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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:

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

WASHINGTON, DC

WHEN: September 21, 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.

DALLAS, TX

WHEN: September 25, at 9:00 a.m.
WHERE: Federal Office Building, 1100 Commerce Street, Room 7A23–175, Dallas, TX.
RESERVATIONS: 1–800–366–2998.

Contents

Federal Register

Vol. 55, No. 173

Thursday, September 6, 1990

Agency for Health Care Policy and Research
NOTICES
Meetings:
Cesarean Section Patient Outcomes Research Advisory Committee, 36702
Gastroenteritis Patient Outcomes Research Advisory Committee, 36703

Agricultural Marketing Service
See also Packers and Stockyards Administration
RULES
Almonds grown in California, 36602
Lemons grown in California and Arizona, 36599
Onions grown in Idaho and Oregon, 36600
Raisins produced from grapes grown in California, 36607
Spearmint oil produced in Far West, 36605
Tomatoes grown in Texas, 36601
PROPOSED RULES
Oranges (navel) grown in Arizona and California, 36653

Agricultural Stabilization and Conservation Service
NOTICES
Marketing quotas and acreage allotments:
Tobacco, 36674

Agriculture Department
See also Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Commodity Credit Corporation; Federal Crop Insurance Corporation; Food Safety and Inspection Service; Forest Service; Packers and Stockyards Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Wildfire Disasters National Commission, 36673
Import quotas and fees:
Sugar—
Import controls, need; review, 36673

Air Force Department
RULES
Publications sales, 36631

Antitrust Division
NOTICES
National cooperative research notifications:
Industrial Cooperative for Ozone Layer Protection, Inc., 36710
International Pharmaceutical Aerosol Consortium for Toxicology Testing, 36710
Michigan Materials & Processing Institute, 36710
Smart House, L.P., 36711
Southwest Research Institute, 36712

Army Department
NOTICES
Meetings:
Science Board, 36686

Coast Guard
PROPOSED RULES
Dangerous cargoes:
Bulk by tankship; gas, liquid, liquefied, or compressed, 36670
Drawbridge operations:
South Carolina, 36666
Ports and waterways safety:
Chesapeake Bay traffic separation scheme, 36666

Commerce Department
See Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Nigeria, 36682
Export visa requirements; certification, waivers, etc.:
Trinidad and Tobago, 36682

Commodity Credit Corporation
NOTICES
Loan and Purchase programs:
Price support levels—
Tobacco, 36674

Council on Environmental Quality
NOTICES
National Environmental Policy Act; Federal agency liaisons list, 36683

Defense Department
See also Air Force Department; Army Department
RULES
Federal Acquisition Regulation (FAR):
Procurement integrity, 36782
PROPOSED RULES
Acquisition regulations (FAR):
Cost or pricing data; exemptions, 36774

Education Department
NOTICES
Meetings:
National Assessment Governing Board, 36686

Employment and Training Administration
NOTICES
Meetings:
Achieving Necessary Skills Commission, 36712

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Indiana, 36634
Rhode Island, 36635
Texas, 36632

Toxic substances:
Health and safety data requirements—
Reporting period terminations, 36638

Environmental Quality Council
See Council on Environmental Quality

Executive Office of the President
See Council on Environmental Quality; Presidential Documents

Export Administration Bureau
RULES
Korea import certificate/delivery verification procedure; establishment, 36610

Federal Communications Commission
RULES
Practice and procedure:
Adjudicatory proceedings; motions to disqualify providing officers, review, 36640
PROPOSED RULES
Common carrier services:
Tariffs—
Interstate long-distance marketplace competition, 36672
NOTICES
Public safety radio communications plans:
Albany area, 36701

Federal Crop Insurance Corporation
RULES
Organization and functions, 36609

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
US West Financial Services, Inc., 36687
Natural gas certificate filings:
El Paso Natural Gas Co. et al., 36687
Selkirk Cogen Partners, L.P., et al., 36694
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 36697
Blue Dolphin Pipe Line Co., 36698
Eastern Shore Natural Gas Co., 36698
Natural Gas Pipeline Co. of America, 36698
Northern Natural Gas Co., 36698, 36699 (2 documents)
Northwest Pipeline Corp., 36699
Southern Natural Gas Co., 36699
Tennessee Gas Pipeline Co., 36700
Trailblazer Pipeline Co., 36700
Williams Natural Gas Co., 36700
Williston Basin Interstate Pipeline Co., 36700, 36701 (2 documents)

Federal Maritime Commission
NOTICES
Agreements filed, etc., 36701

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 36750
Applications, hearings, determinations, etc.:
U.S.B. Holding Co., Inc., et al., 36702
Mahoney, J. Edward, 36702

Fish and Wildlife Service
RULES
Endangered and threatened species:
Pallid sturgeon, 36641
Hunting and sport fishing:
Open-areas list, additions; and refuge-specific regulations, 36647
NOTICES
Marine mammal permit applications, 36705

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name and address changes—
Vet-A-Mix, Inc.; correction, 36751
NOTICES
Meetings:
Consumer information exchange, 36703

