670)	II
Coca leaves (9040)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substances listed above.

Dated: May 18, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-13012 Filed 6-5-90; 8:45 am]

BILLING CODE 4410-09-M

Importers of Controlled Substances; Registration; Minn-Dak Growers, Ltd.

By Notice dated January 30, 1989, and published in the *Federal Register* on February 9, 1990, (55 FR 4728), Minn-Dak Growers Limited, Highway 81 North, P.O. Box 1276, Grand Forks, ND 58206-1276, made application to the Drug Enforcement Administration to be registered as an importer of Marijuana (7360), a basic class of controlled substance listed in Schedule I. This application is exclusively for the importation of marijuana seed which will be rendered no-viable and used as bird seed.

No comments or objections have received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: May 18, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-13013 Filed 6-5-90; 8:45 am]

BILLING CODE 4410-09-M

Importers of Controlled Substances; Registration; Penick Corp.

By notice dated February 29, 1990, and published in the *Federal Register* on March 15, 1990 (55 FR 9783), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made

application to the Drug Enforcement Administration to be registered as an importer of the basic class of controlled substances listed below:

Drug	Schedule
Coca leaves (9040).....	II
Raw opium (9600).....	II
Opium poppy (9650).....	II
Concentrate of poppy straw (9670).....	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substances listed above.

Dated: May 18, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-13014 Filed 6-5-90; 8:45 am]

BILLING CODE 4410-09-M

Penick Corp.; Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on March 21 1990, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145).....	I
Pholcodine (9314).....	I
Alphacetylmethadol (9603).....	I
Methylphenidate (1724).....	II
Phenylacetone (8501).....	II
Cocaine (9041).....	II
Codeine (9050).....	II
Dihydrocodeine (9120).....	II
Oxycodone (9143).....	II
Hydromorphone (9150).....	II
Diphenoxylate (9170).....	II
Benzoyllecgonine (9180).....	II
Hydrocodone (9193).....	II
Meperidine (pethidine) (9230).....	II
Methadone (9250).....	II
Methadone-intermediate (9254).....	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).....	II
Morphine (9300).....	II
Thebaine (9333).....	II
Opium extracts (9610).....	II
Opium fluid extract (9620).....	II
Opium tincture (9630).....	II
Opium, powdered (9639).....	II
Opium, granulated (9640).....	II
Oxymorphone (9652).....	II
Poppy Straw concentrate (CPS) (9670).....	II

Drug	Schedule
Phenazocine (9715).....	II
Fentanyl (9801).....	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 6, 1990.

Dated: May 17, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-13010 Filed 6-5-90; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration; Philadelphia Seed Co.

By Notice, and published in the Federal Register (53 FR 29531), Philadelphia Seed Company, Division of Stanford Seed Company, Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I. This application is exclusively for the importance of marihuana seed which will be rendered non-viable and used as bird feed.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: May 18, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-13015 Filed 6-5-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90-31; Exemption Application No. D-7939 et al.]

Grant of Individual Exemptions; Chase Manhattan Bank (Chase Bank), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 23, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Chase Manhattan Bank (Chase Bank)
Located in New York, New York

**[Prohibited Transaction Exemption 90-31;
Exemption Application No. D-7939]**

Exemption

I. Transactions

A. Effective February 13, 1989, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2), and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.¹

B. Effective February 13, 1989, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the

investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;
(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.² For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii), and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective February 13, 1989, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described

in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.³

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective February 13, 1989 the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P), or Fitch Investors Service, Inc. (Fitch);

³ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

¹ Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2), and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

² For purposes of this exemption, each plan participating a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust; with respect to which Chase Securities or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in section B.(1);

(3) Undistributed cash or temporary investments made therewith maturing

no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in section B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Chase Securities;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Chase Securities; or

(3) Any member of an underwriting syndicate or selling group of which Chase Securities or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

- (1) Each underwriter;
- (2) Each insurer;
- (3) The sponsor;
- (4) The trustee;
- (5) Each servicer;
- (6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)-(6) above.

M. "Affiliate" of another person includes:

- (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;
- (2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and
- (3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

- (1) Such person is not an affiliate of that other person; and
- (2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or

renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

- (1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;
- (2) The servicer may not charge the fee absent the act or failure to act referred to in (1);
- (3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and
- (4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

- (a) Which is secured by equipment which is leased;
- (b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and
- (c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 21, 1990 at 55 FR 6074.

EFFECTIVE DATE: This exemption is effective as of February 13, 1989.

WRITTEN COMMENTS: The Department received one written comment and no requests for a hearing in response to the Notice of Proposed Exemption. The written comment was submitted by the applicant and constituted a correction of a typographical error which appeared in the Notice of Proposed Exemption. The error appeared within the definition of "reasonable compensation" at section III.R., on page 6077 of the Notice, in the citation of the Code of Federal Regulations (CFR). As corrected, the section should read as follows:

"R. *Reasonable Compensation* has the same meaning as that term is defined in 29 CFR 2550.408c-2."

The Department has determined to grant the exemption as so corrected.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Prudential-Bache Securities Inc.
(Prudential-Bache) Located in New York, New York

[Prohibited Transaction Exemption 90-32; Exemption Application No. D-8145]

Exemption

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts

and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2), and 407 of the Act for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.⁷

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a), if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25

percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.⁸ For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii), and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective November 1, 1985, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.⁹

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or

sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act or section 4975(e)(2), (F), (G), (H), or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such

⁷ Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

⁸ For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

⁹ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which Prudential-Bache or any of its affiliates is either (i) the sole underwriter or the manager or co-

manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR section 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or

Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Prudential-Bache;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Prudential-Bache; or

(3) Any member of an underwriting syndicate or selling group of which Prudential-Bache or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any sub-servicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

- (1) Each underwriter;
- (2) Each insurer;
- (3) The sponsor;
- (4) The trustee;
- (5) Each servicer;
- (6) Any obligor with respect to

obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)-(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be

delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

proposed exemption published on February 26, 1990 at 55 FR 6699.

Written Comments

The Department received one written comment and no requests for a public hearing with respect to the proposed exemption. The written comment was received from the Prudential Home Mortgage Securities Company, Inc. (PHMSC), an affiliate of the applicant, regarding the definition of "trust" contained in section III.B. of the proposed exemption. Paragraph III.B.(1)(c) includes in the definition of trust an investment pool, the corpus of which is held in trust and which consists of obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property).

The commentator requests clarification that the definition of trust in section III.B. would include trusts containing obligations secured by leasehold interests on residential real property (the Residential Leasehold Mortgages). In this regard, the commentator represents that Residential Leasehold Mortgages are originated in jurisdictions such as Hawaii in which they are a necessary alternative to mortgages secured by fee simple interests. The commentator further noted that Residential Leasehold Mortgages are, in essence, the same as, and provide substantially the same degree of security to investors as, mortgages secured by fee simple interests. Both the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) have purchase programs for Residential Leasehold Mortgages.

The commentator further states that the Residential Leasehold Mortgages PHMSC will include in pools underlying mortgage pass-through certificates will generally conform with either Freddie Mac or Fannie Mae leasehold guidelines. In any event, the term of the leasehold underlying a Residential Leasehold Mortgage which PHMSC will include in a trust will have a term which extends for at least five years beyond the term of the Residential Leasehold Mortgage. The commentator states that PHMSC will comply with the requirement under the Freddie Mac and Fannie Mae leasehold guidelines that such mortgages constitute obligations secured by real property or an interest in real estate.

After considering the comment, the Department concurs with the views expressed by the commentator that the definition of trust includes Residential Leasehold Mortgages as described in PHMSC's comment.

EFFECTIVE DATE: exemption is effective for transactions occurring on or after November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Chemical Banking Corporation (CBC)
Located in New York, New York

**[Prohibited Transaction Exemption 90-33;
Exemption Application No. D-7940]**

Exemption

I. Transactions

A. Effective January 1, 1988, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2), and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.¹⁰

B. Effective January 1, 1988, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section

4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;
(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.¹¹ For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective January 1, 1988, the restrictions of sections 406(a), 406(b), and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions

in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.¹²

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 1, 1988, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act or section 4975(e)(2) (F), (G), (H), or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

¹² In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

¹⁰ Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

¹¹ For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding

compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which CBC or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR section 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) CBC;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with CBC; or

(3) Any member of an underwriting syndicate or selling group of which CBC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services receivables contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

- (1) Each underwriter;
- (2) Each insurer;
- (3) The sponsor;
- (4) The trustee;
- (5) Each servicer;
- (6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or
- (7) Any affiliate of a person described in (1)-(6) above.

M. "Affiliate" of another person includes:

- (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;
- (2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and
- (3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the

management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

- (1) Such person is not an affiliate of that other person; and
- (2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

- (1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;
- (2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and
- (3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR section 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

- (1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;
- (2) The servicer may not charge the fee absent the act or failure to act referred to in (1);
- (3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and
- (4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

- (a) Which is secured by equipment which is leased;
- (b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

- (a) The trust holds a security interest in the lease;
- (b) The trust holds a security interest in the leased motor vehicle; and
- (c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

EFFECTIVE DATE: This exemption will be effective for transactions occurring on or after January 1, 1988.

Applicant Comments

A. Summary of Facts and Representations

The applicant has commented on or clarified certain aspects of the proposed exemption. In this regard, the applicant notes that the last sentence of footnote 17 in the preamble to the proposed exemption should state that the applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

With respect to item 4, the applicant notes that the sponsor may acquire legal title to all assets selected for the trust on or prior to the closing date. In many transactions, the sponsor may acquire legal title to assets selected for the trust on the closing date and concurrently convey to the trust legal title to the assets.

In addition, the word "lender" should be replaced with the word "lead" in the last sentence of the second paragraph of item 4.

The applicant notes that the words "or receivables" should be replaced by the words "on mortgages" in the last sentence of the first paragraph of item 5.

The applicant notes that the second and third sentences of item 6 should read as follows:

"Therefore, both the sponsor's discretion and the servicer's discretion

with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a relatively short time after the issuance of trust certificates (within 120 days, except in the case of 30-year obligations, in which case the period will not exceed two years)."

In clause (ii) of item 8, the applicant notes that the word "services" should be replaced by the word "servicer".

The applicant notes that, in the last sentence of item 9, the word "prosperous" should be replaced by the word "prospective".

With respect to item 16, the applicant notes that in a best efforts underwriting in which CBC would underwrite certificates in a public offering on an agency basis, CBC would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, CBC may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

The applicant notes that the first sentence of item 17 should read: "The applicant represents that as the principal amount of the receivables in a trust is reduced by payment, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point."

B. Proposed Exemption

The applicant has also requested certain modifications to the exemption as proposed. The applicant has requested that the definition of "Servicer" contained in section III.G. of the proposed exemption be amended to replace the word "loans" with the word "receivables" to be consistent with the definition of "Subservicer" in section III.F. of the proposed exemption. The Department has determined to make such a change.

The applicant has also requested an effective date of January 1, 1988, replacing the effective date of December 29, 1988, published in the proposed exemption. In this regard, the applicant represents that CBC has complied with the conditions contained in part II of the proposed exemption as of the requested effective date of January 1, 1988. The applicant further represents that CBC has had the authority to underwrite and sell certificates described in the

proposed exemption as of the requested effective date of January 1, 1988. Based on the above representations, the Department has determined to amend the exemption as requested.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published at 55 FR 6082.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Innovation Industries, Inc., Profit Sharing Plan (the Plan) Located in Russellville, Arkansas

[Prohibited Transaction Application 90-34; Exemption Application No. D-8196]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain securities (the Securities) to Innovation Industries, Inc., the sponsor of the Plan; provided that the Plan receives an amount which is the greater of either the Plan's original acquisition cost, or the fair market value of the Securities on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 6, 1990 at 55 FR 12963/12964.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions do not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must

operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describe all material terms of the transaction which are subject to the exemption.

Signed at Washington, DC, this 31st day of May 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-13033 Filed 6-5-90; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-338 and 50-339]

Virginia Electric & Power Co.; Old Dominion Electric Cooperative; North Anna Power Station, Units No. 1 and No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering the issuance of amendments to Facility Operating Licenses No. NPF-4 and NPF-7 to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee) for the North Anna Power Station, Units No. 1 and No. 2, located in Louisa County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the Technical Specifications (TS) relating to fuel enrichment.

The proposed action is in accordance with the licensee's application dated September 30, 1988, as supplemented August 18, 1989.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher enrichment fuel which will result in significant fuel cost savings and enhancement of fuel management goals.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel enriched with Uranium 235 in excess of 4 weight percent and up to 4.3 weight percent. The licensee would expect the fuel to be irradiated to levels above 33 gigawatt days per metric ton (GWD/MT), but not to exceed 60 GWD/MT. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. Also, the proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual accumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in 53 FR 30355 dated August 11, 1988. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c).

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principle alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (as amended) for the North Anna Power Station, Units No. 1 and No. 2, dated April, 1973.

Agencies and Persons Contacted

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 amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for amendments dated September 30, 1988, as supplemented August 18, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 30th day of May 1990.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-13095 Filed 6-5-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on the Medical Uses of Isotopes; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting and request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) to provide the ACMUI with status reports on medical use rulemakings, and request ACMUI advice on certain regulatory and administrative issues. The NRC staff will provide the ACMUI with status reports on a petition for rulemaking about practice of medicine and pharmacy and on basic quality

assurance in medical use. The staff will request ACMUI advice on training and experience criteria for medical use personnel. The ACMUI will also be asked to provide advice on how to expand its membership to provide more balance, and on how frequently the ACMUI should meet.

MEETING DATE: Meeting will be held at 8:30 a.m. on July 10, 1990.

MEETING ADDRESS: Conference Theater, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, (301) 492-3417, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION: 1. The agenda of the ACMUI meeting of July 10, 1990, will include the following:

A. Status Reports

Basic Quality Assurance in Medical Use. The NRC has published proposed amendments to 10 CFR part 35 that would require medical use licensees to establish and implement a basic quality assurance (QA) program (see 55 FR 1439). The NRC has also proposed certain modifications to the definition of "misadministration" and to the related reporting and recordkeeping requirements. Approximately 72 NRC and Agreement State licensees began participation in a Pilot Program on May 14, 1990 to develop and implement QA programs in accordance with the proposed rule. The staff will report on the progress to date on this project.

Practice of Medicine and Pharmacy. The American College of Nuclear Physicians and the Society of Nuclear Medicine (ACNP-SNM) submitted a petition for rulemaking (see 54 FR 38229) requesting that the Commission revise its regulations to give cognizance to the appropriate scope of the practice of medicine and pharmacy and (i) to allow nuclear physicians and nuclear pharmacists to reconstitute non-radioactive kits differently from the method recommended by the manufacturer; (ii) to allow nuclear physicians and nuclear pharmacists to prepare radiopharmaceuticals whose manufacture and distribution are not regulated by the Food and Drug Administration (FDA); and (iii) to allow nuclear physicians to determine appropriate diagnostic and therapeutic applications of radiopharmaceuticals. The staff will report on the progress to date on this project.

Visiting Fellows Program. The Commission is planning to initiate a Visiting Fellows Program in order to

expand its understanding of the regulated community. While the program will be primarily open to physicians with backgrounds in Nuclear Medicine or Radiation Oncology, others having expert qualifications in related fields such as Radiological Physics or Radiopharmacy will be considered.

B. Reports for ACMUI Comment

Training and Expertise Criteria. The NRC has published an advance notice of proposed rulemaking requesting comments on training and experience criteria for all individuals who use byproduct material for clinical procedures in the practice of medicine (see 53 FR 18845). The NRC has also received a contractor's report on tasks performed by individuals in medical use, and existing programs for accreditation, certification, and licensure. The NRC staff will summarize the public comments received in response to the notice, and the contractor's report. The ACMUI will then discuss whether there is a need for a rulemaking to change the regulations that currently apply.

Expanded ACMUI Membership. The NRC will be expanding the membership of the ACMUI to broaden the points of view represented. The ACMUI will discuss how the membership should be expanded and the Committee's role in reviewing nominations.

Frequency of ACMUI Meetings. The Commission believes that the ACMUI should hold meetings at least semi-annually. The ACMUI will discuss whether this will be sufficient.

II. Conduct of the Meeting

Barry Siegel, M.D., will chair the meeting. The following procedures will apply to public participation in the meeting:

1. Persons may submit written comments by sending a reproducible copy to Larry W. Camper (see "FOR FURTHER INFORMATION CONTACT" heading for address). Comments must be received by June 19, 1990 to ensure consideration at the meeting. It is not necessary to resubmit written comments that were submitted in response to the Federal Register notices mentioned in this meeting notice.

2. Requests to make oral statements at the meeting should be forwarded to Mr. Camper in writing by June 19, 1990. Statements must pertain to the topics listed. The Chairman will rule on requests to make oral statements. Determination regarding oral statements by members of the public will be based on the time available and the order in which requests are received. In general, oral statements should be limited to approximately 5 minutes. Oral

statements may be supplemented by detailed written statements for the record. Rulings on who may speak, the order of presentation, and time allotments may be obtained by calling Mr. Camper at (301) 492-3417 between 9 a.m. and 5 p.m. EDT on June 26, 1990.

3. At the meeting, questions from attendees other than the committee members, consultants, and NRC staff may be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW., lower level, Washington, DC 20555 on or about July 24, 1990.

5. Seating for the public will be on a first-come/first-served basis.

The meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a), the Federal Advisory Committee Act (5 U.S.C. App.) and the Commission's regulations in title 10, Code of Federal Regulations, part 7.

Dated at Washington, DC, this 1st day of June 1990.

For the Nuclear Regulatory Commission,
John Hoyle,

Advisory Committee, Management Officer.
[FR Doc. 90-13112 Filed 6-5-90; 8:45 am]

BILLING CODE 7590-01-M

Revised Meeting Agenda; Advisory Committee on Reactor Safeguards

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 June 7-9, 1990, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the Federal Register on May 22, 1990. This revised notice of this meeting includes a session on the proposed rulemaking (expedited) regarding the Emergency Response Data System.

Friday, June 8, 1990, room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.-10:30 a.m.: *Interim Standard for Hot Particles* (Open)—The NRC staff will brief the members regarding the status of proposed revisions to the existing standard for exposure of the skin from radioactive particles.