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Utah; poultry products inspection and special purposes designations determination, 36608

Forest Service
NOTICES
Environmental statements; availability, etc.:
Angeles National Forest, CA, 36676
San Bernardino National Forest, CA, 36677

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Procurement integrity, 36782
PROPOSED RULES
Acquisition regulations (FAR):
Cost or pricing data; exemptions, 36774

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Social Security Administration

Health Care Financing Administration
RULES
Medicare:
Geographical Classification Review Board; procedures and criteria, 36754

Health Care Policy and Research Agency
See Agency for Health Care Policy and Research

Hearings and Appeals Office, Interior Department
PROPOSED RULES
Hearings and appeals procedures:
Indian affairs; estates probate, 36669

Housing and Urban Development Department
RULES
Slum clearance and urban renewal:
Rental rehabilitation grant program—
Reporting and recordkeeping requirements, 36611
NOTICES
Agency information collection activities under OMB review, 36703

Interior Department
See Fish and Wildlife Service; Hearings and Appeals Office, Interior Department; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Excise taxes:
Ozone layer depleting chemicals and products, 36612
PROPOSED RULES
Excise taxes:
Ozone layer depleting chemicals and products, 36659
Income taxes:
Acquisitions made to evade or avoid taxes and corporate tax attributes use following ownership change
Correction, 36751
Corporate net operating loss carryforwards; limitations, 36657
NOTICES
Electronic Filing Systems National Conference and Exhibition; trade show, 36748

International Broadcasting Board
NOTICES
Senior Executive Service:
Performance Review Board; membership, 36680

International Trade Administration
NOTICES
Antidumping:
Carbon steel and structural shapes from Canada, 36680
Stainless steel plate from Sweden, 36680

International Trade Commission
NOTICES
Import investigations:
Dynamic and static random access memories, components, and products containing same, 36706
Fans with brushless DC motors, 36706
Generalized System of Preferences—
Eligible articles list, etc., 36707
Internal mixing devices and components, 36708
Plastic encapsulated integrated circuits, 36708
Self-inflating mattresses, 36709

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Belt Railway of Chicago, 36709
Florida Central Railroad Co., 36709

Justice Department
See also Antitrust Division
NOTICES
Pollution control; consent judgments:
Eljer Industries, Inc., 36709
Morton Thiokol, Inc., 36710

Labor Department
See Employment and Training Administration; Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Closure of public lands:
Nevada, 36704
Environmental statements; availability, etc.:
Steep Creek wilderness study area, UT; correction, 36751

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Procurement integrity, 36782
PROPOSED RULES
Acquisition regulations (FAR):
Cost or pricing data; exemptions, 36774

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea subarea groundfish, 36652
Gulf of Alaska groundfish, 36651
PROPOSED RULES
Endangered and threatened species:
Steller sea lions
Correction, 36751
NOTICES
Fishery management councils; hearings:
New England—
Northeast multispecies, 36681

National Park Service
NOTICES
Meetings:
Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 36705
Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission, 36705

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Safety Research Review Committee, 36728
Reactor Safeguards Advisory Committee, 36728
(2 documents)
Applications, hearings, determinations, etc.:
Certified Testing Laboratories, Inc., 36729
Philadelphia Electric Co., 36731

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Turnersburg Horse Auction, NC, et al., 36679

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Greenwich Capital Markets, Inc., 36724
Dennis Calvert & Associates, Inc., et al., 36712

Presidential Documents
PROCLAMATIONS
Special observances:
D.A.R.E. Day, National (Proc. 6174), 36597

Public Health Service
See Food and Drug Administration

Research and Special Programs Administration
NOTICES
Hazardous materials:
Inconsistency rulings, etc.—
Louisiana, 36735
Montevallo, AL, 36736
Nalco Chemical Co., 36732

Small Business Administration
NOTICES
Disaster loan areas:
Alabama, 36731
Nebraska, 36731
New York, 36732
South Carolina, 36732

Social Security Administration
PROPOSED RULES
Social security benefits:
Elementary or secondary school students; full-time attendance, 36656

State Department
NOTICES
Agency information collection activities under OMB review, 36732

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 36660
Ohio, 36661

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard; Research and Special Programs Administration

Treasury Department
See also Internal Revenue Service
PROPOSED RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Mandatory currency transaction aggregation and magnetic media reporting, 36663
NOTICES
Agency information collection activities under OMB review, 36748
Senior Executive Service:
Legal Division Performance Review Board; membership, 36748

Veterans Affairs Department
NOTICES
Meetings:
Voluntary Service National Advisory Committee, 36749
Privacy Act:
Computer matching program, 36749

Separate Parts In This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration, 36754

Part III
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 36774

Part IV
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 36782

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.