10:45 a.m.-12:00 Noon: *Emergency Response Data System* (Open)—The Committee will review and report on the proposed NRC rule regarding installation and use of an Emergency Response Data System.

1:00 p.m.-2:30 p.m.: *Accident Sequence Precursor Program* (Open)—Representatives of the NRC staff will brief the Committee and discuss the status of the Accident Sequence Precursor Program and related reports by the program contractor.

2:45 p.m.-4:45 p.m.: *Risk Based Technical Specifications* (Open)—The members will be briefed on the status of NRC staff activities to develop and use risk based Technical Specifications for nuclear power plants.

4:45 p.m.-5:30 p.m.: (Open)—The members will discuss anticipated subcommittee activities and items proposed for consideration by the Committee.

5:30 p.m.-6:00 p.m.: *ACRS Subcommittee Activities*—The members will hear and discuss a report of the ACRS Planning and Procedures Subcommittee regarding conduct of ACRS activities.

6:00 p.m.-6:30 p.m.: *Preparation of ACRS Reports* (Open)—The members will discuss proposed committee reports to the NRC regarding items considered during this meeting.

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.

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: June 1, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-13097 Filed 6-5-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-31379 and 030-01615;
ASLBP No. 90-612-04-OM; EA No. 90-0711]

Atomic Safety and Licensing Board; Hearing and Prehearing Conference

May 31, 1990.

Before Administrative Judges: Charles

Bechhoefer, Chairman, Dr. Walter H.

Jordan, Dr. Jerry R. Kline

In the Matter of St. Mary Medical Center—

Hobart, St. Mary Medical Center—Gary

Notice is hereby given that, by Memorandum and Order dated May 30, 1990, the Atomic Safety and Licensing Board for this proceeding has granted the request of St. Mary Medical Center—Hobart and St. Mary Medical Center—Gary (Licensees) for a hearing in the above-titled proceeding. The hearing concerns the Order suspending Brachytherapy Activities and Modifying Licenses, issued by the NRC Staff on April 27, 1990 (55 FR 19376, May 9, 1990). The parties to the proceeding are the Licensees and the NRC Staff. Dr. Koppulu P. Sarma has filed a petition to intervene. The issue to be considered at the hearing is whether the Order referenced above should be sustained.

For further information concerning this proceeding, see the staff Order and the Licensing Board's Memorandum and Order. Other materials concerning this proceeding are on file at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Commission's Region III Office, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

During the course of this proceeding, the Licensing Board will conduct one or more prehearing conferences and, as necessary evidentiary hearing sessions. The first prehearing conference will commence at 9:00 a.m. on Friday, June 22, 1990, at the Lake Superior Court, Civil Division, Court Room 3, 400 Broadway, Third Floor, Gary, Indiana 46402. The time and place of other sessions will be announced in later Licensing Board Orders. Members of the public are invited to attend these sessions.

Persons who are not parties to the proceeding are invited to submit limited

appearance statements with regard to the Order Suspending Brachytherapy Activities and Modifying Licenses, as permitted by 10 CFR 2.715(a). During certain prehearing conference and/or evidentiary hearing sessions, such persons will be afforded the opportunity to make oral limited appearance statements. (No such statements will be heard at the June 22, 1990 prehearing conference.) These statements do not constitute testimony or evidence in this proceeding, but may help the Board and/or parties in their deliberations as to the proper boundaries of the issue to be considered. Written statements, or requests to make oral statements, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of such statement or request should also be served on the Chairman, Atomic Safety and Licensing Board, EWW-439, Washington, DC 20555.

Bethesda, Maryland,

May 31, 1990.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer

Chairman Administrative Judge.

[FR Doc. 90-13098 Filed 6-5-90; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Transportation Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to its authority under section 5051 of Pub. L. 100-203, the Nuclear Waste Policy Amendments Act of 1987 (NWPAA), the Transportation Panel of the Nuclear Waste Technical Review Board (the Board) will hold a public hearing to obtain the views of the public on transportation issues under study by the Board as part of its review of the Department of Energy's (DOE) program to develop and site a permanent repository for the disposal of spent nuclear fuel and high-level radioactive waste.

The Transportation Panel intends to hold several hearings during 1990 and 1991 in different locations around the United States. To date, the first hearing has been scheduled for August 1990 in Amargosa Valley (Nye County), Nevada. A second hearing is tentatively scheduled to be held in November 1990 in Reno, Nevada. This notice announces the date and location of the first hearing, provides procedures for participating in the hearing, and lists some of the issues

that participants may want to address in their remarks before the Panel.

Members of the public are welcome to make their views known by (1) preparing written testimony in advance of the hearing and presenting it before the Panel, (2) speaking briefly on a walk-in basis before the Panel, or (3) submitting a written statement for the record. Those requesting to speak before Panel members should be prepared to answer questions. A transcript of the hearing will be made.

DATES: The date, location, and time of the hearing is: Friday, August 17, 1990, Multipurpose Building, Amargosa Valley (Nye County), Nevada; (702) 372-5459, from 12 noon-9 p.m.

ADDRESSES: Request to testify should be made in writing to Ms. Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1111 18th Street NW., suite 801, Washington, DC 20036. Requests to testify must be received no later than close of business July 20, 1990.

Requests to speak briefly before the Panel on a walk-in basis will be taken in the day of the hearing. Persons wanting to make a brief statement before the Panel are asked to appear at the Amargosa Valley, Nevada, Multipurpose Building (702-372-5459) on the day of the hearing to sign up for a time slot on a first-come, first-served basis.

Interested persons may also submit written comments in lieu of appearing before the Panel Board until November 30, 1990. Original statements should be submitted to Members, Transportation Panel, Nuclear Waste Technical Review Board, 1111 18th Street NW., Suite 801, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Ms. Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Board, 1111 18th Street NW., suite 801, Washington, DC 20036 (202) 254-4792. (If unable to reach at this number, please try 703-235-4473.)

SUPPLEMENTARY INFORMATION:

Purpose

The Nuclear Waste Technical Board (NWTRB) was established by the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100-203) to evaluate the scientific and technical validity of activities undertaken by the Department of Energy in its civilian nuclear waste disposal program. The waste to be disposed of consists primarily of commercial spent fuel with some defense high-level waste. While the Board's charge is broad, the Act specifically directs the Board to evaluate activities relating to the

packaging or transportation of high-level radioactive waste or spent nuclear fuel.

To facilitate the evaluation of transportation issues pertaining to spent nuclear fuel and high-level radioactive waste, the Board created the Transportation Panel (formerly known as the Containers and Transportation Panel). As part of its study of nuclear waste transportation safety issues, the Panel intends to hold several public hearings over the next two years in various locations around the country. The purpose of the hearings will be to obtain the views and concerns of persons from geographic regions that could be affected by the transportation of spent fuel or high-level waste once a waste disposal program is in operation.

To maximize public participation, hearing locations are being selected in regions that may see significant waste transport activity once the disposal program becomes operational. Because the majority of commercial reactors are located in the East, and the location of the first geologic repository is currently expected to be in the West, the flow of spent fuel in the disposal program is anticipated at this time to be from east to west.

In the NWPAA of 1987 the U.S. Congress directed the DOE to characterize Yucca Mountain, Nevada, as a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste. Consequently, the first two public hearings will be held in Nevada because spent nuclear fuel and high-level radioactive waste from all regions of the country may end up being shipped there. Future hearings also will be held in other locations around the country that potentially lie in transportation corridors.

Presentation Procedures

Requests to testify should be made in writing to Ms. Paula N. Alford, Director, External Affairs, NWTRB, 1111 18th Street NW., suite 801, Washington, DC 20036. The written request should specify the following:

1. Name of the person testifying
2. Title, if any
3. Name of organization, if any
4. Telephone number
5. Length of time requested for presentation (time limit will be determined once all requests have been received)

If the contact person is different from the person testifying, please provide his or her name, title (if any), organization

name (if any), and telephone number. Requests to testify must be received no later than July 20, 1990.

Persons testifying are asked to provide 10 copies of their testimony and any accompanying slides or other documentation by close of business on August 8, 1990, to the NWTRB, 1111 18th Street NW., suite 801, Washington, DC 20036. Persons testifying also are asked to bring 50 copies at the time of testimony.

The Transportation Panel will reserve time in addition to the scheduled presentations to hear the views of interested persons scheduled on a first-come, first-served basis. Presenters in this part of the hearing do not need to notify the Panel in advance of their plans to attend, but they will be required to sign up the day of the hearing at the Amargosa Valley Multipurpose Building (702-372-5459) beginning at 12:00 noon.

To accommodate those wishing to make presentations, and to allow for questions from Panel members, a time limit will be placed on scheduled and walk-in presentations. The amount of time permitted for each presentation will depend on the number of requests the Panel receives. Those testifying will be notified of time constraints following receipt of their written requests. Walk-in presenters will be advised of their time constraints when they sign up. All participants should be prepared to answer questions from the Panel. A transcript of the hearing will be made.

Issues

To date, Panel members and other members of the Board have met with representatives of the DOE and the Nuclear Regulatory Commission (NRC) to discuss safety and risk assessment issues associated with the transportation of spent nuclear fuel and high-level radioactive waste. In its *First Report to the U.S. Congress and the U.S. Secretary of Energy*, the Board made a number of recommendations to the DOE on the following transportation issues: system safety, human factors engineering, and risk assessment and management. These issues were selected in part because of their importance in the early stages of transportation system planning. Consequently, the Transportation Panel encourages comments from parties particularly interested in the following areas.

- System Safety is a management approach that involves applying safety engineering and management techniques to the design of transportation system

hardware, software, and operations: The central question is, in what ways and to what extent should the DOE dedicate its management resources to such transportation safety activities?

- Human Factors Engineering involves applying what we know about human psychological, physiological, and physical limitations to the design and operation of industrial systems to optimize system safety and operability: The central question is, how can human error be reduced in the design, fabrication, maintenance, and operation of a transport system?

- Risk Assessment and Management involves the development and use of analytical methods to estimate the probability and severity of safety hazards that may be encountered in spent fuel transportation and to methodically foresee and develop measures to prevent their occurrence: The central question is, how can the existing risk assessment tools be improved; are the needs of the users—including state, tribal, and local government planners—being considered sufficiently?

In addition to these early safety management and planning issues, the Panel invites comments on safety considerations that will become increasingly important as the system for transporting spent nuclear fuel and high-level radioactive waste becomes more clearly defined and established. Safety issues that will grow in importance include:

- Transportation Cask Integrity: The question is, can transportation containers be designed and constructed to prevent the release of radioactive material under normal and accident conditions? If so, how can public confidence in transportation safety be enhanced?

- Transportation Operations: One of the main questions is, are current routing criteria adequate? If so, how can inspection and enforcement measures be improved?

- Emergency Preparedness: The central question is, what contingency plans need to be in place in communities that may be in a shipment path.

Dated: June 1, 1990.

William D. Barnard,

Acting Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90-13051 Filed 6-5-90; 8:45 am]

BILLING CODE 6820-AM-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28053; File No. SR-AMEX-90-5]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing of Proposed Rule Change Regarding Joint-Exchange Options Plan

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 30, 1990 the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The adoption of Rule 19c-5 under the Act effectively eliminated the Options Allocation Plan which had served since 1980 as the principal agreement among the options exchanges under which exchange-listed stocks were selected for trading.¹ In order to establish uniform procedures for selecting, listing, challenging and arbitrating the eligibility of new equity options overlying both exchange-traded and OTC-listed securities, the Chicago Board Options Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, the New York Stock Exchange and the Options Clearing Corporation ("OCC") have agreed with the Amex to adopt this Joint-Exchange Options Plan ("the Plan"). The Plan, the text of which follows, is to become effective immediately upon the Commission's approval of a rule filing for each of the exchanges noted above.

Joint-Exchange Options Plan

1. An exchange which seeks to list a new equity option on a security (the "Selecting Exchange") must:

(a) Notify OCC of its selection (the "Selected Option") through the submission of an intent to certify; and

(b) Simultaneously give written notification of its selection to the other exchanges. Such Selecting Exchange has the right to determine the ticker symbol and the trading cycle for the Selected Option.

2. Upon receipt of notification from the Selecting Exchange, any other exchange may:

(a) Submit an intent to certify the Selected Option to the OCC provided such request is submitted no later than 4 p.m. New York City time on the business day following receipt of notification from the Selecting Exchange and further, provided such exchange(s) notifies all other exchanges of its intention to concurrently list the Selected Option; or

(b) Challenge the eligibility of the Selected Option provided notification of such challenge is submitted to the Selecting Exchange, OCC and all the other exchanges no later than 4 p.m. New York City time on the business day following receipt of notification from the Selecting Exchange. Upon any challenge, any challenging exchange and any challenged exchange shall submit written support for its claim of eligibility or ineligibility to the Arbitrator by 4 p.m. New York City time and to all of the other Exchanges by 5 p.m. New York City time on the third business day following notification of an intent to certify the Selected Option by the Selecting Exchange. Any exchange which has submitted an intent to certify the Selected Option will automatically be deemed to be a party to the challenge.

3. An exchange that elects to:

(a) Notify OCC of its intent to certify a Selected Option is prohibited from challenging such selection.

(b) Challenge the eligibility of a Selected Option is prohibited from requesting certification of such selection except in accordance with the provisions of Paragraphs 6 and 7 set forth below.

4. If no challenge is asserted as to the Selected Option and no other exchange has submitted an intent to certify such option in accordance with the provisions of paragraph 2(a), the Selecting Exchange may commence trading in such option on the third (3rd) business day following the date of its submission to the OCC of its intent to certify. Any other exchange may not commence trading the Selected Option prior to the eighth (8th) business day following the date the Selecting Exchange submitted its intent to certify to the OCC.

5. If no challenge is asserted as to a Selected Option, then the Selecting Exchange and any other exchange which has submitted an intent to certify such option in accordance with the time provisions of paragraph 2(a) may commence trading in such option on the fifth (5th) business day following the date of the Selecting Exchange's submission to the OCC of its intent to certify. Any other exchange may not commence trading the Selected Option prior to the tenth (10th) business day following the date the Selecting Exchange submits its intent to certify to the OCC.

6. If a challenge is asserted as to a Selected Option in accordance with the time provisions of paragraph 2(b) above and no exchange other than the Selecting Exchange submits to OCC an intent to certify such option, the Arbitrator shall resolve the challenge by the close of the business day following its receipt of written support for the Selected Option's eligibility or ineligibility from the challenged/challenging exchanges. Should the Arbitrator require additional time to make a determination as to the Selected Option's eligibility, the Arbitrator shall notify the exchanges of the additional time needed which shall not exceed five business days from the receipt of written support from the challenged/challenging exchanges without the approval of the challenging exchanges. If the Arbitrator deems the Selected Option eligible for option trading, the Selecting Exchange may commence trading in such option on the second (2nd) business day following the Arbitrator's determination. Any exchange which challenged the eligibility of the Selected Option as well as any other exchange may not commence trading such option prior to the seventh (7th) business day following the Arbitrator's determination.

7. With regard to a Selected Option for which an intent to certify is made by other exchange(s) in accordance with the time provisions of paragraph 2(a) above and for which challenge is also made by another exchange(s) in accordance with the time provisions of paragraph 2(b) above, the Arbitrator shall resolve the challenge by the close of the business day following its receipt of written support from the challenged/challenging exchanges. Should the Arbitrator require additional time to make a determination as to the Selected Option's eligibility, the Arbitrator shall notify the exchanges of the additional time needed. Such additional time shall not exceed five business days from the receipt of the written support from the

¹ Rule 19c-5 allows for the multiple trading of exchange-listed standardized options. The Rule states that, as of January 22, 1990, no rule, stated policy, practice or interpretation of an options exchange shall restrict the listing of any new stock options class to a single exchange. In addition, effective January 21, 1991, but not before, Rule 19c-5 amends exchange rules to prohibit any exchange from limiting by any means its ability to list any stock options class because that options class is listed on another exchange. See Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963.

challenged/challenging exchanges without the approval of the challenged/challenging exchanges. If the Arbitrator deems the Selected Option eligible for option trading, the Selecting Exchange along with the exchange(s) that concurrently submitted an intent to certify such option in accordance with the time provision of paragraph 2(a) may commence trading in such option on the fifth (5th) business day following the Arbitrator's determination. Any exchange which challenged the eligibility of the Selected Option, as well as any other exchange that did not request certification in accordance with the procedures of paragraph 2(a) above, may not commence trading such option prior to the tenth (10th) business day following the Arbitrator's determination.

8. In performing its duties and functions as Arbitrator, OCC shall determine whether a Selected Option is eligible and there shall be no appeal from the Arbitrator's determination. A Selected Option will be eligible only if it meets the applicable exchange listing standards as of the date the Selecting Exchange notifies OCC of its intent to certify such option. It shall be no defense to any challenge that any provisions of exchanges rules permits a waiver of listing requirements due to exceptional circumstances. OCC may employ whatever law firms, accounting firms or other grants and may perform such review as it, in its sole discretion, deems necessary to resolve any challenge within the time limits prescribed by this Agreement. The Arbitrator in its sole discretion shall have the right to request additional information as to eligibility or ineligibility from the selecting or challenging exchange(s) and to the extent the Arbitrator deems necessary to independently verify the information received.

It is expressly understood and agreed that, since OCC is to be the issuer of any Selected Option, it may independently of any challenge take any action permitted it under the Participant Exchange Agreement between it and exchanges. Further, the Arbitrator may in its sole discretion, assess against any losing party or parties to any challenge the total cost of any outside services and/or OCC staff time allocated to resolving a challenge. In this regard, the exchanges jointly and severally agree to indemnify OCC and to hold it harmless from and against any and all loss, damage, or expense, resulting from its activities as Arbitrator hereunder in the performance of its duties as such.

9. All notices required under the terms of this Agreement shall be deemed to

have been duly given if communicated by telefacsimile.

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 statement concerning the purpose of and basis for the proposed rule change and discussed any comment 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 this proposal is to comply with the Commission request that the options exchanges implement procedures which will supplant the Options Allocation Plan (the "old Plan") and ensure the adherence to a uniform set of guidelines for selecting new equity options. Accordingly, the exchanges have worked together to develop the Plan.