3 CFR
Proclamations:
6174.....36597

7 CFR
910.....36599
958.....36600
965.....36601
981.....36602
985.....36605
989.....36607
Proposed Rules:
907.....36653

9 CFR
381.....36608

12 CFR
1400.....36609

15 CFR
775.....36610

20 CFR
Proposed Rules:
404.....36656

21 CFR
522.....36751

24 CFR
511.....36611

26 CFR
52.....36612
602.....36612
Proposed Rules:
1 (2 documents).....36657, 36751
52.....36659
602.....36659

30 CFR
Proposed Rules:
901.....36660
935.....36661

31 CFR
Proposed Rules:
103.....36663

32 CFR
807.....36631

33 CFR
Proposed Rules:
117.....36666
167.....36666

40 CFR
52 (3 documents).....36632–36635
716.....36638

42 CFR
412.....36754

43 CFR
Proposed Rules:
4.....36669

46 CFR
Proposed Rules:
153.....36670

47 CFR
1.....36640
Proposed Rules:
61.....36672

48 CFR
3.....36782
4.....36782
9.....36782
14.....36782
15.....36782
37.....36782
52.....36782
53.....36782
Proposed Rules:
8.....36774
15.....36774
31.....36774
52.....36774
53.....36774

50 CFR
17.....36641
32.....36647
33.....36647
672.....36651
675.....36652
Proposed Rules:
227.....36751

Federal Register
Vol. 55, No. 173
Thursday, September 6, 1990

Presidential Documents

Title 3—

The President

Proclamation 6174 of September 4, 1990

National D.A.R.E. Day, 1990

By the President of the United States of America

A Proclamation

Prevention remains one of our most important weapons in the Nation's war on illicit drugs, and all of us must continue working together to teach young Americans about the dangers of experimenting with drugs and alcohol. One collaborative program that has proved to be particularly effective is Project D.A.R.E. (Drug Abuse Resistance Education). Developed in 1983 by the Los Angeles Police Department and the Los Angeles Unified School District, the D.A.R.E. program has brought together students, parents, educators, and law enforcement officers in a concerted effort to help young Americans say "No" to illicit drugs and "Yes" to life.

Many of our Nation's law enforcement professionals have seen firsthand the violence, death, and despair caused by drug and alcohol abuse. Most tragic and most frustrating is the devastation unleashed upon children, whose great potential and bright hopes for the future are too often laid to waste as a result of drug use. Through Project D.A.R.E., specially trained, veteran law enforcement officers provide classroom instruction aimed at impressing upon children the dangers of using drugs and alcohol.

The D.A.R.E. program not only alerts participants to the perils of drug use, but also helps them to develop skills to resist the subtle pressures that influence young people to try drugs and alcohol. Project D.A.R.E. targets children in kindergarten through 12th grade—at ages when they are most vulnerable—and helps them to develop self-confidence, a sense of responsibility, and respect for our Nation's laws.

The law enforcement officers who lead the D.A.R.E. program also help to educate parents about the dangers and symptoms of drug and alcohol abuse, pointing out ways in which they can help their children to stay away from drugs. For example, through this innovative program, parents are reminded that it is important not only to talk to their children, but also to listen to them, learning about their troubles and fears and discerning their need for guidance and support.

Since its inception only 7 years ago, the D.A.R.E. program has been adopted by schools in 2,000 communities in 49 States and by the Department of Defense Overseas Dependent Schools worldwide. This week we applaud the success of Project D.A.R.E. and salute the dedicated law enforcement officers, parents, and educators who are making it work. We honor, too, in a special way, the enthusiastic young participants who—by word, deed, and example—are demonstrating to other young Americans the many great and lasting rewards of staying drug-free.

In recognition of the success of Project D.A.R.E., the Congress, by Senate Joint Resolution 281, has designated September 13, 1990, as "National D.A.R.E. Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 13, 1990, as National D.A.R.E. Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities.

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

George Bush

[FR Doc. 90-21152
Filed 9-5-90; 11:30 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 55, No. 173
Thursday, September 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

Agricultural Marketing Service

7 CFR Part 910

[FV-90-188-FR]

Expenses and Assessment Rate for Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1990–91 fiscal year under Marketing Order No. 910 for lemons produced in California and Arizona. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Lemon Administrative Committee (Committee), the agency responsible for the administration of the order, to have sufficient funds to meet the expenses of operating the program. This facilitates program operations. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture (Department) for approval.

EFFECTIVE DATES: August 1, 1990, through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524–S, Washington DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 910 [7 CFR part 910], as amended, regulating the handling of lemons grown in California and Arizona. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed 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 requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final 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 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 70 handlers of lemons grown in California and Arizona who are subject to regulation under the lemon marketing order and approximately 2,000 producers of lemons in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual revenues 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 lemon producers and handlers may be classified as small entities.

The lemon marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable lemons handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The Committee consists of handlers, producers, and a non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of lemons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on July 3, 1990, and unanimously recommended 1990–91 marketing order expenditures of $970,000 and an assessment rate of $0.05 per carton of lemons. In comparison, 1989–90 marketing year budgeted expenditures were $775,000 and the assessment rate was $0.045 per carton. Based on the amendment of the marketing policy, which was adopted by the Committee at its August 14 meeting, the assessment income for the 1990–91 fiscal year is revised to total $895,000. Assessment income is determined by the anticipated fresh domestic shipments of lemons. Since the Committee revised the fresh domestic shipments from 17,340,000 cartons to 17,900,000 cartons, the assessment income is expected to increase from $867,000 to $895,000. Reserve funds may be used to meet the projected deficit of $75,000 in assessment income.

Major budget categories for 1990–91 are $267,000 for field and compliance expenses, $241,300 for administrative and office salaries, and $122,000 for Committee member expenses. Comparable expenditures for the 1989–90 fiscal year are expected to be $224,750, $195,622, and $102,000, respectively. In addition, the Committee anticipates spending an additional $110,000 during 1990–91 on the relocation of the Committee's office from Los Angeles to Valencia.

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 would be significantly offset by the benefits derived from the operation of the marketing 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.

This action adds a new section 910.228 and is based on Committee recommendations and other information. A proposed rule on the expenses and assessment rate was published in the August 9, 1990, issue of the **Federal Register** [55 FR 32423]. Comments on the proposed rule were invited from interested persons until August 20, 1990. No comments were received.

After consideration of the information and recommendation submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This rule should expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Committee at public meetings. Therefore, it is 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 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. A new § 910.228 is added to read as follows:

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

§ 910.228 Expenses and assessment rate.

Expenses of $970,000 by the Lemon Administration Committee are authorized, and an assessment rate of $0.05 per carton of assessable lemons is established for the 1990–91 fiscal year ending on July 31, 1991. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: August 30, 1990.

Ronald L. Cioffi,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 90–20955 Filed 9–5–90; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 958

[Docket No. FV–90–165]

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Change in the Definition of Pearl Onions and Revision of Reporting Requirements for Pearl Onion Shipments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the definition of pearl onions, which are exempt from regulation under the Idaho-Eastern Oregon onion marketing order. Such onions are defined as those equal to or less than 1¾ inches rather than 1½ inches in diameter. The change in the definition recognizes that there is an expanding market for pearl onions and should facilitate the marketing of such onions. This rule will also revise the reporting requirements with respect to pearl onions to require handlers to report shipments of such onions on a monthly basis rather than subsequent to each individual shipment of lots of such onions. Requiring less frequent reporting of pearl onion shipments will reduce reporting requirements imposed on handlers in view of the fact that individual shipments of lots of pearl onions contain relatively small volumes, and it is unnecessary to require each of those shipments to be reported separately.

EFFECTIVE DATE: September 6, 1990.

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) 475–5610.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. The marketing agreement and order are authorized 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 requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 30 handlers of Idaho-Eastern Oregon onions subject to regulation under the marketing order, and approximately 450 onion producers in the production area. 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 the handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities.

Under the terms of the marketing order, fresh market shipments of onions grown in Idaho-Eastern Oregon are required to be inspected and are subject to grade, size, maturity, and pack requirements. Handling requirements for fresh shipments of Idaho-Eastern Oregon onions are specified in 7 CFR 958.328. That regulation establishes grade and size requirements for each of the three types of onions grown in the production area—white, red and other varieties, the last consisting of mostly yellow varieties. Each of the three types of onions must grade at least U.S. No. 2. White onions are required to be at least 1 inch in diameter and red and other varieties are subject to a minimum size requirement of 1½ inches in diameter. Exemptions from these requirements are provided for certain types of onions (e.g., braided red onions) and onions used for certain specified purposes (e.g., dehydration).

At a meeting held on April 24, 1990, the Idaho-Eastern Oregon Onion Committee (committee), the agency responsible for local administration of the marketing order, recommended two changes in the current handling regulation. In accordance with the committee's recommendation, this rule changes the definition of pearl onions, which are exempt from regulation, to include onions equal to or less than 1¾ inches in diameter, rather than 1½ inches in diameter. This rule also revises safeguard requirements to provide that

handlers must report shipments of pearl onions on a monthly basis rather than subsequent to each individual shipment of lots of pearl onions. These actions are designed to facilitate the marketing of pearl onions, which are sold as a specialty item and do not compete directly with other onions grown in the production area.

Pearl onions have been exempt from quality, size, inspection and assessment requirements since 1985. Pearl onions are grown using specific cultural practices to limit growth. For example, irrigation and planting techniques differ from those used in growing other onions. Pearl onions are grown and sold as a specialty item, and comprise a small percentage of the total volume of onions grown in the Idaho-Eastern Oregon production area. The committee believed, in recommending an exemption for pearl onions, that it was not necessary to regulate this small volume of pearl onions, and that producers and handlers of other onions would not be adversely affected because their onions were not competing directly with the exempt pearl onions. The committee also believed that the exemption for pearl onions would facilitate development of a new market for production area onions.

For purposes of the exemption, pearl onions are currently defined as onions grown using specific cultural practices to limit growth to a general size of less than 1½ inches in diameter. According to information submitted by the committee, pearl onions are typically less than 1½ inches in diameter. However, a pearl onion crop will often contain some larger onions. Buyers of pearl onions are willing to purchase these somewhat larger pearl onions to reduce the additional costs associated with sorting the various sizes. For these reasons, the committee recommended changing the definition to include onions up to 1¾ inches in diameter. Since pearl onions are sold as a specialty item distinct from other onions grown in the production area, it is not expected that this action will adversely affect the marketing of such other onions. In addition, the order in which definitions appear in § 958.328(g) is also being changed for clarity.