Rule 19c-5 under the Act, which became effective on January 22, 1990, effectively eliminated the old Plan and provided for the expansion of multiple trading to include qualified exchange-listed securities along with qualified OTC securities (which have been permitted to be multiply-traded since 1985). While the old Plan was never amended to include OTC stocks under its provisions, since 1980 it has served as the principle agreement under which the five options exchanges selected, certified, challenged and arbitrated disputes concerning new equity options on exchange-listed stocks.

Like its predecessor, the Plan provides for uniform selection, certification and challenge procedures that are similar to those that were previously in effect. The exchanges will continue to pre-announce their intended selection and certify such selections to the OCC. Further, the Plan contains provisions for exchanges to challenge and defend the eligibility of selected underlying stocks and provides for the OCC to act as arbiter to resolve any disputes.

In an attempt to permit an exchange to benefit from its research efforts, the Plan stipulates certain rigid time frames within which other exchanges must act if they seek to similarly select ("piggy-back") the same new option. Also, to

satisfy member firm concerns that they receive adequate advance notice in case an option will be multiply traded, the Agreement provides certain waiting periods before the start-up of such trading.

The Amex believes the proposed rule change is consistent with section 6(b)(5) of the Act, which provides in pertinent part, that the rules of the Exchange are to be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received, although the proposed filing has been discussed with member firm representatives who appear to favor strongly the elements of the plan.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-Amex-90-5 and should be submitted by June 27, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 25, 1990.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-13091 Filed 6-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27975-A; File No. SR-NASD-88-19]

Self-Regulatory Organizations; Proposed Rule Change of the National Association of Securities Dealers, Inc.

In the matter of: Self-Regulatory Organizations; Corrected Order Approving Proposed Rule Change and Order Granting Accelerated Approval of Amendment to Proposed Rule Change of the National Association of Securities Dealers, Inc. Relating to the OTC Bulletin Board Display Service

I. Introduction

On June 9, 1988, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NASD-88-19) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ to establish a one-year pilot program testing a new service, the OTC Bulletin Board Display Service ("Bulletin Board Service" or "Service"), for securities traded over-the-counter that are neither included in the NASDAQ System nor listed on a national securities exchange (collectively referred to as "non-NASDAQ securities").² The

Commission received 9 comment letters in response to its notice.³ The order dated May 1, 1990⁴ approving the Service erroneously stated the date for termination of the pilot period as May 1, 1991. The correct date for termination of the pilot period is May 31, 1991.

II. Description of the Service

The NASD requests that the Commission approve a one-year pilot program of the Bulletin Board Service. The Service is designed to capture and display quotation information (including unpriced indications of interest) entered by NASD member firms that function as market makers in non-NASDAQ securities. The Service will operate on a real-time basis (during market hours) allowing eligible member firms to view, enter, and update information on a real-time basis on certain non-NASDAQ securities. Market makers' participation in the Service will be voluntary, and those market makers who elect to participate will incur no minimum obligation as to time or the number of non-NASDAQ securities that they may select for inclusion in the Service.

Members will enter and update information displayed through the Service through NASDAQ terminal devices or Workstation units authorized for Level 3 NASDAQ service. NASD member firms will be able to retrieve Bulletin Board information, on a real-time basis, by means of NASDAQ terminal devices or Workstation units authorized either for Level 2 or Level 3 NASDAQ service. The NASD believes that providing access to Level 2 subscribers will facilitate the handling of retail orders in non-NASDAQ securities by member firms that do not function as market makers.

¹ See letters to Jonathan G. Katz, Secretary, SEC, from: James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc. ("NYSE"), dated October 13, 1988, ("NYSE letter"); Carrie E. Dwyer, Senior Vice President and General Counsel, American Stock Exchange, Inc. ("Amex"), dated October 14, 1988, ("Amex letter"); Darby J. Whalen, Vice President, Dain Bosworth, Inc., dated October 26, 1988; Jerry Williams, Chairman, Williams Securities Group, Inc., dated September 9, 1988; Mark R. Edwards, dated September 8, 1988; Jim Angel, dated September 2, 1988; and Andrew Thomas, dated September 1, 1988. The NASD received one comment letter on the proposal. See letter from John L. Watson, III, President, Securities Traders Association, to Joseph R. Hardiman, President, NASD, dated November 14, 1988. The National Quotation Bureau submitted a letter after Amendment No. 2 was published. See letter from Harvey L. Pitt, Fried, Frank, Harris, Shriver & Jacobson, counsel for NQB, dated February 16, 1989. Amex submitted two letters after Amendment No. 3 was published. See letter from Gordon L. Nash, Senior Executive Vice President, Amex, dated August 30, 1989; and letter from James R. Jones, Chairman of the Board, Amex, dated April 24, 1990.

⁴ Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

The NASD is to provide the Service for a pilot period of one year, with actual operations commencing 30 days after the date of the Commission's approval order. NASD members utilizing NASDAQ-authorized equipment will not incur a separate service charge for access to market makers' input captured in the Service data base.⁵ NASD members that register as market makers in Bulletin Board securities ("Market Maker Participants" or "Participants") will incur a charge for displaying their trading interest through the Service. Specifically, a Market Maker Participant will pay \$85 per month for the first 10 securities listings (or any part thereof), and \$37 per month for each additional lot of five listings (or any part thereof) or \$74 per month for each additional lot of ten listings (or any part thereof).⁶

The non-NASDAQ securities chosen for inclusion by participating market makers will be separately accessed and identified by utilization of the prefix "3" with the issue's four or five letter symbol code.⁷ Market Maker Participants will be provided a scan function enabling them to view all securities in which they have registered. Initially, access to the Service will be limited to registered broker-dealers who are NASD members and subscribe to either Level 2 or Level 3 NASDAQ service. Participants will be permitted to enter two-sided or one-sided quotes for one unit of trading (*i.e.*, 100 shares) at a specified price, to designate whether a priced bid or priced offer is firm, to solicit a bid or offer without stipulating a price, to advertise a general interest in trading a particular security without specifying a price, and to insert an indicator (UNS) next to a priced entry to identify it as an unsolicited customer indication of interest.⁸

⁵ Since this information will be available through standard NASDAQ terminals, the charges applicable to NASDAQ Level 2/3 service and equipment will continue to apply.

⁶ In this context, "listing" refers to a line of quotations, priced or unpriced, firm or non-firm, one-sided or two-sided, or indications of interest entered by a Participant in a Bulletin Board Security.

⁷ The numeric prefix will differentiate a quotation display for a non-NASDAQ security from a quote display for a NASDAQ security. The universe of securities eligible for quotation through the Service will not include any security authorized for inclusion in the NASDAQ System or listed on a national securities exchange.

⁸ The NASD stated that although designating quotations as "firm" is optional, once a Participant designates a quote as firm, it must honor the entry for at least 100 shares. The NASD stated that failure to do so will constitute a violation of article III, section 1 of the NASD Rules of Fair Practice, which requires that members conduct their business in accordance with just and equitable principles of trade. See Release 34-25949 at 2.

¹ 15 USC 78s(b)(1) (1992).

² See Securities Exchange Act Release No. 25949 (July 28, 1988), 53 FR 29096 ("Release 34-25949"). The NASD submitted three amendments. The first was a technical amendment submitted on August 10, 1988. Amendment No. 2 was submitted on February 2, 1989, (Securities Exchange Act Rel. No. 26545, February 14, 1989, 54 FR 7901), and Amendment No. 3 was submitted on July 20, 1989, (Securities Exchange Act Release No. 27062, July 26, 1989, 54 FR 31905). Amendment No. 4 expanded the update restriction to encompass all foreign securities/ADRs. Accordingly, the Bulletin Board will only provide a static display of market maker's quotations or indications of interest in these securities twice daily. See Amendment No. 4 submitted January 30, 1990.

The display of information contemplated by the Bulletin Board

Service can be demonstrated by the following example:

P, 3 ABCD, ABC Development Corp.

BADR.....	10	F	11	F	800-250-1620
DBCC.....	10	F	11	F	212-646-1000
WALC.....	10½	F	11		202-898-1000
MATS.....	9.5	F	11.25		800-909-2100
BAGN.....	10		13		800-243-6120
BOTE.....	10½		11½		303-525-4230
RJAA.....	b.w				800-126-1423
DANI.....					641-202-2087

This hypothetical display reflects the trading interests of eight market makers who have elected to participate in the Bulletin Board Service by entering information on the stock of ABC Development Corp., a non-NASDAQ issue. The sequencing of market maker information shown on the screen display is determined by an algorithm incorporated into the system design.⁹ For example, market makers BADR and DBCC appear at the top because they have entered two-sided, firm quotes. Market makers WALC and MATS appear next because both have firm bids, but non-firm offers. Because WALC's firm bid is superior in price, WALC is listed ahead of MATS.¹⁰ BOTE and BAGN follow all market makers displaying a firm bid price because their priced bids are not designated as "firm." BAGN, however, ranks ahead of BOTE on the basis of time priority. Finally, RJAA and DANI are listed below all other market makers because neither firm has made a priced entry. Multiple firms with unpriced entries in a particular security will be listed by time priority. In this example, RJAA appears ahead of DANI solely because of the former's indication of "bid wanted" ("B.W."). Finally, it should be noted that all firms registering as market makers in non-NASDAQ securities must enter their respective telephone numbers. These will be displayed regardless of whether a firm inserts a priced entry.

The NASD stated that it would be able to ensure within its own systems

that displays of Bulletin Board information can be differentiated from market data displays on NASDAQ issues by affixing a special identifier to covered securities and assigning a special key (P) to retrieve information on non-NASDAQ securities included in the Service. The NASD will require vendors to implement comparable procedures as a condition of their receiving Bulletin Board information from the NASD.

Foreign securities/American Depositary Receipts ("ADRs"), including those of issuers that are exempt from the Act's reporting requirements pursuant to rule 12g3-2(b) under the Act,¹¹ will be displayed in static form and market makers will only be permitted to update quotations for them twice daily. More specifically, market makers will be permitted to update their individual quotes/indications in foreign securities daily between 9 and 9:30 a.m. and 12 and 12:30 p.m. (ET).¹² Thus, each market maker in a foreign security will be allowed a maximum of two updates per day in each of those securities. The NASD will enforce compliance with this operational requirement through an automated surveillance report. The new report will identify every instance in which a market maker updates his quote in a foreign security outside the prescribed time periods or enters multiple updates within those periods in a particular foreign security. Such occurrences will be viewed as apparent violations of the Service's operational requirements and be forwarded to the NASD's Market Surveillance Committee for review and possible disciplinary action. The Market Surveillance Committee may place limitations on or suspend the market maker's quote update capability in the Bulletin Board Service, and/or a disciplinary sanction

pursuant to article III, section 1 of the NASD Rules of Fair Practice.¹³

To facilitate administration of the update restriction, the NASD will add an "F" or "Y" to the respective trading symbols of foreign securities and ADRs that are eligible for quotation in the Service.¹⁴ The NASD stated that it has reviewed historical information furnished by the Commerce Clearing House/National Quotation Bureau ("CCH/NQB")¹⁵ on securities quoted in the Pink Sheetstm ("Pink Sheets") to locate issues/ADRs that had not been identified previously, and that it will monitor rule 15c2-11 filings processed by CCH/NQB in connection with market maker registrations to quote foreign securities/ADRs. Finally, the NASD represented that, shortly after the Service commences operation, a letter will be sent to market makers that have registered to quote foreign securities/ADRs. The letter will request that they re-check their market-making positions against the automated directory and notify the NASD of any foreign issues/ADRs that have not been identified with an "F" or "Y," respectively, so the NASD may promptly amend the directory. The NASD believes that these efforts should ensure that the identified securities are appropriately distinguished with an "F" or "Y" appended to their Bulletin Board trading symbols.

During the pilot period, the NASD will provide CCH/NQB, twice daily, with a static transmission of data captured in

⁹ The algorithm for ranking the display of market makers' entries will work in the following manner: (1) All two-sided firm quotes will be displayed first and ranked in price/time sequence; (2) all one-sided firm quotes will be displayed second and ranked in price/time sequence; (3) all quotations ranked by price will be sequenced according to the bid price; (4) all non-firm quotations will be displayed after the firm quotes (two-sided and one-sided) and will be sequenced solely on the basis of time; and (5) unpriced entries will appear last, with entries of "bid wanted"/"offer wanted" being displayed ahead of other unpriced entries; multiple unpriced entries will be sequenced on the basis of time.

¹⁰ The priced entries of WALC and MATS illustrate the Service's capacity to accept quotations in fractions or in decimal form.

¹¹ 17 CFR 240.12g3-2(b) (1989).

¹² An update may consist of a market maker inserting a new priced quotation or substituting an unpriced indication for a priced entry. Market makers in foreign exempt securities (and in all other Bulletin Board Securities) will have the option of designating their priced entries as firm or non-firm quotations.

¹³ Article III, section 1 requires NASD members to observe high standards of commercial honor and just and equitable principles of trade. During the Service's pilot period, the standard contract governing market maker participation will reference the limitations applicable to quotation of foreign exempt securities.

¹⁴ The NASD stated that it has already identified many of these securities in connection with its processing of price and volume information reported by member firms under Schedule H to the NASD By-laws and by reviewing the Commission's published listings of securities eligible for the rule 12g3-2(b) exemption.

¹⁵ CCH/NQB is a securities information vendor that, among other things, publishes daily listings of market-maker quotations in securities eligible for inclusion in the Service.

the Service's data base.¹⁶ The first transmission will occur at approximately 12:00 noon Eastern time to be used for publication of the next day's Pink Sheets.¹⁷ The second transmission, consisting of end-of-day information, will occur after the Service closes and be provided to subscribers of CCH/NQB's electronic delivery service the following morning.¹⁸ as to both the Pink Sheets and CCH/NQB electronic delivery system, the priced entries of Market Maker Participants will appear in the form of a stringline.¹⁹

During the twelve-month pilot, CCH/NQB will monitor, as the NASD's agent, Participants' compliance with Rule 15c2-11²⁰ under the Act and coordinate those functions with the NASD.²¹ If the required information has not been filed on a security eligible for the Service, CCH/NQB will promptly notify the NASD. Upon such notification, the NASD will request that the market maker produce that information or justify the basis for claiming an exemption.²² To compensate CCH/NQB

for this and other services, the NASD will pay CCH/NQB an amount derived from the Participant fees proposed in this filing.²³ The proposed fees are identical to those currently assessed by CCH/NQB for market maker listings in the Pink Sheets. At the conclusion of the Service's pilot period, the NASD will rebate to participants any Service revenue remaining after satisfaction of the NASD's obligations to CCH/NQB and recovery of costs incurred in developing and operating the pilot Service.

III. Comments

The Commission received 9 comment letters in response to its notice of the proposed rule change. With three exceptions, the commentators generally favored the implementation of the Service. The five commentators who favored the Service stated that they believe the proposal will benefit investors, market participants and firms by making trading in non-NASDAQ securities more effective and less costly.²⁴

The Securities Traders Association ("STA") stated that the Service represents a further step in the development of a national market system because it provides a uniform means of inter-dealer communication in the non-NASDAQ market.²⁵ The STA, however, expressed concern regarding the maintenance of historical records which reflect past market prices for Pink Sheets stocks. It therefore urged the NASD to assure that there be some form of preservation in "hard copy" of this information. The NASD subsequently addressed these concerns in its filing of Amendment No. 2.²⁶

The New York Stock Exchange ("NYSE") questioned whether foreign securities exempt from the registration requirements of the Act pursuant to the "information-supplying exemption" of

rule 12g3-2 may be included in the Service.²⁷ Currently, the rule provides an exemption from registration pursuant to section 12(g) of the Act only for foreign securities not quoted in an "automated" inter-dealer quotation system.²⁸

The NYSE argued that the Service is an "automated interdealer quotation system" within the meaning of paragraph (d) of the Rule. Therefore, foreign securities quoted in the system should not be exempt from registration under section 12(g) pursuant to rule 12g3-2(b). The NYSE maintains that, should the Commission not specify that foreign exempt securities be excluded from the Service absent registration, a "loophole" would be created in the regulatory schemes developed in 1983 to ensure that investors have access to adequate information on securities quoted in automated systems.²⁹

The American Stock Exchange ("Amex") also voiced concern regarding the application of rule 12g3-2.³⁰ Like the NYSE, the Amex believes that to permit unregistered foreign issuers eligible to be quoted in the Service to qualify for the information-supplying exemption would undermine the policy adopted in the 1983 amendment.

In addition, the Amex raised concerns over the potential inclusion of domestic securities in the Service. Amex believes that the lack of regulatory requirements applicable to the Service, and the quality and quantity of issuer information available, raise significant concerns about the protection of investors. It further stated that the Service could be used to evade what may be perceived by some issuers to be burdensome exchange or NASDAQ listing requirements and the on-going

¹⁶ The elements of information which will be transmitted to CCH/NQB from the Service's data base include, but need not be limited to: (1) Market maker identifications (including trading room telephone numbers, if authorized by the individual participants); (2) security identifications and symbols used by the NASD; (3) all priced entries as well as indications of interest inserted by participating market makers; and (4) any condition codes applicable to individual securities. The NASD will not assess CCH/NQB a charge for the static transmissions of data from the Service's data base. CCH/NQB, however, will bear all costs associated with the telecommunication line and any support equipment needed to receive or process the NASD's transmissions.

¹⁷ Presently, CCH/NQB is the only vendor of static, OTC quotation information that has expressed interest in receiving such a transmission. CCH/NQB currently has agreements with other vendors to electronically disseminate static information contained in the printed Pink SheetsTM.

¹⁸ Electronic delivery service refers to CCH/NQB's arrangement with Quotron for the electronic dissemination of static quotation information.

¹⁹ The stringline will identify each Participant by a four character alpha symbol followed by the firm's bid and/or offered prices, and an indicator to designate whether the bid and/or offer price is firm. In instances where a Participant enters only a bid or an offer price, an alpha prefix designating the price as a bid or, offer will appear.

²⁰ 17 CFR 240.15c2-11. For a description of rule 15c2-11, see text at note 36, *infra*.