Currently, handlers of pearl onions must apply to the committee for a Certificate of Privilege to be permitted to ship pearl onions exempt from marketing order requirements. Once receiving a Certificate of Privilege, handlers report each individual shipment of lots of pearl onions to the committee. Since pearl onion shipments are typically of relatively low volume, the committee does not believe that it is necessary that each such shipment be reported separately as it occurs. The committee therefore recommended that the current reporting requirements be revised to require pearl onion handlers to report shipments on a monthly basis. This will reduce the reporting requirements imposed on handlers, while still ensuring that the committee receives information it needs relative to the volume of pearl onions being marketed.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection requirements included in this final rule have been submitted to the Office of Management and Budget (OMB) and have been approved under OMB No. 0581–0087.

Based on the above, 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 July 6, 1990, **Federal Register** (55 FR 27825) and afforded interested persons until August 6, 1990, to submit written comments. No comments were received.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the shipping season began in July and therefore this rule should be implemented as soon as possible. Further, handlers are aware of this action, which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

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

2. Section 958.328 is amended by revising paragraph (e)(2) and paragraph (g) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 958.328 Handling regulation.

* * * * *

(e) * * *

(2) Prepare, on forms furnished by the committee, a report in quadruplicate on each individual shipment to such outlets authorized in paragraph (c) of this section; except that shipments of pearl onions shall be reported to the committee on a monthly basis on forms furnished by the committee;

* * * * *

(g) *Definitions.* The terms "U.S. No. 1," "U.S. Commercial," and "U.S. No. 2" have the same meaning as defined in the United States Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Type), as amended (7 CFR 51.2830–2854), or the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195–51.3209), whichever is applicable to the particular variety, or variations thereof specified in this section. The term "braided red onions" means onions of red varieties with tops braided (interlaced). "Pearl onions" means onions produced using specific cultural practices that limit growth to the same general size as boilers and picklers, measuring 1¾ inches in diameter or less. The term "moderately cured" means the onions are mature and are more nearly well cured than fairly well cured. Other terms used in this section have the same meaning as when used in Marketing Agreement No. 130 and this part.

* * * * *

Dated: August 30, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–20956 Filed 9–5–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 965

[Docket No. FV–90–192]

Tomatoes Grown in the Lower Rio Grande Valley in Texas; Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures under Marketing Order No. 965 for the 1990–91 fiscal period. Authorization of this budget will permit

the Texas Valley Tomato Committee to finance a varietal research project from operating reserve funds.

EFFECTIVE DATE: August 1, 1990, through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, 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 Order No. 965, as amended (7 CFR part 965), regulating the handling of tomatoes grown in the counties of Cameron, Hidalgo, Starr, and Willacy in the State of Texas. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This 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 final 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 5 handlers of Texas tomatoes under this marketing order, and 25 tomato producers. 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 tomato producers and handlers may be classified as small entities.

The budget of expenses for the 1990–91 fiscal period was prepared by the Texas Valley Tomato Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Texas tomatoes. They 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 in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The committee met on July 10, 1990, and unanimously recommended that $2,500 of the committee's operating reserve funds be allocated to conduct a varietal research project. The projected reserve at the end of the 1990–91 fiscal period is $547.79, which will be carried over into the next fiscal period. This amount is within the maximum permitted by the order of two fiscal periods' expenses.

Since the expenses will be financed from the committee's operating reserve, no additional costs will be imposed on handlers. 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 August 9, 1990 (55 FR 32423). That document contained a proposal to add § 965.215 to authorize expenses for the committee. That rule provided that interested persons could file comments through August 20, 1990. No comments were received.

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

This action should be expedited because the committee needs to finance this research project. The 1990–91 fiscal period for the program began on August 1, 1990. The industry is 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 965

Marketing agreements, reporting and recordkeeping requirements, tomatoes.

For the reasons set forth in the preamble, 7 CFR part 965 is amended as follows:

PART 965—TOMATOES GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 965 continues to read as follows:

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

2. Section 965.215 is added to read as follows:

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

§ 965.215 Expenses.

Expenses of $2,500 by the Texas Valley Tomato Committee are authorized for the fiscal period ending July 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: August 30, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–20952 Filed 9–5–90; 8:45 am]

BILLING CODE 3410–02

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7 CFR Part 981

[FV–90–183 FR]

Expenses and Assessment Rate for Almonds Grown in California

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1990–91 crop year under the marketing agreement and order for California almonds. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Almond Board of California (Board), which is responsible for local administration of the order, to have sufficient funds to meet the expenses of operating the program. Expenses are incurred on a continuous basis.

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

FOR FURTHER INFORMATION CONTACT: Sheila Young, Marketing Specialist, Marketing Order Administration Branch, F&V, AMDS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–5992.

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

This final rule has been reviewed by the U.S. Department of Agriculture (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 requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final 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 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 95 handlers of California almonds, and there are approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) 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 almond handlers and producers may be classified as small entities.