²¹ For example, CCH/NQB will verify that a market maker who seeks to place a new listing in the Service or Pink Sheets has furnished the information required by rule 15c2-11(a)(5) with CCH/NQB.

²² CCH/NQB will transmit a copy of the required information supplied by a Market Maker Participant to the Commission and the NASD at least two days prior to publication of a new listing in the Service. CCH/NQB will be capable of making rule 15c2-11 information available to other broker-dealers upon request.

²³ The NASD will reimburse CCH/NQB for the cost of monitoring market makers' compliance with rule 15c2-11 for quotations initiated in the Pink Sheets; the preparation, maintenance and distribution of CCH/NQB's historical database of price and issuer information to market professionals and the public; the provision of customary library and research services; and an agreement not to create a system in competition with the Service for up to three years.

²⁴ See, e.g., letter from Darby J. Whalen, Vice President, Dain Bosworth, Inc., dated October 26, 1988.

²⁵ Letter from John L. Watson, III, President, STA, to Joseph Hardiman, President, NASD, dated November 14, 1988.

²⁶ Amendment No. 2 describes the agreement between the NASD and CCH/NQB that provides that CCH/NQB will continue to collect, process and maintain its historical records, library/research services and other market data publications covering OTC securities.

²⁷ Letter from James E. Buck, Senior Vice President and Secretary, NYSE, dated October 13, 1988.

²⁸ As a general matter, paragraph (b) of rule 12g3-2, which allows foreign private issuers to use an "information-supplying exemption" from the registrations requirements of sections 12(g) of the Act, applies if the issuer provides the Commission with whatever information the issuer must provide in its home country.

²⁹ In 1983, the Commission amended rule 12g3-2 making exemption unavailable for securities quoted in an "automated inter-dealer quotation system." Securities Exchange Act Release No. 20264 (October 6, 1983), 48 FR 46736 ("Amendment Order").

³⁰ See letter from Carrie E. Dwyer, Senior Vice President and General Counsel, Amex, dated October 14, 1988. The Amex further argued that inclusion of such securities would also be inconsistent with proposed Regulation S (Securities Act Rel. No. 6839, July 11, 1989, 54 FR 30063) and rule 144A (Securities Act Rel. No. 6839, July 11, 1989, 54 FR 30076). This argument ignores the difference between secondary market reporting requirements and Securities Act registration requirements.

regulatory framework that accompanies listing.

In its comment letter on Amendment No. 3, Amex reiterated its concern that the inclusion of unregistered foreign securities in the Service would discourage foreign issuers from registering with the Commission, listing on an exchange and complying with the various resultant requirements, since they would no longer have to do so to gain access to the U.S. markets.³¹ The Amex stated that these concerns were underscored by the apparent proliferation of activity in sponsored and unsponsored ADRs, and urged the Commission to conduct a study of the ADR market before rendering its determination on this aspect of the proposal.

Although Amendment No. 3 limited the manner in which market makers would be permitted to quote foreign securities/ADRs, Amex does not believe the NASD explained how the limitation would negate the benefits the Service would provide in terms of heightened visibility, access and exposure, which led to the elimination of the information-supplying exemption for NASDAQ securities. Amex argued that the fact that market makers will not be able to update their quotes on a real-time basis does not negate the significant advantages inclusion in the Service will provide as compared to ordinary listing in the Pink Sheets.

IV. Discussion

The Commission has determined that it is appropriate to approve the implementation and operation of a one-year pilot program of the Bulletin Board Service. Implementation of the Service is consistent with sections 15A(b)(6) and (11),³² and 11A(a)(1)³³ of the Act.

Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. In addition, section 11A(a)(1) articulates the Congressional findings and policy goals and objectives respecting the development of a national market system.³⁴ Essentially, the

Congress found that new data processing and communication techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, enhance opportunities to achieve best execution and promote competition among market participants.

Implementation of the Bulletin Board Service will allow the market makers in non-NASDAQ securities to enter and update quotation information on a real-time basis.³⁵ This capability should enhance the efficiency of pricing and foster competition within the interdealer market for a particular security. Similarly, order entry firms will have real-time access to the trading interest being displayed by market makers in each covered security. Such access will assist them in negotiating the execution of customer orders at the best available price. Because the Bulletin Board display includes the telephone numbers of participating market makers, this feature should expedite the retail firms' processing of market orders. Assuming that a sufficient number of market makers participate, the NASD envisions expanded access to Bulletin Board information through commercial services offered by vendors. That development will comport with the Congressional goal of broadening the distribution of market information to investors.³⁶

³⁵ While the Commission hopes that use of the Bulletin Board will result in more accurate quotations for the securities quoted in the Service, the Commission believes that it is necessary to acknowledge the limited usefulness of those quotations. For example, in the context of mark-up calculations the Commission has repeatedly cautioned that quotations in many cases may not be acceptable evidence of "prevailing market price." *In re Alstead, Dempsey & Strangis, Inc.*, 47 SEC 1034 (1984). This is particularly true, for quotations for inactively traded, non-firm dominant securities, which frequently are subject to negotiation and thus may have little value for markup determinations. *Id.* In fact, the Commission has made clear that quotations may be used to establish the prevailing market price only in the limited circumstances where: (1) There are no contemporaneous inter-dealer transactions (which are generally better evidence of the prevailing market price) and (2) the validity of the quotations to be used to determine markups can be shown by comparing them with actual inter-dealer transactions in that security. The Commission believes that these long-established principles will continue to be relevant for securities quoted in the Bulletin Board.

³⁶ The Commission emphasizes that any continued exclusion beyond the pilot period of private vendors and the investing public from access to the quotation information maintained in the Bulletin Board System would appear to be inconsistent with the Act.

Section 15A(b)(11) of the Act authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter. Such rules should produce fair and informative quotations, prevent misleading quotations, and promote orderly procedures for collecting and disseminating quotations. Essentially, the Service's design and display features achieve the regulatory purposes contemplated by section 15A(b)(11) of the Act. For example, the preferential ranking of market makers entering two-sided, firm quotes reflects the NASD's effort to display quotation information for non-NASDAQ securities in a fair and informative manner. Similarly, the NASD's commitment to take enforcement action against any market maker who fails to honor quotes designated as "firm" should deter the entry of misleading or fictitious quotations by participating member firms.

Because the pilot program includes the imposition of a fee upon Market Maker Participants, it is necessary to examine the fee in relation to the requirements of section 15A(b)(5) of the Act. That provision requires the equitable allocation of reasonable charges among members for the use of any facility or system that the NASD operates. The proposed fee structure tracks that of CCH/NQB for market maker listings in the Pink Sheets publication, which the Commission regards as a reasonable standard for establishing an interim fee applicable to the Service's pilot phase. Such a standard is appropriate because of the NASD's present inability to project the user population over which the Service's cost would be spread, the extent to which OTC market makers will elect to become Participants, or the additional subscriber population that may be interested in receiving Bulletin Board information after the pilot has terminated. Essentially, Market Maker Participants will be charged the same price they currently pay to display priced entries in OTC securities through a widely-recognized quotation medium. Thus, OTC market makers choosing the Service in lieu of the Pink Sheets will not incur additional costs unless they increase their respective market making commitments in eligible securities. Because participation in the Service is voluntary, individual market makers will assess whether the Service or one of the printed quotation mediums (including the Pink Sheets) is best suited to their needs.

To facilitate commencement of the Service, the NASD has requested that

³¹ See letter from Gordon L. Nash, Senior Executive Vice President, Amex, to Jonathan G. Katz, Secretary, SEC, dated August 30, 1989.

³² 15 U.S.C. 78o-3 (1982).

³³ 15 USC 78k-1 (1982).

³⁴ Although Section 11A does not provide the Commission with authority to approve a self-regulatory organization's proposal, it is relevant in that it sets forth the Act's general policy goals for securities markets.

the Commission grant certain exemptions from rule 15c2-11 under the Act.³⁷ Rule 15c2-11 is intended to prevent broker-dealers from furnishing initial quotations for over-the-counter securities in the absence of information about the issuer. Under the rule, a broker-dealer must have in its records certain information about the issuer prior to publication or submission of quotations in a quotation medium.

The NASD has requested an exemption from Rule 15c2-11 under the Act to permit a Market Maker Participant to initiate quotations in the Service³⁸ without furnishing to the NASD the information required by the rule for certain issuers.³⁹ Specifically, a Participant would be exempt from furnishing the information if it previously has submitted such information for that issuer to CCH/NQB and has been publishing quotations for the security without an interruption of more than four consecutive business days, or if it submits the information to CCH/NQB in connection with a provision of the working agreement between the NASD and CCH/NQB regarding review of rule 15c2-11 information furnished by Participants. The NASD also has requested an exemption under rule 15c2-11 to permit inter-system "piggybacking"⁴⁰ during the first 60 calendar days of the Service's operation. The NASD has sought the exemption to permit a Market Maker Participant during the start-up phase of the Service to look to another interdealer quotation system, *i.e.*, the Pink Sheets, to determine whether the security satisfies the piggyback

exception in that system and, if so, to permit the initiation of quotations in the Service without having the rule's specified information.⁴¹

The Commission believes that the requested exemptions from Rule 15c2-11 are appropriate to avoid duplicative submissions and to facilitate start-up of the Service, and today has issued a separate letter granting the exemptions pursuant to paragraph (h) of rule 15c2-11.⁴² The Commission notes, however, that in all other respects a Market Maker participant must comply with rule 15c2-11 when submitting or publishing quotations in the Service. Accordingly, for a security that does not qualify for the limited rule 15c2-11 exemption for inter-system piggybacking granted today, a Market Maker participant must have in its records the information required by rule 15c2-11 to initiate quotations in the Service.⁴³ Additionally, if a Participant has not previously furnished information to CCH/NQB respecting a particular issuer and cannot qualify for the inter-system piggybacking exemption granted today, it must furnish the information to the NASD pursuant to rule 15c2-11(d). The NASD will provide a form for a Market Maker Participant's submission of paragraph (a)(5) information and will develop procedures for supplying the data to the Commission.

Moreover, the NASD's working agreement with CCH/NQB regarding review of Market Maker Participants' compliance with Rule 15c2-11 does not affect the NASD's responsibility as a self-regulatory organization to secure compliance with Rule 15c2-11 (including the information gathering requirements) by Market Maker participants.⁴⁴ In this regard, the NASD recently submitted a proposed rule change amending Schedule H of the NASD's By-Laws.⁴⁵ The amendment would require that, before initiating or resuming quotations for securities covered by rule 15c2-11, a member file with the NASD one copy of the information needed to comply with the rule at least three business days prior to publication of the quotation. The

amendment, which must be filed with and approved by the Commission before the NASD can implement it, would apply to securities quoted in the Pink Sheets, the Service, or any other interdealer quotation system subject to the rule.

As part of its proposal, the NASD also proposed to allow the inclusion of foreign securities to be displayed in static form and be updated only twice daily, including those that are exempt from registration under section 12 of the Act pursuant to the information-supplying exemption under rule 12g3-2(b) ("exempt foreign securities").⁴⁶ Generally, the exemption is available to certain issuers if the issuer provides the Commission with whatever information the issuer must provide in its home country. The exemption is not available, however, to issuers whose securities are quoted in an "automated interdealer quotation system."⁴⁷ The NASDA has requested that the Commission find that its proposed Bulletin Board Service is not "an automated inter-dealer quotation system" as that term is used in rule 12g3-2. As discussed above, however, the Amex and the NYSE argued against such a finding by the Commission.⁴⁸

The Amex and NYSE argued that the language of rule 12g3-2 should preclude application of the exemption for foreign securities included in the Service.⁴⁹ Both also note that when the Commission amended the Rule in 1983 it was recognizing that the introduction of NASDAQ to the OTC market resulted in a market for NASDAQ securities that was in significant respects the same as

³⁷ 17 CFR 240.12g3-2(b).

⁴¹ 17 CFR 240.12g3-2(d)(3). In 1983 the Commission amended rule 12g3-2 to delete the information-supplying exemption in rule 12g3-2(b) "for securities quoted in an automated inter-dealer quotation system, *i.e.*, NASDAQ." Securities Act Release No. 6493 (October 6, 1983), 48 FR 46736.

⁴² Although Amendment No. 3 addressed these concerns by limiting the display of foreign securities and ADRs to static form, the Amex submitted a second letter stating that it still objected to their inclusion in the system. (See discussion *infra*.) The NYSE, however, did not submit a comment letter on Amendment No. 3.

⁴³ The NYSE surveyed other Commission rules and noted that in some, the terms "automated inter-dealer quotation system" or "inter-dealer quotation system" are used and, in others, the term "NASDAQ" is used. The NYSE thus concluded that when the Commission intended particular provisions to apply only to NASDAQ it expressly so stated. The Commission disagrees with this narrow reading. Although in some instances the Commission may specifically have focused on NASDAQ, it is inappropriate to automatically conclude that whenever an arguably broader term like "automated inter-dealer quotation system" is used the Commission had already decided its applicability to systems not yet in existence.

³⁸ The NASD's request for exemptive relief under rule 15c2-11 is set forth in Release 34-25949, as supplemented by letter to Kathryn V. Natale, Assistant Director, Division of Market Regulation, SEC, from Michael J. Kulczak, Special Counsel, Office of General Counsel, NASD, dated March 14, 1989.

³⁹ The Service is an interdealer quotation system (which is a type of quotation medium), as defined in paragraph (e)(2) of rule 15c2-11, 17 CFR 240.15c2-11(e)(2).

⁴⁰ Rule 15c2-11(d), 17 CFR 240.15c2-11(d), requires a broker-dealer submitting a quotation to an interdealer quotation system for a security covered by paragraph (a)(5) of the rule to furnish the information required by that paragraph to the interdealer quotation system, in the form prescribed by the system, at least two days before the quotation is published.

⁴¹ Under rule 15c2-11(f)(3), the "piggyback" exception, the rule's information gathering requirements are inapplicable when a security has been the subject of quotations in an interdealer quotation system for at least 12 business days during the previous 30 calendar days, with no more than four consecutive business days elapsing without a quotation. In addition, the Commission notes that the parameters of the relief granted to the NASD may be altered if the amendments to 15c2-11, as proposed in Securities Exchange Act Release No. 27247 (September 14, 1989), are adopted.

⁴² After the initial 60 days of operations, the Service will have the capability to monitor entries daily for compliance with the rule's piggyback provision. If a security is not quoted for four consecutive business days, it will be dropped from the Service and require a Rule 15c2-11 submission prior to initiation or resumption of quotations.

⁴³ 17 CFR 240.15c2-11(h).

⁴⁴ For a more detailed description of a market maker's obligations under rule 15c2-11, see Securities Exchange Act Release No. 27247 (September 14, 1989), 54 FR 39194.

⁴⁵ See sections 15A(b)(6) and (11) of the Act, 15 USC 78o-3(b)(6) and (11).

⁴⁶ See Securities Exchange Act Release No. 27694 (February 8, 1990) 55 FR 5532.

that for listed stocks.⁵⁰ Amex argues that the Bulletin Board Service is an equivalent change in the Pink Sheet market that the introduction of NASDAQ was to the OTC market. Moreover, the NYSE argues that access to the Service and the avoidance of the registration requirements under the Act provide significant incentives to issuers to have their securities quoted in the Service and as such create a loophole in rule 12g3-2 that the 1983 amendment to the rule was intended to prevent. The NYSE believes that this provides the NASD a significant competitive advantage.

The Commission disagrees with the Amex and NYSE and has preliminarily concluded that the NASD may allow Participants to include exempt foreign securities in the Service in the limited way described above.⁵¹ The Commission, however, will review this decision at the end of the one-year pilot period to determine whether its assumptions about how these securities trade will continue to hold true.

The Commission is basing its decision on a number of factors. First, the Commission disagrees with the NYSE and the Amex that the information contained in the NASD's proposed Bulletin Board Service for exempt foreign securities is essentially the same as that in NASDAQ and thus should not be available for issues exempt from registration under rule 12g3-2(b).⁵² Unlike NASDAQ, which allows real-time, unlimited quotation updates, Bulletin Board Participants can only update quotations on foreign securities twice daily, once between 9 and 9:30 a.m. and once between 12:30 p.m. (ET).⁵³ Thus, the quotations entered will

generally be stale non-firm indications of interest, entirely different in nature from the real time dissemination of quotations through NASDAQ.

Accordingly, the Commission believes that its interpretation of rule 12g3-2(d)(3) will not create a significant loophole in section 12 that will result in a significant competitive advantage for the NASD at the expense of the exchanges. As has been discussed above, there will be significant differences between being traded in the Bulletin Board Service and being traded in NASDAQ or on exchanges, including the fact that there will be no continuous market, mandatory firm quotations or market maker obligations for securities quoted in the Bulletin Board Service. The Commission believes that those differences should provide incentives for issuers that wish to voluntarily enter the U.S. markets to list their securities on one or more national securities exchanges or NASDAQ. Accordingly, for these reasons the Commission does not believe the system as presently designed for foreign securities, is an automated quotation system for purposes of Rules 12g3-2(b). Again, the Commission emphasizes that these conclusions are preliminary and the Commission will review them at the end of the one-year pilot period.

Finally, the Commission finds good cause for approving the proposed rule change (Amendment No. 4) prior to the thirtieth day after the date of publication of the notice of filing. The instant filing does not raise any new substantive issues nor does it modify the basic operational features of the Service. Further, because the Commission approval of the Service will only permit a pilot operation for one year, interested parties will have an additional opportunity for comment when the NASD seeks authorization for permanent approval.

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 communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the

Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 27, 1990.

V. Conclusion

In view of the above, the Commission concludes that the proposed rule change is consistent with the requirements of the Act, in particular, sections 15A and 11A, and that it is appropriate to grant the NASD approval of the one-year pilot program of the Bulletin Board Service.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved for a one-year pilot program, ending May 31, 1991.

Dated: May 30, 1990.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-13090 Filed 6-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26072; File No. SR-NYSE-90-15]

Self-Regulatory Organizations; New York Stock Exchange; Order Approving Proposed Rule Change Relating to the Adoption of Listing Standards and a Membership Circular for Contingent Value Rights

On April 9, 1990, the New York Stock Exchange ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt paragraphs 703.18 and 904.06 of the NYSE Listed Company Manual ("Manual") to provide listing standards and a Circular to the Membership ("Circular") applicable to Contingent Value Rights ("CVRs").

The proposed rule change was published for comment in Securities Exchange Act Release No. 27905 (April 13, 1990), 55 FR 15077 (April 20, 1990). No comments were received on the proposal.

The NYSE proposes to adopt new paragraph 703.18 to the Manual to provide standards for the listing of CVRs on the Exchange. CVRs are defined as unsecured obligations of an

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1989).

⁵⁰ The Amex believes that the fact that NASDAQ brought increased visibility, access and exposure to the OTC market was the basis for the elimination of the exemption.

⁵¹ For purposes of all other rules, regulations, forms and schedules under the Securities Act and the Securities Exchange Act, the Bulletin Board Service will not be considered an "automated interdealer quotation system" or an "electronic interdealer quotation system."

⁵² The NYSE argues that these two systems are the same because, in both, market makers can enter firm quotes and can suffer the same discipline if they fail to honor those quotes.

⁵³ The Commission disagrees with the Amex that this limitation on update capability does not represent "a significant difference in the treatment of these securities." Letter from Gordon L. Nash, Senior Executive Vice President, Amex, to Jonathan G. Katz, Secretary, SEC, dated August 30, 1989. On the contrary, the Commission believes that this is a significant limitation on market makers. Limiting market makers' ability to update their quotations for a security virtually guarantees that those market makers will always enter only non-firm quotations or indications of interest.

issuer that provide for a possible cash payment upon maturity depending upon the price performance of an affiliate's equity security. If the average market price of the related equity security is less than a pre-set target price when the CVR matures, then the CVR holder would be entitled to a cash payment at maturity. The target price typically would be established at the time the CVR is issued. Conversely, if the average market price of the related equity security equals or exceeds the target price upon maturity, the CVR would expire worthless, and the CVR holder would not be entitled to any cash payment.

The Exchange proposes stringent asset and equity criteria for issuers seeking to list CVRs. First, an issuer must have assets in excess of \$100 million and must meet the Exchange's current size and earnings requirement set forth in Paragraph 102.01 of the Manual.³ The Exchange also would require a minimum public distribution of 600,000 CVRs, together with a minimum of 1,200 public holders and an aggregate market value of \$18,000,000. Further, the CVRs would be required to have a maturity of at least one year.

The Exchange also proposes continued listing standards for CVRs. The Exchange states that the issue may be delisted if the aggregate market value of the publicly-held CVRs is less than \$1,000,000 or if the related equity security to which the cash payment at maturity is tied is delisted.

The Exchange also proposes to adopt new paragraph 904.06 to the Manual which would require the Exchange to distribute a Circular announcing commencement of trading in CVRs and highlighting the specific risks associated with CVRs. The Circular emphasizes that CVR investors should be given an explanation of the special characteristics and risks attendant to the trading of CVRs.⁴ In the Circular, the

Exchange suggests that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading. The Circular further sets forth that exchange members or member organizations should make a determination that CVRs are suitable investments for customers who may be trading them.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.⁵ In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, or dealers. In today's financial markets, new and innovative financial vehicles continue to be created which are issued and proposed for trading on exchange markets. Over the past several years, the Commission has approved listing criteria for various new products for trading on exchange markets, such as index warrants,⁶ and foreign currency warrants.⁷ In addition, the Commission has approved listing standards on the American Stock Exchange to accommodate new products such as CVRs.⁸ These new products create financing techniques which assist business entities in their ability to raise capital more easily and less expensively, and also provide investors with new opportunities for investment. In response to these new products, the Commission has carefully identified and evaluated certain regulatory concerns which must be addressed by the exchange that proposes to list and trade these products.

The Commission believes that the NYSE's proposal to establish listing criteria for CVRs addresses the special concerns raised by these new investment products. The proposed quantitative listing standards should

ensure that only substantial companies capable for meeting their financial obligations issue CVRs. This is important in light of the contingent financial obligations created by these instruments, and should serve to protect investors and the public interest by ensuring that the companies listing CVRs on the Exchange have sufficient financial means to meet their settlement obligations.

The NYSE's proposed rule for listing CVRs also addresses the additional regulatory concerns raised by these products. Many of the novel financial products that have been proposed for trading on exchange markets in recent years have combined features of debt, equity, and securities derivative instruments. Consequently, these new products may be more risky and complex than straight stock, bond, or equity warrants. In the past, NYSE has agreed to make certain recommendations or require certain action by its members in regard to suitability and sales practice issues pertaining to these products.⁹ In this filing, the Exchange has proposed to distribute a Circular apprising member firms of the special characteristics, risks, and suitability obligations associated with CVRs. The Commission believes distribution of this Circular should provide the NYSE with the ability to address any potential sales practice problems and questions that may arise in connection with these CVRs. Moreover, the Commission believes that use of this Circular will help ensure that only customers with an understanding of the risks attendant to the trading of CVRs trade these products on their brokers' recommendations. Finally, this Circular will alert members to the special disclosure and suitability obligations involved in this product.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Dated: May 30, 1990.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-13092 Filed 6-5-90; 8:45 am]

BILLING CODE 8010-01-M

³ Section 102.01 of the Manual requires, as a condition of original listing, that an issuer have \$2.5 million in pretax earnings in the year prior to its listing application and \$2 million in pretax earnings in the two previous years; or \$6.5 million in aggregate pretax earnings for the three years preceding its listing application and \$4.5 million in pretax earnings in the previous year. This section further requires an issuer to have 1,100,000 publicly held shares and 2,200 shareholders or 2,000 holders of 100 shares or more, and that the aggregate market value of the issuer's publicly-held shares be at least \$18,000,000.

⁴ The Circular states that the risks of trading CVRs include possibilities that the maturity date may be extended and that the CVRs may expire without value.

⁵ 15 U.S.C. 78f (1982).

⁶ See Securities Exchange Act Release No. 26152 (Oct. 3, 1988), 53 FR 39832 (Oct. 12, 1988) (approving File No. SR-Amex-87-27) (listing guidelines for foreign currency and index warrants) and Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376 (Jan. 4, 1990) (File No. SR-Amex-89-22) (proposal to list index warrants based on the Nikkei Stock Average).

⁷ See Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987) (File No. SR-Amex-87-15) (proposal to list warrants on foreign currencies).

⁸ See Securities Exchange Act Release No. 27753 (Mar. 1, 1990), 55 FR 8624 (Mar. 8, 1990).

⁹ See, e.g., NYSE Manual ¶ 904.05.

¹⁰ 15 U.S.C. 78s(b)(2) (1982).

¹¹ 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. IC-17157; 812-7472]

Bankers Trust Company; Application

May 31, 1990.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Bankers Trust Company.

RELEVANT 1940 ACT SECTION: Exemption requested under section 6(c) from the provisions of section 17(f) and rule 17f-5 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order to permit it to maintain foreign securities of U.S. registered investment companies in the custody of applicant's foreign subsidiary, Bankers Trust A.G. ("BTAG"), in Switzerland.

FILING DATE: The application was filed on February 7, 1990 and amended on May 23, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1990, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1 Bankers Trust Plaza, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management), Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant acts as a custodian of foreign securities for certain U.S.

registered investment companies. Applicant seeks an order to exempt it, any investment company registered under the 1940 Act other than an investment company registered under section 7(d) (a "Company"), and BTAG from section 17(f) and rule 17f-5 to permit applicant to maintain a Company's foreign securities in the custody of BTAG as a foreign subcustodian.

2. Rule 17f-5 provides that any registered management investment company may place and maintain in the care of an eligible foreign custodian the company's foreign securities in amounts necessary to effect the company's foreign securities transactions. Rule 17f-5(c)(2)(ii) defines the term "eligible foreign custodian" to include a majority-owned, direct or indirect subsidiary of a qualified U.S. bank that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of U.S. \$100,000,000. Applicant is a "qualified U.S. bank" for purposes of rule 17f-5(c)(2)(ii). However, BTAG is not an eligible foreign custodian solely because it does not meet the minimum shareholders' equity requirements.

3. BTAG was founded in 1971 as a Swiss banking institution and is a wholly-owned, indirect subsidiary of applicant. BTAG is subject to the supervision of the Swiss Federal Banking Commission and the regulations of the Swiss National Bank. BTAG has been actively involved in providing global custody services for its clients since its inception. Although BTAG currently has shareholders' equity of less than U.S. \$100,000,000, as of September 30, 1989, BTAG maintained custody of securities and other assets having a value in excess of U.S. \$2,000,000,000.

4. Applicant proposes to deposit foreign securities in BTAG in accordance with a written three-party contractual agreement, which would remain in effect at all times during which BTAG fails to meet the requirements of rule 17f-5 relating to minimum shareholders' equity, among (a) The Company or a custodian of the Company for which applicant acts as subcustodian, (b) applicant, and (c) BTAG. Pursuant to the terms of this agreement, applicant would provide specified custodial or subcustodial services for the Company or the custodian, as the case may be, and would delegate to BTAG such of its duties and obligations as would be necessary to permit BTAG to hold the foreign securities in custody in Switzerland.

5. Applicant believes that the proposed foreign custodial arrangement will adequately protect the Companies against loss. Pursuant to the terms of the custodial agreement, applicant will remain liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by BTAG of its responsibilities under the agreement to the same extent as if applicant were required to provide custody services under such agreement. Applicant believes that BTAG has financial resources that are adequate to meet its contractual responsibilities as applicant's foreign subcustodian in Switzerland.

6. Applicant submits that the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

Applicant's Conditions

1. The foreign custody arrangement with BTAG will comply with the provisions of rule 17f-5 in all respects except those relating to the minimum shareholders' equity requirements of eligible foreign custodians.

2. Applicant currently satisfies and will continue to satisfy the minimum shareholders' equity requirements described in rule 17f-5(c)(2)(ii).

3. Applicant will deposit securities in Switzerland with BTAG only in accordance with a three-party contractual agreement, which will remain in effect at all times during which BTAG fails to meet the requirements of rule 17f-5 relating to minimum shareholders' equity, among (a) The Company of a custodian of the securities of the Company for which applicant acts as subcustodian, (b) applicant, and (c) BTAG. Pursuant to the terms of this agreement, applicant will provide specified custodial or subcustodial services for the Company or the custodian, as the case may be, and will delegate to BTAG each of its duties and obligations as will be necessary to permit BTAG to hold the securities in custody in Switzerland. This agreement will further provide that applicant will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by BTAG of its responsibilities under the agreement to the same extent as if applicant had been required to provide custody services under such agreement.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-13089 Filed 6-5-90; 8:45 am]

BILLING CODE 6010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2425]

Michigan, Declaration of Disaster Loan Area

Crawford County and the contiguous Counties of Antrim, Kalkaska, Missaukee, Montmorency, Ogemaw, Oscoda, Otsego, and Roscommon in the State of Michigan constitute a disaster area as a result of damages from forest fires which occurred May 8 to May 10, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 23, 1990 and for economic injury applications until the close of business on February 25, 1991 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Per- cent
For Physical Damage:	
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	8.000
Businesses and non-profit organizations without credit available elsewhere.....	4.000
Others (including non-profit organizations) with credit available elsewhere.....	9.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere.....	4.000

The number assigned to this disaster for physical damage is 242505 and for economic injury the number is 706800.

(Catalog of Federal Domestic Assistance Program No. 59002 and 59008).

Dated May 23, 1990.

Susan Engeleiter,
Administrator.

[FR Doc. 90-13042 Filed 6-5-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2426]

North Carolina, Declaration of Disaster Loan Area

Lee County and the contiguous Counties of Chatham, Harnett, and Moore in the State of North Carolina constitute a disaster area as a result of damages from tornadoes which occurred on May 3, 1990.

Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 23, 1990 and for economic injury applications until the close of business on February 25, 1991 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Per- cent
For Physical Damage:	
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	8.000
Businesses and non-profit organizations without credit available elsewhere.....	4.000
Others (including non-profit organizations) with credit available elsewhere.....	9.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere.....	4.000

The number assigned to this disaster for physical damage is 242612 and for economic injury the number is 706900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 23, 1990.

Susan Engeleiter,
Administrator.

[FR Doc. 90-13043 Filed 6-5-90; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Meeting

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of Des Moines, will hold a public meeting at 9:30 a.m. on Thursday, June 28, 1990 at the Ox Yoke Inn, Main Amana, Iowa, to meet jointly with the Advisory Council from the Cedar Rapids District Office of the U.S. Small Business Administration to discuss such matters as may be presented by members and the staff of the U.S. Small Business Administration, or others present.

For further information, write or call Conrad Lawlor, District Director, U.S. Small Business Administration, Federal Building, room 749, 210 Walnut Street, Des Moines, Iowa 50309, telephone (515) 284-4567.

Dated: May 30, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-13041 Filed 6-5-90; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Meeting

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of St. Louis, will hold a public meeting at 9 a.m. on Friday, June 22, 1990 at District Office of the U.S. Small Business Administration, 815 Olive Street, room 242, St. Louis, Missouri, to discuss such matters as may be presented by members and the staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive Street, room 242, St. Louis, Missouri 63101, telephone (314) 539-6600.

Dated: May 29, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-13039 Filed 6-5-90; 8:45 am]

BILLING CODE 8025-01-M

Public Meeting of National Small Business Development Advisory Board

The National Small Business Development Center Advisory Board will hold a public meeting on Friday, June 29th, 1990 from 9 a.m. to 10:30 a.m. in the conference room of the National Westminster Bank USA, 175 Water Street, New York City, New York.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, SBA, room 317, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6315.

Dated: May 29, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-13040 Filed 6-5-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 46928; Agreement CAB 1175 as amended]

Application of the International Air Transportation Association for Approval of Revised Traffic Conference Provisions Pursuant to Sections 412 and 414 of the Federal Aviation Act

Order

On May 17, 1990, the International Air Transport Association (IATA) filed with the Department of Transportation, an application for continued approval of and related antitrust immunity for the provisions for the conduct of the IATA Traffic Conferences. Comments in support of or in opposition to approval of the Agreement are due June 5, 1990.

The Agreement consists of fifteen pages of text, hundreds of pages of pertinent appendices, plus bound volumes of supporting detail. It was served upon six parties and appropriate public notice was published in the Federal Register of May 15, 1990.

We have decided, in view of the extensive scope of the materials presented, to extend the period for comments by 30 days or until July 5, 1990, in order to give all interested parties sufficient time to develop their positions.

Accordingly, the date for filing comments in Docket 46928 is extended to July 5, 1990.

A copy of this order will be published in the Federal Register.

Issued by the Department of Transportation on the 24th day of May, 1990.
Paul L. Gretch,
Director, Office of International Aviation.
[FR Doc. 90-13037 Filed 6-5-90; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 90-45]

Approval of Bennett Testing Service, Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of Approval of Bennett Testing Service, Inc., as a Commercial Gauger and Laboratory.

SUMMARY: Bennett Testing Service, Inc., of Carteret, New Jersey, was granted conditional approval to gauge and

sample imported petroleum, petroleum products, organic chemicals, and vegetable and animal oils, and to analyze petroleum and petroleum products for API gravity, sediment and water, distillation characteristics, and organic chemicals for identity and composition in all Customs districts under part 151.13 of the Customs Regulations (19 CFR 151.13). Customs recently conducted an on-site inspection and evaluation of Bennett Testing Service operations and determined that the requirements for full approval have now been met.

Therefore, in accordance with part 151.13(f) of the Customs Regulations, Bennett Testing Service, Inc., P.O. Box 654, Carteret, New Jersey 07008, is approved to gauge and analyze the products named above in all Customs districts.

EFFECTIVE DATE: June 6, 1990.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202) 566-2446.

Dated: May 30, 1990.

John B. O'Loughlin,
Director, Office of Laboratories and Scientific Services.

[FR Doc. 90-13035 Filed 6-5-90; 8:45 am]
BILLING CODE 4820-02-M

[T.D. 90-46]

Extension of Analyses for which E.W. Saybolt & Co., Inc., a Customs Accredited Commercial Laboratory, Has Been Accredited To Perform

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

ACTION: Notice of additional analyses for which E.W. Saybolt and Company, Inc., a Customs accredited commercial laboratory, has been accredited to perform.

SUMMARY: E.W. Saybolt and Company, Inc., of Kenilworth, New Jersey, a Customs accredited commercial laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of their commercial laboratory accreditation to include the analysis of organic chemicals in bulk and liquid form for identity and composition as provided for in the Customs Regulations, 19 CFR part 151.13(a)(2); and the analysis of petroleum and petroleum products for antiknock index and distillation characteristics.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for

the acceptance at Customs Districts of laboratory analyses for certain products from Customs accredited commercial laboratories. E.W. Saybolt and Company, Inc., which holds Customs accreditation in certain laboratory analyses, has applied to Customs to extend its accreditation to the performance of additional analyses. Review of E.W. Saybolt and Company's qualifications shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: May 31, 1990.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229, (202-566-2446).

Dated: May 30, 1990.

John B. O'Loughlin,
Director, Office of Laboratories and Scientific Services.

[FR Doc. 90-13036 Filed 6-5-90; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1989—Rev., Supp. No. 23-4-00236]

Surety Companies Acceptable on Federal Bonds: Termination of Authority; Century Reinsurance Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to Century Reinsurance Company, under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as acceptable surety on Federal bonds at 54 FR 27806, June 30, 1989.

With respect to any bonds currently in force with Century Reinsurance Company bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: May 31, 1990.
Mitchell A. Levine,
*Assistant Commissioner, Comptroller
 Financial Management Service.*
 [FR Doc. 90-13052 Filed 6-5-90; 8:45 am]
 BILLING CODE 4810-35-M

[Dept. Circ. 570, 1989—Rev., Supp. No. 22;
 4-00236]

**Surety Companies Acceptable on
 Federal Bonds: Termination of
 Authority; Meritplan Insurance
 Company**

Notice is hereby given that the Certificate of Authority issued by the Treasury to Meritplan Insurance Company, under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as acceptable surety on Federal bonds at 54 FR 27815, June 30, 1989.