The marketing order for California almonds requires that the assessment rate for a particular crop year shall apply to all assessable almonds handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture (USDA) for approval. The members of the Board are handlers and producers of regulated almonds. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected handler receipts of assessable almonds. The assessment rate is a Board recommended figure that must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Board shortly after July 1 of each crop year, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Board will have funds to pay its expenses.

The Board met on June 27, 1990, and unanimously recommended 1990–91 crop year expenditures of $18,946,254 and an assessment rate of 2.77 cents per pound (kernelweight basis). The Board also recommended, by a 9 to 1 vote, that handlers should be eligible to receive credit for their own marketing promotion activities for up to 2.50 cents of this 2.77-cent-per-pound assessment rate.

The 2.77-cent-per-pound 1990–91 assessment rate compares with a 1989–90 assessment rate of 2.75 cents per pound. While the 2.50-cent-per-pound creditable rate is the same as the 1989–90 rate, the 0.27-cent-per-pound non-creditable portion of the total assessment, which handlers must pay to the Board, is 0.02 cents higher than the 0.25-cent-per-pound 1989–90 rate. The higher rate is needed to cover increased personnel costs and promotional activities. Reserve funds may be used to meet any deficit in assessment income, and unexpended funds may be carried over as a reserve.

At its June 27 meeting, the Board recommended total projected expenses for the 1990–91 season of $18,946,254, which compares with 1989–90 budgeted expenses of $12,339,618. Major budget categories for 1990–91 are $975,600 for administrative expenses, $393,179 for production research, $1,575,675 for public relations, and $119,800 for the 1991 crop estimate and an acreage survey. Comparable actual expenditures for the 1989–90 crop year were $880,200 $352,018, $937,700, and $69,700, respectively. This remaining $15,900,000 of proposed 1990–91 expenses was the estimated amount which handlers would spend on their own marketing promotion activities based on the June estimate of 1990–91 marketable California almond production of 636,000,000 kernelweight pounds and assumed that all handlers would receive full credit against their 2.50-cent-per-pound creditable assessment obligations. For the 1989–90 crop year; $10,100,000 was budgeted for handler marketing promotion activities based on a projected marketable production of 404,000,000 kernelweight pounds. A final figure is not yet available because handlers have until December 31, 1990, to complete marketing promotion activities for which they may receive credit toward their 1989–90 crop year creditable assessment obligations.

At its July 25 meeting, the Board passed a resolution, by an 8 to 2 vote, to revise its recommendation for the 1990–91 crop year expenditures by decreasing them from $18,946,254 to $18,771,254. This revision was based on a change in the estimated amount which handlers will spend on their own marketing promotion activities from $15,900,000 to $15,725,000 which, in turn, was based on a decrease in the estimated 1990–91 marketable production figure from 636,000,000 kernelweight pounds to 629,000,000 kernelweight pounds.

The marketable production is derived by subtracting from the total estimated production of almonds the estimated quantity of inedible almonds in the crop which will not be available for sale to human consumption outlets. On July 6, the National Agricultural Statistics Service (NASS) revised its earlier June 12 estimate of the 1990 production from 670,000,000 kernelweight pounds to 655,000,000 kernelweight pounds. At its July 25 meeting, the Board revised its estimate of inedible quantity almonds from 27,000,000 kernelweight pounds to 26,000,000 kernelweight pounds. By subtracting this figure from the new NASS estimate, the Board arrived at its revised marketable production estimate of 629,000,000 kernelweight pounds.

This action adds a new § 981.337 and is based on the Board's June 27 and July 25 recommendations and other available information. It adopts the 2.77-cent-per-kernelweight-pound assessment rate with a creditable portion of 2.50 cents per kernelweight pound as proposed in the **Federal Register** on July 17, 1990 (55 FR 29026). However, based on the new crop estimate this rule approves total expenses in the amount of $18,771,254 rather than the $18,946,254 as appeared in the proposed rule. Comments on the proposed rule were invited from interested persons until July 27, 1990. Comments were received from Brian C. Leighton on behalf of Cal-Almond, Inc., Mr. David Long of Nuts Natural, and Mr. Steve Easter on behalf of Blue Diamond Growers.

Mr. Leighton, in his comment on behalf of Cal-Almond, Inc. (Cal-Almond), contested the Board's recommended total expenses stating that there is nothing to suggest that the Board needs to spend $18,946,254 for the 1990–91 crop year. In particular, the commenter contested the Board's recommended administrative expenses of $957,600, stating that that amount is much too high considering last year's expenditure was only $880,200. Cal-Almond stated that the salaries paid to members of the Board's administrative staff are too high and are not comparable to salaries paid to individuals in the Federal government. The Department disagrees with Cal-Almond's statement. The members of the Board's administrative staff are not government employees. In addition, salaries paid to the Board's administrative staff are competitive with those salaries paid to individuals in the

private industry. The Department reviewed the lists of recommended expenses submitted by the Board on a line-by-line basis and determined that all recommended expenses were reasonable and necessary for the maintenance and functioning of the Board and for activities authorized under the order.

In its comments, Cal-Almond also stated that the amount the Board recommended for marketing promotion and generic public relations program activities are not justified. The Board recommended expenditures of $1,575,675 for the 1990–91 season. This figure is approximately $600,000 more than that of the 1989–90 season. The Department believes that the Board's recommendation is justified for a number of reasons. Handlers may receive up to 150 percent credit against their advertising assessments for direct payments to the Board for use by the Board in its generic public relations program pursuant to § 981.441(e) of the regulations issued under the order. Therefore, it is estimated that the money received by the Board for this program, pursuant to § 981.441, will be equal to, or near, the above mentioned $1,575,675. Increased generic public relations activities are needed to promote this season's large almond crop. It is expected that increased generic public relations activities will encourage an increase in almond consumption which would, in turn, decrease the quantity of almonds in reserve.

The commenter believes that the recommended increased total expenditures are an extra burden on handlers especially when handlers are assessed on all of their almonds and the Board has recommended that handlers may only market 65 percent of those almonds. The Department agrees with the Board's recommended increase from $10,100,000 last year to $15,725,000 this year in handler marketing promotion due to this year's large almond crop. Since handlers are assessed on all almonds received, and this year's crop is so much larger than that of last year, handlers would be expected to spend more this year on creditable advertising activities pursuant to § 981.441. Cal-Almond also raised three issues in its comment which relate to 15(A) petitions which Cal-Almond has filed with the Department. Section 15(A) of the Act provides that any handler regulated under a marketing order may file a petition with the Secretary of Agriculture if such handler believes that the order, any provision of the order, or any obligation imposed under the order is not in accordance with law.

Cal-Almond pointed out that two administrative law judges, in response to two separate 15(A) petitions filed by Cal-Almond, have recently ruled that § 981.441 of the administrative rules and regulations established under the order, which establishes conditions under which handlers may receive credit for their own advertising and promotion activities, is not in accordance with law. The judges determined that § 981.441 violates section 8(c)10 of the Act, which provides that no marketing order shall regulate or restrict the advertising of any commodity covered thereunder. Cal-Almond indicated that because of these rulings, the 2.50 cent-per-pound creditable portion of the proposed assessment rate should not be established.

It is the position of the AMS that § 981.441 does not impose regulations or restrictions on what almond handlers may advertise, but only governs what handlers may receive credit for under the order. The rules of practice governing 15(A) proceedings provide that decisions of administrative law judges do not become effective if they are appealed, and the AMS is appealing the decisions on this matter. The AMS will continue to support the provisions of § 981.441 until and unless a final decision is issued ruling that those provisions are not in accordance with law.

A second 15(A) issue raised by Cal-Almond concerns the legality of assessing almonds designated as reserve pursuant to the order. In its comment, Cal-Almond stated that assessments cannot be levied upon reserve almonds. It is the position of the AMS that the order requires that handlers pay assessments on all almonds received by such handlers, including almonds which are subsequently designated as reserve. This position was upheld by two USDA administrative law judges in decisions issued recently on two separate 15(A) petitions filed by Cal-Almond. In turn, Cal-Almond may choose to appeal these decisions.

The final 15(A) issue raised by Cal-Almond concerns Cal-Almond's First Amendment rights. In its comment, Cal-Almond stated that Cal-Almond is opposed to the Board's advertising and promotion program and is ideologically, philosophically, and commercially opposed to associating with that program. Cal-Almond stated that Cal-Almond is opposed to both the Board's generic promotion activities and the system whereby handlers may receive credit towards a portion of their assessments for their own advertising and promotion activities pursuant to conditions specified in § 981.441 of the order. Cal-Almond stated that it violates Cal-Almond's First Amendment rights to compel Cal-Almond to participate in this program.

It is the position of the AMS that the advertising and promotion program established under the order does not violate Cal-Almond's First Amendment rights. This position was supported by a Department administrative law judge in a recent decision issued in response to a 15(A) petition filed by Cal-Almond. In that decision, the judge determined that while the advertising and promotion program established under the order did implicate Cal-Almond's First Amendment rights, the government has a compelling state interest in promoting the sale, consumption, and use of California almonds, which is ideologically neutral and which cannot be achieved through less restrictive means. Cal-Almond also has the right for further appeal of this decision.

For the reasons stated above, Cal-Almond's objections are denied.

A comment was also received from Mr. David Long of Nuts Natural. Mr. Long states that it would be inconsistent with the purpose of the marketing order for the Board to recommend two different rates for the assessment on handlers. At the Board's June 26 meeting, it proposed to recommend two different rates of assessment based on whether or not it would recommend an allocated reserve. The Department, which was represented at the meeting, advised against the action. At its July meeting, the Board, then, recommended only one rate—a 2.77 cent-per-kernelweight-pound assessment.