With respect to any bonds currently in force with Meritplan Insurance Company bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: May 31, 1990.
Mitchell A. Levine,
*Assistant Commissioner, Comptroller
 Financial Management Service.*
 [FR Doc. 90-13053 Filed 6-5-90; 8:45 am]
 BILLING CODE 4810-35-M

Office of Thrift Supervision

[N-4/1]

**Caguas-Central Federal Savings Bank
 of Puerto Rico; Appointment of
 Conservator**

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Caguas-Central Federal Savings Bank of Puerto Rico, Caguas, Puerto Rico, OTS Docket No. 6344, on May 25, 1990.

Dated: May 24, 1990.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
 [FR Doc 90-13017 Filed 6-5-90; 8:45 am]
 BILLING CODE 6720-01-M

[N-4/2]

**First American Savings Bank, F.S.B.;
 Appointment of Conservator**

Notice is hereby given that, pursuant to the authority contained in section 5 (d) (2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First America Savings Bank, F.S.B., Fort Smith, Arkansas ("Savings Bank") on May 25, 1990.

Dated: May 31, 1990.
 By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-13018 Filed 6-5-90; 8:45 am]
 BILLING CODE 6720-01-M

[N-4/2]

**Pima Federal Savings and Loan
 Association; Appointment of
 Conservator**

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Pima Federal Savings and Loan Association, Tucson, Arizona ("Association") on May 25, 1990.

Dated: May 31, 1990.
 By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-13019 Filed 6-5-90; 8:45 am]
 BILLING CODE 6720-01-M

[LN-4/2]

**Appointment of Conservator;
 Remington Federal Savings
 Association**

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989,

the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Remington Federal Savings Association, Elgin, Texas ("Association"), on May 25, 1990.

Dated: May 31, 1990.
 By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-13020 Filed 6-5-90; 8:45 am]
 BILLING CODE 6720-01-M

[LN-4/2]

**Appointment of Conservator;
 Universal Federal Savings Association**

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Universal Federal Savings Association, Houston, Texas ("Association"), on May 31, 1990.

Dated: May 31, 1990.
 By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-13021 Filed 6-5-90; 8:45 am]
 BILLING CODE 6720-01-M

[LN-4/1]

**Deseret Savings and Loan
 Association, F.A.; Appointment of
 Receiver**

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Deseret Savings and Loan Association, F.A., Salt Lake City, Utah ("Association"), on May 24, 1990.

Dated: May 31, 1990.
 By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-13022 Filed 6-5-90; 8:45 am]
 BILLING CODE 6720-01-M

[LN-4/1]

Replacement of Conservator With a Receiver; Durand Federal Savings and Loan Association

Notice is hereby given that pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Durand Federal Savings and Loan Association, Durand, Wisconsin ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 25, 1990.

Dated: May 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.

[FR Doc. 90-13027 Filed 6-5-90; 8:45 am]

BILLING CODE 6720-01-M

[LN-4/1]

First America Federal Savings Bank, Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First America Federal Savings Bank, Fort Smith, Arkansas ("Savings Bank") on May 25, 1990.

Dated: May 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.

[FR Doc. 90-13023 Filed 6-5-90; 8:45 am]

BILLING CODE 6720-01-M

First Savings Association of Brenham; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Savings Association of Brenham, Brenham, Texas ("Association"), on May 25, 1990.

Dated: May 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.

[FR Doc. 90-13038 Filed 6-5-90; 8:45 am]

BILLING CODE 6720-01-M

[LN-4/1]

Replacement of Conservator With a Receiver; First Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings and Loan Association, Atlanta, Georgia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 25, 1990.

Dated: May 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.

[FR Doc. 90-13028 Filed 6-5-90; 8:45 am]

BILLING CODE 6720-01-M

[LN-4/1]

Gill Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301, of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Gill Savings Association, Hondo, Texas, Docket No. 7082, on May 24, 1990.

Dated: May 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.

[FR Doc. 90-13024 Filed 6-5-90; 8:45 am]

BILLING CODE 6720-01-M

[LN-4/1]

Replacement of Conservator With a Receiver; Mercury Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended

by section 301, of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as Conservator for Mercury Savings and Loan Association, Huntington Beach, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 25, 1990.

Dated: May 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.

[FR Doc. 90-13029 Filed 6-5-90; 8:45 am]

BILLING CODE 6720-01-M

[LN-4/1]

Replacement of Conservator With a Receiver; Pima Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation for Pima Savings and Loan Association, Tucson, Arizona ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 25, 1990.

Dated: May 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.

[FR Doc. 90-13030 Filed 6-5-90; 8:45 am]

BILLING CODE 6720-01-M

[LN-4/1]

Remington Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Remington Savings Association, Elgin, Texas ("Association"), on May 25, 1990.

Dated: May 31, 1990.

By the Office of Thrift Supervision.
 Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-13025 Filed 6-5-90; 8:45 am]
 BILLING CODE 6720-01-M

[LN-4/1]

Replacement of Conservator With a Receiver; Universal Savings Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Universal Savings Association, Houston, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 25, 1990.

Dated: May 31, 1990.

By the Office of Thrift Supervision.
 Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-13031 Filed 6-5-90; 8:45 am]
 BILLING CODE 6720-01-M

[AC-30, OTS No. 1975]

The Findlay Savings Bank, Cincinnati, OH; Approval of Conversion Application

May 23, 1990.

Notice is hereby given that on May 15, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of The Findlay Savings Bank, Cincinnati, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 and District Director, Office of Thrift Supervision, Cincinnati District Office, 2000 Atrium TWO, 221 E. Fourth Street Cincinnati, Ohio 45202.

By the Office of Thrift Supervision.
 Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-13032 Filed 6-5-90; 8:45 am]
 BILLING CODE 6720-01-M

[AC-34; OTS No. 6249]

Regency Savings Bank, F.S.B., Naperville, IL; Final Action Approval of Voluntary Supervisory Conversion Application

May 30, 1990

Notice is hereby given that the Director noted that on May 30, 1990, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Regency Savings Bank, F.S.B., Naperville, Illinois, for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the acquisition of all the conversion stock by FBOP Corporation, Oak Park, Illinois.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-13026 Filed 6-5-90; 8:45 am]
 BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Proposed collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256. USIA is requesting approval of a proposed information collection entitled "Secondary School Administrators Views on Foreign Exchange Student Programs—J-Visa Exchange Program Survey." Estimated burden hours per response is 30 minutes. Respondents will be required to respond only one time.

DATES: Within 30 days of June 6, 1990.

COPIES: Copies of the Request for Clearance (SF-83), supporting

statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review: Mr. C. Marshall Mills, Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Secondary School Administrators Views on Foreign Exchange Student Programs—J-Visa Exchange Program Survey.

Form Number: IAP 118.

Abstract: Pursuant to the Mutual Educational and Cultural Exchange Act of 1961, as amended, the U.S. Information Agency (USIA) administers an exchange program which includes a large portion of the international teenage student exchanges in U.S. high schools. In the interest of proper administration of the Exchange Visitor Program, USIA undertakes the collection of information on the attitudes and experience of Secondary School Administrators with regard to foreign teenage exchange student in their schools. The Information obtained from this survey will be used by the Office of General Council, USIA, to evaluate existing regulations affecting issuance of the J-visa to foreign exchange students.

Proposed Frequency of Response**No. of Respondents—2000.****Recordkeeping Hours—0.****Total Annual Burden—1000.****Dated:** May 31, 1990.**Louise Massoud,****Federal Register Liaison.****[FR Doc. 90-13034 Filed 6-5-90; 8:45 am]****BILLING CODE 8230-01-M**

Sunshine Act Meetings

Federal Register

Vol. 55, No. 109

Wednesday, June 6, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, June 20, 1990.

PLACE: 2033 K Street NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Board of Trade for designation to trade options on Tokyo Stock Price Index (Topix)
Application of the Chicago Board of Trade for designation to trade options on Long-Term Japanese Government Bonds.

Statutory Interpretation concerning certain commercial transactions

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-13250 Filed 6-4-90; 1:19 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Wednesday, June 20, 1990.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-13251 Filed 6-4-90; 1:19 pm]

BILLING CODE 6351-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., June 18, 1990.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Review of annuity policy.
3. Thrift Savings Plan activities report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION:

Tom Trabucco, Director,
Office of External Affairs, (202) 523-5660.

Date: June 4, 1990.

Francis X. Cavanaugh,
Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 90-13258 Filed 6-4-90; 2:41 pm]

BILLING CODE 6760-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 4, 1990.

A closed meeting will be held on Tuesday, June 5, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Shapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 5, 1990, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Consideration of *amici* participation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272-2000.

Jonathan G. Katz,
Secretary.

June 1, 1990.

[FR Doc. 90-13228 Filed 6-4-90; 11:35 am]

BILLING CODE 8010-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, June 12, 1990 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints: Certain Battery-Powered Children's Ride-On Toy Vehicles (D/N 1563).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason,
Secretary (202) 252-1000.

Lisbeth K. Godley,
Acting Secretary.
May 31, 1990.

[FR Doc. 90-13155 Filed 6-4-90; 8:50 am]

BILLING CODE 7020-02-M

Sunshine Act Meetings

The action of the FEDERAL RESERVE BOARD on the proposed changes in the Sunshine Act (50 U.S.C. 3041-3045) is being published in the FEDERAL REGISTER.

COMMITTEE ON THE FEDERAL RESERVE BOARD

DATE AND DATE: 11-10-64, 11-11-64, 11-12-64, 12-1-64, 12-2-64, 12-3-64, 12-4-64, 12-5-64, 12-6-64, 12-7-64, 12-8-64, 12-9-64, 12-10-64, 12-11-64, 12-12-64, 1-1-65, 1-2-65, 1-3-65, 1-4-65, 1-5-65, 1-6-65, 1-7-65, 1-8-65, 1-9-65, 1-10-65, 1-11-65, 1-12-65, 2-1-66, 2-2-66, 2-3-66, 2-4-66, 2-5-66, 2-6-66, 2-7-66, 2-8-66, 2-9-66, 2-10-66, 2-11-66, 2-12-66, 3-1-67, 3-2-67, 3-3-67, 3-4-67, 3-5-67, 3-6-67, 3-7-67, 3-8-67, 3-9-67, 3-10-67, 3-11-67, 3-12-67, 4-1-68, 4-2-68, 4-3-68, 4-4-68, 4-5-68, 4-6-68, 4-7-68, 4-8-68, 4-9-68, 4-10-68, 4-11-68, 4-12-68, 5-1-69, 5-2-69, 5-3-69, 5-4-69, 5-5-69, 5-6-69, 5-7-69, 5-8-69, 5-9-69, 5-10-69, 5-11-69, 5-12-69, 6-1-70, 6-2-70, 6-3-70, 6-4-70, 6-5-70, 6-6-70, 6-7-70, 6-8-70, 6-9-70, 6-10-70, 6-11-70, 6-12-70, 7-1-71, 7-2-71, 7-3-71, 7-4-71, 7-5-71, 7-6-71, 7-7-71, 7-8-71, 7-9-71, 7-10-71, 7-11-71, 7-12-71, 8-1-72, 8-2-72, 8-3-72, 8-4-72, 8-5-72, 8-6-72, 8-7-72, 8-8-72, 8-9-72, 8-10-72, 8-11-72, 8-12-72, 9-1-73, 9-2-73, 9-3-73, 9-4-73, 9-5-73, 9-6-73, 9-7-73, 9-8-73, 9-9-73, 9-10-73, 9-11-73, 9-12-73, 10-1-74, 10-2-74, 10-3-74, 10-4-74, 10-5-74, 10-6-74, 10-7-74, 10-8-74, 10-9-74, 10-10-74, 10-11-74, 10-12-74, 11-1-75, 11-2-75, 11-3-75, 11-4-75, 11-5-75, 11-6-75, 11-7-75, 11-8-75, 11-9-75, 11-10-75, 11-11-75, 11-12-75, 12-1-76, 12-2-76, 12-3-76, 12-4-76, 12-5-76, 12-6-76, 12-7-76, 12-8-76, 12-9-76, 12-10-76, 12-11-76, 12-12-76, 1-1-77, 1-2-77, 1-3-77, 1-4-77, 1-5-77, 1-6-77, 1-7-77, 1-8-77, 1-9-77, 1-10-77, 1-11-77, 1-12-77, 2-1-78, 2-2-78, 2-3-78, 2-4-78, 2-5-78, 2-6-78, 2-7-78, 2-8-78, 2-9-78, 2-10-78, 2-11-78, 2-12-78, 3-1-79, 3-2-79, 3-3-79, 3-4-79, 3-5-79, 3-6-79, 3-7-79, 3-8-79, 3-9-79, 3-10-79, 3-11-79, 3-12-79, 4-1-80, 4-2-80, 4-3-80, 4-4-80, 4-5-80, 4-6-80, 4-7-80, 4-8-80, 4-9-80, 4-10-80, 4-11-80, 4-12-80, 5-1-81, 5-2-81, 5-3-81, 5-4-81, 5-5-81, 5-6-81, 5-7-81, 5-8-81, 5-9-81, 5-10-81, 5-11-81, 5-12-81, 6-1-82, 6-2-82, 6-3-82, 6-4-82, 6-5-82, 6-6-82, 6-7-82, 6-8-82, 6-9-82, 6-10-82, 6-11-82, 6-12-82, 7-1-83, 7-2-83, 7-3-83, 7-4-83, 7-5-83, 7-6-83, 7-7-83, 7-8-83, 7-9-83, 7-10-83, 7-11-83, 7-12-83, 8-1-84, 8-2-84, 8-3-84, 8-4-84, 8-5-84, 8-6-84, 8-7-84, 8-8-84, 8-9-84, 8-10-84, 8-11-84, 8-12-84, 9-1-85, 9-2-85, 9-3-85, 9-4-85, 9-5-85, 9-6-85, 9-7-85, 9-8-85, 9-9-85, 9-10-85, 9-11-85, 9-12-85, 10-1-86, 10-2-86, 10-3-86, 10-4-86, 10-5-86, 10-6-86, 10-7-86, 10-8-86, 10-9-86, 10-10-86, 10-11-86, 10-12-86, 11-1-87, 11-2-87, 11-3-87, 11-4-87, 11-5-87, 11-6-87, 11-7-87, 11-8-87, 11-9-87, 11-10-87, 11-11-87, 11-12-87, 12-1-88, 12-2-88, 12-3-88, 12-4-88, 12-5-88, 12-6-88, 12-7-88, 12-8-88, 12-9-88, 12-10-88, 12-11-88, 12-12-88, 1-1-89, 1-2-89, 1-3-89, 1-4-89, 1-5-89, 1-6-89, 1-7-89, 1-8-89, 1-9-89, 1-10-89, 1-11-89, 1-12-89, 2-1-90, 2-2-90, 2-3-90, 2-4-90, 2-5-90, 2-6-90, 2-7-90, 2-8-90, 2-9-90, 2-10-90, 2-11-90, 2-12-90, 3-1-91, 3-2-91, 3-3-91, 3-4-91, 3-5-91, 3-6-91, 3-7-91, 3-8-91, 3-9-91, 3-10-91, 3-11-91, 3-12-91, 4-1-92, 4-2-92, 4-3-92, 4-4-92, 4-5-92, 4-6-92, 4-7-92, 4-8-92, 4-9-92, 4-10-92, 4-11-92, 4-12-92, 5-1-93, 5-2-93, 5-3-93, 5-4-93, 5-5-93, 5-6-93, 5-7-93, 5-8-93, 5-9-93, 5-10-93, 5-11-93, 5-12-93, 6-1-94, 6-2-94, 6-3-94, 6-4-94, 6-5-94, 6-6-94, 6-7-94, 6-8-94, 6-9-94, 6-10-94, 6-11-94, 6-12-94, 7-1-95, 7-2-95, 7-3-95, 7-4-95, 7-5-95, 7-6-95, 7-7-95, 7-8-95, 7-9-95, 7-10-95, 7-11-95, 7-12-95, 8-1-96, 8-2-96, 8-3-96, 8-4-96, 8-5-96, 8-6-96, 8-7-96, 8-8-96, 8-9-96, 8-10-96, 8-11-96, 8-12-96, 9-1-97, 9-2-97, 9-3-97, 9-4-97, 9-5-97, 9-6-97, 9-7-97, 9-8-97, 9-9-97, 9-10-97, 9-11-97, 9-12-97, 10-1-98, 10-2-98, 10-3-98, 10-4-98, 10-5-98, 10-6-98, 10-7-98, 10-8-98, 10-9-98, 10-10-98, 10-11-98, 10-12-98, 11-1-99, 11-2-99, 11-3-99, 11-4-99, 11-5-99, 11-6-99, 11-7-99, 11-8-99, 11-9-99, 11-10-99, 11-11-99, 11-12-99, 12-1-00, 12-2-00, 12-3-00, 12-4-00, 12-5-00, 12-6-00, 12-7-00, 12-8-00, 12-9-00, 12-10-00, 12-11-00, 12-12-00, 1-1-01, 1-2-01, 1-3-01, 1-4-01, 1-5-01, 1-6-01, 1-7-01, 1-8-01, 1-9-01, 1-10-01, 1-11-01, 1-12-01, 2-1-02, 2-2-02, 2-3-02, 2-4-02, 2-5-02, 2-6-02, 2-7-02, 2-8-02, 2-9-02, 2-10-02, 2-11-02, 2-12-02, 3-1-03, 3-2-03, 3-3-03, 3-4-03, 3-5-03, 3-6-03, 3-7-03, 3-8-03, 3-9-03, 3-10-03, 3-11-03, 3-12-03, 4-1-04, 4-2-04, 4-3-04, 4-4-04, 4-5-04, 4-6-04, 4-7-04, 4-8-04, 4-9-04, 4-10-04, 4-11-04, 4-12-04, 5-1-05, 5-2-05, 5-3-05, 5-4-05, 5-5-05, 5-6-05, 5-7-05, 5-8-05, 5-9-05, 5-10-05, 5-11-05, 5-12-05, 6-1-06, 6-2-06, 6-3-06, 6-4-06, 6-5-06, 6-6-06, 6-7-06, 6-8-06, 6-9-06, 6-10-06, 6-11-06, 6-12-06, 7-1-07, 7-2-07, 7-3-07, 7-4-07, 7-5-07, 7-6-07, 7-7-07, 7-8-07, 7-9-07, 7-10-07, 7-11-07, 7-12-07, 8-1-08, 8-2-08, 8-3-08, 8-4-08, 8-5-08, 8-6-08, 8-7-08, 8-8-08, 8-9-08, 8-10-08, 8-11-08, 8-12-08, 9-1-09, 9-2-09, 9-3-09, 9-4-09, 9-5-09, 9-6-09, 9-7-09, 9-8-09, 9-9-09, 9-10-09, 9-11-09, 9-12-09, 10-1-10, 10-2-10, 10-3-10, 10-4-10, 10-5-10, 10-6-10, 10-7-10, 10-8-10, 10-9-10, 10-10-10, 10-11-10, 10-12-10, 11-1-11, 11-2-11, 11-3-11, 11-4-11, 11-5-11, 11-6-11, 11-7-11, 11-8-11, 11-9-11, 11-10-11, 11-11-11, 11-12-11, 12-1-12, 12-2-12, 12-3-12, 12-4-12, 12-5-12, 12-6-12, 12-7-12, 12-8-12, 12-9-12, 12-10-12, 12-11-12, 12-12-12, 1-1-13, 1-2-13, 1-3-13, 1-4-13, 1-5-13, 1-6-13, 1-7-13, 1-8-13, 1-9-13, 1-10-13, 1-11-13, 1-12-13, 2-1-14, 2-2-14, 2-3-14, 2-4-14, 2-5-14, 2-6-14, 2-7-14, 2-8-14, 2-9-14, 2-10-14, 2-11-14, 2-12-14, 3-1-15, 3-2-15, 3-3-15, 3-4-15, 3-5-15, 3-6-15, 3-7-15, 3-8-15, 3-9-15, 3-10-15, 3-11-15, 3-12-15, 4-1-16, 4-2-16, 4-3-16, 4-4-16, 4-5-16, 4-6-16, 4-7-16, 4-8-16, 4-9-16, 4-10-16, 4-11-16, 4-12-16, 5-1-17, 5-2-17, 5-3-17, 5-4-17, 5-5-17, 5-6-17, 5-7-17, 5-8-17, 5-9-17, 5-10-17, 5-11-17, 5-12-17, 6-1-18, 6-2-18, 6-3-18, 6-4-18, 6-5-18, 6-6-18, 6-7-18, 6-8-18, 6-9-18, 6-10-18, 6-11-18, 6-12-18, 7-1-19, 7-2-19, 7-3-19, 7-4-19, 7-5-19, 7-6-19, 7-7-19, 7-8-19, 7-9-19, 7-10-19, 7-11-19, 7-12-19, 8-1-20, 8-2-20, 8-3-20, 8-4-20, 8-5-20, 8-6-20, 8-7-20, 8-8-20, 8-9-20, 8-10-20, 8-11-20, 8-12-20, 9-1-21, 9-2-21, 9-3-21, 9-4-21, 9-5-21, 9-6-21, 9-7-21, 9-8-21, 9-9-21, 9-10-21, 9-11-21, 9-12-21, 10-1-22, 10-2-22, 10-3-22, 10-4-22, 10-5-22, 10-6-22, 10-7-22, 10-8-22, 10-9-22, 10-10-22, 10-11-22, 10-12-22, 11-1-23, 11-2-23, 11-3-23, 11-4-23, 11-5-23, 11-6-23, 11-7-23, 11-8-23, 11-9-23, 11-10-23, 11-11-23, 11-12-23, 12-1-24, 12-2-24, 12-3-24, 12-4-24, 12-5-24, 12-6-24, 12-7-24, 12-8-24, 12-9-24, 12-10-24, 12-11-24, 12-12-24, 1-1-25, 1-2-25, 1-3-25, 1-4-25, 1-5-25, 1-6-25, 1-7-25, 1-8-25, 1-9-25, 1-10-25, 1-11-25, 1-12-25, 2-1-26, 2-2-26, 2-3-26, 2-4-26, 2-5-26, 2-6-26, 2-7-26, 2-8-26, 2-9-26, 2-10-26, 2-11-26, 2-12-26, 3-1-27, 3-2-27, 3-3-27, 3-4-27, 3-5-27, 3-6-27, 3-7-27, 3-8-27, 3-9-27, 3-10-27, 3-11-27, 3-12-27, 4-1-28, 4-2-28, 4-3-28, 4-4-28, 4-5-28, 4-6-28, 4-7-28, 4-8-28, 4-9-28, 4-10-28, 4-11-28, 4-12-28, 5-1-29, 5-2-29, 5-3-29, 5-4-29, 5-5-29, 5-6-29, 5-7-29, 5-8-29, 5-9-29, 5-10-29, 5-11-29, 5-12-29, 6-1-30, 6-2-30, 6-3-30, 6-4-30, 6-5-30, 6-6-30, 6-7-30, 6-8-30, 6-9-30, 6-10-30, 6-11-30, 6-12-30, 7-1-31, 7-2-31, 7-3-31, 7-4-31, 7-5-31, 7-6-31, 7-7-31, 7-8-31, 7-9-31, 7-10-31, 7-11-31, 7-12-31, 8-1-32, 8-2-32, 8-3-32, 8-4-32, 8-5-32, 8-6-32, 8-7-32, 8-8-32, 8-9-32, 8-10-32, 8-11-32, 8-12-32, 9-1-33, 9-2-33, 9-3-33, 9-4-33, 9-5-33, 9-6-33, 9-7-33, 9-8-33, 9-9-33, 9-10-33, 9-11-33, 9-12-33, 10-1-34, 10-2-34, 10-3-34, 10-4-34, 10-5-34, 10-6-34, 10-7-34, 10-8-34, 10-9-34, 10-10-34, 10-11-34, 10-12-34, 11-1-35, 11-2-35, 11-3-35, 11-4-35, 11-5-35, 11-6-35, 11-7-35, 11-8-35, 11-9-35, 11-10-35, 11-11-35, 11-12-35, 12-1-36, 12-2-36, 12-3-36, 12-4-36, 12-5-36, 12-6-36, 12-7-36, 12-8-36, 12-9-36, 12-10-36, 12-11-36, 12-12-36, 1-1-37, 1-2-37, 1-3-37, 1-4-37, 1-5-37, 1-6-37, 1-7-37, 1-8-37, 1-9-37, 1-10-37, 1-11-37, 1-12-37, 2-1-38, 2-2-38, 2-3-38, 2-4-38, 2-5-38, 2-6-38, 2-7-38, 2-8-38, 2-9-38, 2-10-38, 2-11-38, 2-12-38, 3-1-39, 3-2-39, 3-3-39, 3-4-39, 3-5-39, 3-6-39, 3-7-39, 3-8-39, 3-9-39, 3-10-39, 3-11-39, 3-12-39, 4-1-40, 4-2-40, 4-3-40, 4-4-40, 4-5-40, 4-6-40, 4-7-40, 4-8-40, 4-9-40, 4-10-40, 4-11-40, 4-12-40, 5-1-41, 5-2-41, 5-3-41, 5-4-41, 5-5-41, 5-6-41, 5-7-41, 5-8-41, 5-9-41, 5-10-41, 5-11-41, 5-12-41, 6-1-42, 6-2-42, 6-3-42, 6-4-42, 6-5-42, 6-6-42, 6-7-42, 6-8-42, 6-9-42, 6-10-42, 6-11-42, 6-12-42, 7-1-43, 7-2-43, 7-3-43, 7-4-43, 7-5-43, 7-6-43, 7-7-43, 7-8-43, 7-9-43, 7-10-43, 7-11-43, 7-12-43, 8-1-44, 8-2-44, 8-3-44, 8-4-44, 8-5-44, 8-6-44, 8-7-44, 8-8-44, 8-9-44, 8-10-44, 8-11-44, 8-12-44, 9-1-45, 9-2-45, 9-3-45, 9-4-45, 9-5-45, 9-6-45, 9-7-45, 9-8-45, 9-9-45, 9-10-45, 9-11-45, 9-12-45, 10-1-46, 10-2-46, 10-3-46, 10-4-46, 10-5-46, 10-6-46, 10-7-46, 10-8-46, 10-9-46, 10-10-46, 10-11-46, 10-12-46, 11-1-47, 11-2-47, 11-3-47, 11-4-47, 11-5-47, 11-6-47, 11-7-47, 11-8-47, 11-9-47, 11-10-47, 11-11-47, 11-12-47, 12-1-48, 12-2-48, 12-3-48, 12-4-48, 12-5-48, 12-6-48, 12-7-48, 12-8-48, 12-9-48, 12-10-48, 12-11-48, 12-12-48, 1-1-49, 1-2-49, 1-3-49, 1-4-49, 1-5-49, 1-6-49, 1-7-49, 1-8-49, 1-9-49, 1-10-49, 1-11-49, 1-12-49, 2-1-50, 2-2-50, 2-3-50, 2-4-50, 2-5-50, 2-6-50, 2-7-50, 2-8-50, 2-9-50, 2-10-50, 2-11-50, 2-12-50, 3-1-51, 3-2-51, 3-3-51, 3-4-51, 3-5-51, 3-6-51, 3-7-51, 3-8-51, 3-9-51, 3-10-51, 3-11-51, 3-12-51, 4-1-52, 4-2-52, 4-3-52, 4-4-52, 4-5-52, 4-6-52, 4-7-52, 4-8-52, 4-9-52, 4-10-52, 4-11-52, 4-12-52, 5-1-53, 5-2-53, 5-3-53, 5-4-53, 5-5-53, 5-6-53, 5-7-53, 5-8-53, 5-9-53, 5-10-53, 5-11-53, 5-12-53, 6-1-54, 6-2-54, 6-3-54, 6-4-54, 6-5-54, 6-6-54, 6-7-54, 6-8-54, 6-9-54, 6-10-54, 6-11-54, 6-12-54, 7-1-55, 7-2-55, 7-3-55, 7-4-55, 7-5-55, 7-6-55, 7-7-55, 7-8-55, 7-9-55, 7-10-55, 7-11-55, 7-12-55, 8-1-56, 8-2-56, 8-3-56, 8-4-56, 8-5-56, 8-6-56, 8-7-56, 8-8-56, 8-9-56, 8-10-56, 8-11-56, 8-12-56, 9-1-57, 9-2-57, 9-3-57, 9-4-57, 9-5-57, 9-6-57, 9-7-57, 9-8-57, 9-9-57, 9-10-57, 9-11-57, 9-12-57, 10-1-58, 10-2-58, 10-3-58, 10-4-58, 10-5-58, 10-6-58, 10-7-58, 10-8-58, 10-9-58, 10-10-58, 10-11-58, 10-12-58, 11-1-59, 11-2-59, 11-3-59, 11-4-59, 11-5-59, 11-6-59, 11-7-59, 11-8-59, 11-9-59, 11-10-59, 11-11-59, 11-12-59, 12-1-60, 12-2-60, 12-3-60, 12-4-60, 12-5-60, 12-6-60, 12-7-60, 12-8-60, 12-9-60, 12-10-60, 12-11-60, 12-12-60, 1-1-61, 1-2-61, 1-3-61, 1-4-61, 1-5-61, 1-6-61, 1-7-61, 1-8-61, 1-9-61, 1-10-61, 1-11-61, 1-12-61, 2-1-62, 2-2-62, 2-3-62, 2-4-62, 2-5-62, 2-6-62, 2-7-62, 2-8-62, 2-9-62, 2-10-62, 2-11-62, 2-12-62, 3-1-63, 3-2-63, 3-3-63, 3-4-63, 3-5-63, 3-6-63, 3-7-63, 3-8-63, 3-9-63, 3-10-63, 3-11-63, 3-12-63, 4-1-64, 4-2-64, 4-3-64, 4-4-64, 4-5-64, 4-6-64, 4-7-64, 4-8-64, 4-9-64, 4-10-64, 4-11-64, 4-12-64, 5-1-65, 5-2-65, 5-3-65, 5-4-65, 5-5-65, 5-6-65, 5-7-65, 5-8-65, 5-9-65, 5-10-65, 5-11-65, 5-12-65, 6-1-66, 6-2-66, 6-3-66, 6-4-66, 6-5-66, 6-6-66, 6-7-66, 6-8-66, 6-9-66, 6-10-66, 6-11-66, 6-12-66, 7-1-67, 7-2-67, 7-3-67, 7-4-67, 7-5-67, 7-6-67, 7-7-67, 7-8-67, 7-9-67, 7-10-67, 7-11-67, 7-12-67, 8-1-68, 8-2-68, 8-3-68, 8-4-68, 8-5-68, 8-6-68, 8-7-68, 8-8-68, 8-9-68, 8-10-68, 8-11-68, 8-12-68, 9-1-69, 9-2-69, 9-3-69, 9-4-69, 9-5-69, 9-6-69, 9-7-69, 9-8-69, 9-9-69, 9-10-69, 9-11-69, 9-12-69, 10-1-70, 10-2-70, 10-3-70, 10-4-70, 10-5-70, 10-6-70, 10-7-70, 10-8-70, 10-9-70, 10-10-70, 10-11-70, 10-12-70, 11-1-71, 11-2-71, 11-3-71, 11-4-71, 11-5-71, 11-6-71, 11-7-71, 11-8-71, 11-9-71, 11-10-71, 11-11-71, 11-12-71, 12-1-72, 12-2-72, 12-3-72, 12-4-72, 12-5-72, 12-6-72, 12-7-72, 12-8-72, 12-9-72, 12-10-72, 12-11-72, 12-12-72, 1-1-73, 1-2-73, 1-3-73, 1-4-73, 1-5-73, 1-6-73, 1-7-73, 1-8-73, 1-9-73, 1-10-73, 1-11-73, 1-12-73, 2-1-74, 2-2-74, 2-3-74, 2-4-74, 2-5-74, 2-6-74, 2-7-74, 2-8-74, 2-9-74, 2-10-74, 2-11-74, 2-12-74, 3-1-75, 3-2-75, 3-3-75, 3-4-75, 3-5-75, 3-6-75, 3-7-75, 3-8-75, 3-9-75, 3-10-75, 3-11-75, 3-12-75, 4-1-76, 4-2-76, 4-3-76, 4-4-76, 4-5-76, 4-6-76, 4-7-76, 4-8-76, 4-9-76, 4-10-76, 4-11-76, 4-12-76, 5-1-77, 5-2-77, 5-3-77, 5-4-77, 5-5-77, 5-6-77, 5-7-77, 5-8-77, 5-9-77, 5-10-77, 5-11-77, 5-12-77, 6-1-78, 6-2-78, 6-3-78, 6-4-78, 6-5-78, 6-6-78, 6-7-78, 6-8-78, 6-9-78, 6-10-78, 6-11-78, 6-12-78, 7-1-79, 7-2-79, 7-3-79, 7-4-79, 7-5-79, 7-6-79, 7-7-79, 7-8-79, 7-9-79, 7-10-79, 7-11-79, 7-12-79, 8-1-80, 8-2-80, 8-3-80, 8-4-80, 8-5-80, 8-6-80, 8-7-80, 8-8-80, 8-9-80, 8-10-80, 8-11-80, 8-12-80, 9-1-81, 9-2-81, 9-3-81, 9-4-81, 9-5-81, 9-6-81, 9-7-81, 9-8-81, 9-9-81, 9-10-81, 9-11-81, 9-12-81, 10-1-82, 10-2-82, 10-3-82, 10-4-82, 10-5-82, 10-6-82, 10-7-82, 10-8-82, 10-9-82, 10-10-82, 10-11-82, 10-12-82, 11-1-83, 11-2-83, 11-

50 CFR Part 20

Wednesday
June 6, 1990

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Supplemental Proposals for Migratory
Game Bird Hunting Regulations

DEPARTMENT OF THE INTERIOR**United States Fish and Wildlife Service****50 CFR Part 20****[RIN 1018-AA24]****Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds. This supplementary document describes proposed changes and provides additional information that will facilitate establishment of the 1990-91 hunting regulations.

DATES: The comment period for proposed migratory bird hunting season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons will end on July 20, 1990; and for late-season proposals will end on August 27, 1990. Public hearings on proposed early- and late-season frameworks will be held at 9 a.m. on June 21 and August 2, 1990, respectively.

ADDRESSES: Both public hearings will be held in the Auditorium of the Department of the Interior Building, 1849 C Street NW., Washington, DC. Written comments on the proposals and notice of intention to participate in either hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, Washington, DC 20240 (703-358-1714).

SUPPLEMENTARY INFORMATION: The data used in regulatory decisions were outlined in the March 14, 1990, Federal Register (55 FR 9618). At this time, the Service has not completed analysis of the spring breeding-ground surveys. As in past years, some actions on early-season regulations will be based on information from these surveys. In addition, aspects of past regulations

which may have a bearing on possible harvest, are being reviewed in cooperation with the Flyway Councils. These regulatory issues are shooting hours, the point system, special harvest opportunities for teal and scaup, and zones and splits for duck. The Service is currently assessing the comments received and preparing final reports before offering any proposals concerning these regulatory issues.

Description of the Regulations Development Process

The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons. Early seasons include those which generally may open before October 1, and late seasons are those which may open about October 1 or later. Regulations are developed independently for early and late seasons. The early-seasons regulations cover doves and pigeons; rails; moorhens and gallinules; woodcock; common snipe; early (September) waterfowl seasons; sandhill cranes in the Central and Pacific Flyways; all migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and extended falconry seasons. Late seasons include the general waterfowl seasons and coots; and, in the Pacific Flyway, moorhens and gallinules.

Certain general procedures are followed in developing regulations for the early and late seasons. Initial regulatory proposals are announced in the Federal Register in March and opened to public comment. These proposals are supplemented, as necessary, with additional Federal Register documents. Following review of comments received, and after public hearings, the Service develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the Federal Register. Using these frameworks, State conservation agencies then select hunting season dates and options, which may be more restrictive but not more liberal than those provided in the final frameworks. Upon receipt of State selections, the Service publishes a final rule in the Federal Register, amending subpart K of 50 CFR part 20, to establish specific seasons, bag limits, and other regulations, which become effective upon publication.

Regulations Schedule for 1990

On March 14, 1990, the Service published in the Federal Register (55 FR 9618) a proposal to amend 50 CFR part 20, with public comment periods ending as noted above. The proposal dealt with establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in series of proposed, supplemental, and final rules for migratory game bird hunting regulations. Comment periods on this second document and specified above under dates. Early-season frameworks will be proposed in late June and late-season frameworks in early August. Final regulatory frameworks for early seasons are targeted for Federal Register publication on or about August 8, 1990, and those for late seasons on or about September 17, 1990.

On June 21, 1990, a public hearing will be held in Washington, DC, to review the status of migratory shore and upland game birds. Recommended hunting regulations for the species and other early seasons will be discussed at that time.

On August 2, 1990, a public hearing will be held in Washington, DC, to review the status of waterfowl and recommended hunting regulations for regular waterfowl seasons, and other species and seasons not previously discussed at the June 21 public hearing.

Review of Public Comments

This supplemental rulemaking describes changes which have been recommended based on the preliminary proposals published March 14, 1990, in the Federal Register. Only those recommendations that would require either new proposals or substantial modification of the preliminary proposals to facilitate effective participation are included herein. Those that support or oppose but do not recommend alternatives to the preliminary proposals are not included, but will be considered later in the regulations development process. The Service will publish responses to proposals, written comments, and public hearing testimony when final frameworks are developed, at which time additional data about the status of affected species will be available.

The Service seeks additional information and comments on the recommendations contained in this supplemental proposed rule. These recommendations and all associated comments will be considered during development of the final framework.

New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 14, 1990, Federal Register (at 55 FR 9619).

General Comments

a. **Early-Season Consultants**—The Service is expanding its use of consultants in the regulations setting process to include regulations for all migratory birds. The late-season consultants have been very helpful in the development of waterfowl regulations and the Service plans to extend this arrangement to the early seasons as well. The consultants provide and interpret technical data and information on migratory bird populations, hunter activities, harvest, and habitat considerations to the Service Regulations Committee. This aids in the development of the proposals prior to the public hearings.

4. **Wood ducks**: In the preliminary proposals published on March 14, 1990, the Service gave notice that the harvest strategies for wood ducks are still being reviewed. In July 1988, the Service requested that the Atlantic and Mississippi Flyway Councils address several issues concerning wood duck harvest strategies in their respective flyways. At this time, the Service has received only one of the flyway reports requested. The Service awaits the other flyway report and will work with the Councils to develop an overall wood duck harvest management strategy for the two flyways (see Item 8).

6. **September Teal**: The Mississippi Flyway Council's Lower Region Regulations Committee recommends that the Service provide the option of a 3-day, 3-bird September teal season in the southern portion of the Flyway. The Committee believes that sport hunting in the U.S. has not contributed to the decline in the blue-winged teal population, and further states that these birds are early migrants.

8. **Experimental September Duck Seasons**: In the preliminary proposals published on March 14, 1990, the Service gave notice that the experimental September duck seasons are still being reviewed. These seasons are currently for wood ducks only, and therefore, the review is being done in conjunction with the review of existing harvest strategies for that species (see Item 4). When reviews are completed, the Service will work with the Atlantic and Mississippi Flyway Councils to develop acceptable criteria to monitor population changes. Presently, preseason banding programs are not meeting the regional

requirements for sample size and distribution necessary to evaluate special seasons for wood ducks on a state-by-state basis. The Service would like to reiterate that, unless arrangements can be made to initiate regional banding programs and to facilitate widespread data collection, these experimental seasons may be further modified or suspended.

13. Duck Zones and Splits:

a. The preliminary proposal requires clarification. The Service proposes to continue the option of 3-way splits for States that are currently utilizing this option. The option of a 3-way split is also available to currently zoned States in the Atlantic and Central Flyways that, in exchange, forfeit the option to zone. The option of a 3-way split was never offered to the Mississippi or Pacific Flyways.

b. The Pacific Flyway Council supported California's request for a boundary adjustment between the Northeastern Zone and the balance of the State. Presently, the zone boundary splits the Shasta Valley into two zones. The boundary realignment would remove a portion of the valley from the Northeastern Zone.

14. Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits:

a. The Atlantic Flyway Council endorsed the following recommendations at its March meeting:

i. That an early September Canada goose season be allowed for the western zone of Massachusetts. The expanding local goose population is causing an increase in nuisance problems and agricultural damage. It appears that the regular goose season is not of sufficient length or of correct timing to be able to significantly impact this population. The Council believes that an early September season will impact the local breeding population while avoiding migrant geese, and that the hunting pressure will cause nuisance geese to leave problem areas. The State would use a permit system to control the hunt.

ii. That an early September Canada goose season be allowed in northern St. Lawrence County, New York. The State believes that recent changes in regulations intended to protect migrant Canada geese have led to an increased resident goose population; and that the proposed season will have no impact on migrant geese, but should help to reduce the potential for nuisance, public health, and crop depredation problems.

iii. That the white goose season be extended from 90 to 107 days and that the closing framework date be extended to February 10. Even with more liberal

regulations, white goose populations in the Flyway continue to increase. These large populations are degrading important marsh habitat. The framework extension will provide additional hunting opportunity. An attempt to harvest more white geese is desirable.

iv. That the brant season closing framework be extended from January 20 to January 31 to be similar to frameworks for other geese and that, providing there is no production bust, the season be 50 days long with bag limits increased from 2 to 4 daily.

b. The following recommendations were endorsed at the March meeting of the Mississippi Flyway Council:

i. The Upper Region Regulations Committee recommended that an early September Canada goose season be allowed for the metropolitan Milwaukee area of Wisconsin. The increasing resident goose population is causing substantial nuisance problems. Present harvest levels are inadequate to control the population growth. The proposed hunt is intended to help alleviate nuisance problems caused by resident geese while avoiding harvest of migrant geese.

ii. The Lower Region Regulations Committee recommended that Louisiana be allowed a 9-day Canada goose season in late January, with a daily bag limit of 2 dark geese (only 1 of which could be a Canada goose). The Canada goose season in the State has been closed for almost 30 years. The State feels that the recent shift in the distribution of Tall Grass Prairie Population Canada geese into southwest Louisiana and the current status of Canada geese in the State is adequate to provide a restricted hunting season without disrupting the upward population trend.

iii. The Lower Region Regulations Committee recommended that the Snow goose closing framework date be extended to February 14 in the southern portion of the Flyway. The Committee cites that the resource is significantly over its population objective and hunting pressure and harvest rates remain low.

c. The Central Flyway Council endorsed an option for the eastern tier light goose seasons of 86 days and a 7 goose bag limit or 100 days and a 5 goose bag limit. The Council cites a decrease in harvest, an increase in population, and evidence that large numbers of snow geese are damaging habitat. The Council believes that implementation of these season options will not increase the harvest of mid-continent snow geese, but will allow

States to select the seasons most appropriate for their hunters.

d. The following recommendations were endorsed at the March meeting of the Pacific Flyway Council:

i. That an early September Canada goose season be allowed for Cache County in Utah. Local geese are depredating small cereal grain crops. As a result of stable water conditions during recent nesting seasons, the Cache Valley goose population and associated depredation have increased. The State controls very little land in this area which can be managed to reduce depredations. The State would use a permit system to control the hunt.

ii. That an early September Canada goose season be allowed for the Lower Columbia River of Oregon and Washington. Northwestern Oregon and southwestern Washington provide migration and wintering habitat to seven Canada goose subspecies. Harvest regulations have been restricted out of concern for several subspecies. These restrictions, combined with improved nesting conditions for western Canada geese, have resulted in large increases in resident Canada goose numbers and increases in agricultural damage complaints. The proposed hunt is designed to alleviate crop depredation and avoid jeopardizing any migrant geese that winter in the area. The States would use permit systems to control the hunts.

iii. That the restrictions in California be modified to increase the opportunity for hunting Western population Canada geese. Currently, several areas are restricted for hunting Canada geese out of concern for Aleutian and cackling Canada geese. A more detailed proposal being developed at this time will address modification in boundaries and season dates.

15. *Tundra Swans*: The Atlantic Flyway Council recommends that the permits be reallocated to increase the number in North Carolina from 6,000 to 6,200. However, this reallocation would not increase the number of permits allowed in the Atlantic Flyway.

16. *Sandhill Cranes*

a. The Central and Pacific Flyways endorsed proposals to allow a Sandhill Crane hunt in the Pacific Flyway portion of Montana. The Service already conditionally allows the option for such a hunt.

b. The Central Flyway recommended that the experimental hunt in the Middle Rio Grande Valley be granted operational status. Four years of experimental seasons have been completed within the guidelines of the *Pacific and Central Flyway Management Plan for the Rocky*

Mountain Population of Greater Sandhill Cranes.

17. *Coots*: The Pacific Flyway Council recommends that frameworks for coots allow those States with split duck seasons the option of hunting coots and common moorhens during the split between duck seasons, but not beyond the outside dates of the ducks seasons (see Item 18).

18. *Common moorhens and purple gallinules*: The Pacific Flyway Council recommends that frameworks for common moorhens allow those States with split duck seasons the option of hunting coots and common moorhens during the split between duck seasons, but not beyond the outside dates of the duck seasons (see Item 17).

22. *Band-tailed pigeons*: The Pacific Flyway Council recommends that the daily bag limit be reduced from 4 to 2 pigeons and that the closing date for the northern zone of California be changed from October 15 to October 7.

24. *White-winged doves*: In the preliminary proposals published on March 14, 1990, the Service indicated its intention to review the impacts of the special white-winged dove season in Texas and the adverse effects of the freeze-damaged citrus nesting habitat. No new information has become available since that time. Depending on population status and breeding habitat conditions in late May and June, 1990, the Service may consider modification of the season.

30. *Other*: The Service proposes to amend codified text for certain sections of 50 CFR to reflect previous updates and to display the latitude possible for certain seasons. The codified text for seasons in Alaska would be updated to include the experimental tundra swan season that is ongoing in that State. The codified text for sandhill crane seasons does not currently include the ongoing seasons in the Pacific Flyway, while the codified text for tundra swans does not currently include the recent seasons that were initiated in Virginia and were authorized for several other States. The texts of the sections on sandhill cranes and tundra swans would be modified to reflect the latitude for authorizing seasons in designated portions of the contiguous 48 States.

Public Comment Invited

Based on the results of migratory game bird studies now in progress, and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

Flyway Council Meetings

Department of the Interior representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—July 26–29, Buffalo, New York (Buffalo Hilton)
Mississippi Flyway—July 24–30, Bemidji, Minnesota (Holiday Inn)
Central Flyway—July 25–28, Angel Fire, New Mexico (Legend Hotel)

Pacific Flyway—July 25–27, Reno, Nevada (Peppermill Inn)

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", filed with EPA on June 9, 1988. Notice of Availability was published in the *Federal Register* on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

Endangered Species Act Consideration

As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate changes of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some regulatory measures proposed in this document. Any modifications will be reflected in the final frameworks. The

Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for public inspection in the Division of Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291, and Paperwork Reduction Act

In the *Federal Register* dated March 14, 1990, (55 FR 9618), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis. The Determination of Effects is included in the present document by reference. The Final Regulatory Impact Analysis is still under revision, but will be completed prior to publication of the final frameworks. As noted in the above *Federal Register* reference, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this supplemental proposed rulemaking is William O. Vogel, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend subpart K of part 20, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 20 is revised to read as follows:

Authority: Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–711) and the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712).

2. It is proposed that §§ 20.102, 20.106 and 20.107 be revised to read as follows:

§ 20.102 Seasons, limits, and shooting hours for Alaska.

This section provides for the annual hunting of certain waterfowl (ducks, tundra swans, geese, and brant), common snipe, and sandhill cranes in Alaska. In Alaska, the hunting of waterfowl must be with the use of nontoxic shot beginning in the 1991–92 waterfowl season.

§ 20.106 Seasons, limits, and shooting hours for sandhill cranes.

This section provides for the annual hunting of sandhill cranes in designated portions of the 48 contiguous United States.

§ 20.107 Seasons, limits, and shooting hours for tundra swans.

This section provides for the annual hunting of tundra swans in designated portions of the 48 contiguous United States.

Dated: May 25, 1990.

Richard N. Smith,
Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–12989 Filed 6–5–90; 8:45 am]

BILLING CODE 4310–55–M

Reader Aids

Federal Register

Vol. 55, No. 109

Wednesday, June 6, 1990

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, June

22319-22764.....	1
22765-22888.....	4
22889-23064.....	5
23065-23182.....	6

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

5 CFR

890..... 22889

Proposed Rules:

550..... 23088

7 CFR

51..... 22765, 22772

301..... 22319, 22320

352..... 23065

400..... 23066

910..... 22774

948..... 23069

953..... 22775

998..... 22776

Proposed Rules:

928..... 22797

1068..... 23086

1139..... 22798

1948..... 22920

9 CFR

381..... 23070

Proposed Rules:

92..... 22338

309..... 23100

310..... 23100

317..... 23100

318..... 22921, 23030

320..... 22921, 23030

381..... 22921

12 CFR

1611..... 22323

506..... 22891

Proposed Rules:

203..... 22923

225..... 22348

13 CFR

123..... 23072

Proposed Rules:

121..... 22799

14 CFR

39..... 22328, 22329, 22779

71..... 22331

121..... 23046

125..... 23046

127..... 23046

129..... 23046

135..... 23046

Proposed Rules:

Ch I..... 22351, 22800

39..... 22351, 22358, 22800, 22806, 22924

15 CFR

774..... 22892

Proposed Rules:

381..... 22808

16 CFR

305..... 22893

19 CFR

152..... 22894

21 CFR

74..... 22895

178..... 22898

520..... 23075

522..... 23075

23 CFR

658..... 22758

Proposed Rules:

635..... 22812

24 CFR

Proposed Rules:

86..... 22722

251..... 22887

252..... 22887

255..... 22887

26 CFR

48..... 23076

602..... 23076

27 CFR

Proposed Rules:

9..... 22925

28 CFR

0..... 22901, 22902

29 CFR

2200..... 22780

30 CFR

917..... 22903

920..... 22904

925..... 22907

935..... 22913

Proposed Rules:

914..... 22928

935..... 22929-22931

33 CFR

Proposed Rules:

117..... 22822, 22823

38 CFR

Proposed Rules:

3..... 22932

40 CFR

35..... 22994

52..... 22332, 22334, 22784

60..... 23077

123..... 22748

130..... 22748

148.....	22520
261.....	22520
262.....	22520
264.....	22520
265.....	22520
268.....	22520
270.....	22520
271.....	22520, 22916
302.....	22520

Proposed Rules:

52.....	22933
141.....	22752
799.....	22359

42 CFR

405.....	22785
410.....	22785

43 CFR

5400.....	22916
5440.....	22916

44 CFR

7.....	23078
--------	-------

46 CFR**Proposed Rules:**

308.....	23103
----------	-------

47 CFR

1.....	23082
73.....	23084

Proposed Rules:

73.....	23107, 23108
---------	--------------

48 CFR**Proposed Rules:**

1509.....	23109
1510.....	23109
1512.....	23109
1527.....	23109
1552.....	23109

49 CFR

217.....	22791
219.....	22791

50 CFR

301.....	23085
611.....	22794
620.....	22336
641.....	23086
650.....	22336
652.....	22336
659.....	22795
661.....	23087
672.....	22794, 22796, 22917, 22918
675.....	22919

Proposed Rules:

17.....	23109
20.....	23178

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 June 4, 1990

are now available for the 101st Congress, 2nd Session, 1990

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Order Processing Code:



Please Type or Print

[illegible]

Thank you for your order!

(Signature)

1/90

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

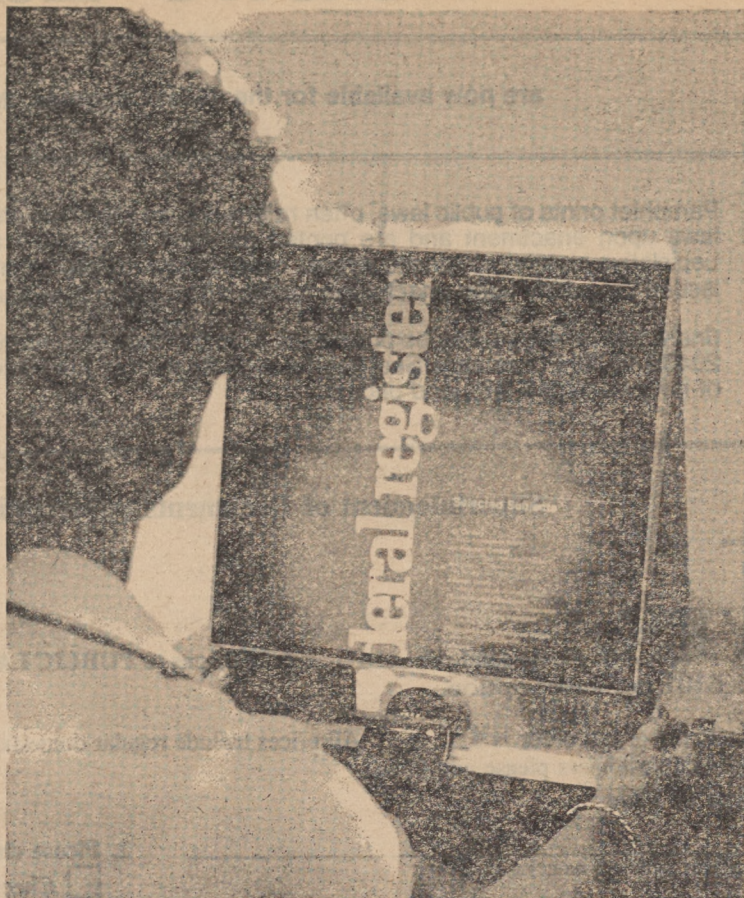
Federal Register:

One year: \$195

Six months: \$97.50

Code of Federal Regulations:

Current year (as issued): \$188



Superintendent of Documents Subscriptions Order Form

Order Processing Code:

* 6462

**Charge your order.
It's easy!**



Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

☐ **YES**, please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

Federal Register:

_____ One year: \$195

_____ Six months: \$97.50

Code of Federal Regulations:

_____ Current year: \$188

1. The total cost of my order is \$_____. All prices include regular domestic postage and handling and are subject to change.
International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents☐ GPO Deposit Account☐ VISA or MasterCard Account

(Credit card expiration date)

(Signature)

Thank you for your order!

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

(Rev. 2/90)