Mr. Long also suggested that small handlers should be exempt from the credible advertising program, stating that the program is not of help to small handlers who do not have a brand. However, handlers may receive credit against their advertising assessments for activities other than brand advertising. Handlers may also receive credit for generic advertising, the distribution of sample packages of almonds to charitable and educational outlets, and the purchase of promotional materials from the Board. In addition, handlers may receive 150 percent credit against their advertising assessments for direct payments to the Board for use by the Board in its generic public relations program. The Department believes that handler brand advertising, as well as handler generic advertising and marketing promotion activities and the Board's public relations program, benefit

all handlers and growers by increasing demand for all almonds.

For the reasons stated above, Mr. Long's objections are denied.

A comment was also received from Mr. Steve Easter on behalf of Blue Diamond Growers (Blue Diamond). The commenter stated that the administrative expenses are necessary for the Board to function effectively by providing industry-wide information, such as crop estimates and acreage surveys, which is essential information for establishing marketing policies on a year-to-year basis. Blue Diamond also stated that the Board's recommended expenses are for maintenance of the staff and undertaking the all-important activities of quality control, industry statistics and compliance with the marketing order, adding that these issues are all vital to the industry.

Blue Diamond supports the Board's recommended assessment rate and expenses described in the proposed rule. Blue Diamond expressed support of the Board recommended 2.77-cent-per-kernelweight-pound assessment rate. The commenter was especially supportive of the Board recommended 2.50-cent-per-kernelweight-pound creditable advertising assessment stating that this program gives the handlers the option of undertaking creditable brand advertising or providing funding to the Board for additional public relations activities. The commenter continued by stating that the advertising expenditures are allowed to be made on a worldwide basis and have been effective in increasing consumption in recent years.

The commenter added that the generic public relations activities are aimed at increasing consumption of all almonds and, therefore, constitutes a beneficial program. The commenter then concluded by stating that the industry has seen the success of the advertising programs in the past as indicated by increased consumption of almonds, and that the way to achieve further increases is by the judicious application of the advertising assessment.

While this final action may 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 significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this final action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the Board, the comments received, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This action should be expedited because the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Board at public meetings. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication of the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

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

PART 981—ALMONDS GROWN IN CALIFORNIA

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

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

2. Section 981.337 is added to read as follows:

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

§ 981.337 Expenses and assessment rate.

Expenses of $18,771,254 by the Almond Board of California are authorized for the crop year ending on June 30, 1991. An assessment rate for that crop year payable by each handler in accordance with section 981.81 is fixed at 2.77 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to section 981.41, but not to exceed 2.50 cents per pound of almonds (kernelweight basis).

Dated: August 31, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–20944 Filed 9–5–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 985

[FV–89–107–IFR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantities and Allotment Percentages for "Class 1" Scotch and "Class 3" Native Spearmint Oil for the 1990–91 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on increasing the quantity of "Class 1" (Scotch) and "Class 3" (Native) spearmint oils produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1990–91 marketing year which began on June 1, 1990. This action is taken under the marketing order for spearmint oil produced in the Far West to avoid extreme fluctuations in supplies and pries and, thus, help maintain stability in the spearmint oil market. This action was unanimously recommended by the Spearmint Oil Administrative Committee (Committee), which is responsible for local administration of the order.

EFFECTIVE DATES: September 6, 1990. Comments which are received by October 9, 1990 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 447–8139. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Sheila A. Young, Marketing Specialist, F&V, AMS, USDA, room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–5992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental regulation 1512–1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this final action on small entities.

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

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

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 160 producers hold "Class 1" oil (Scotch) allotment base and 136 producers hold "Class 3" oil (Native) allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years 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 handlers and producers of Far West spearmint oil may be classified as small entities.

The initial salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1990–91 marketing year were unanimously recommended by the Committee at its September 20, 1989, meeting. The committee recommended salable quantities of 678,800 pounds and 806,498 pounds for Scotch and Native oils, respectively, and allotment percentages of 40 percent and 43 percent for Scotch and Native oils, respectively. The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil. A proposed rule incorporating the Committee's recommendations was published in the November 14, 1989, issue of the **Federal Register** (54 FR 47366). Written comments were invited from interested persons until December 14, 1989. One comment was received in the form of a recommendation from the Committee.

This recommendation from the Committee was to increase the salable quantity for Scotch oil from 678,800 to 882,440 pounds and the allotment percentage from 40 to 52 percent. On January 8, 1990, the Committee also made a recommendation to the Secretary to increase the salable quantity for Native oil from 806,498 to 937,789 pounds and the allotment percentage from 43 percent to 50 percent.

Accordingly, based upon analysis of available information, these recommendations were adopted in an interim final rule in the **Federal Register** on March 9, 1990 (55 FR 8905). One comment was received by the Committee to increase, again, the salable quantity for Native oil from 937,789 to 1,125,347 pounds and the allotment percentage from 50 to 60 percent. Upon analysis of available information, this revision was then reflected in another interim final rule published in the **Federal Register** on May 22, 1990 (55 FR 21006). No comments were received. Therefore, on July 25, 1990, a final rule was published in the **Federal Register** (55 FR 30194). This established the salable quantities for Scotch and Native oils at 882,440 and 1,125,347 pounds, respectively, and established allotment percentages at 52 and 60 percent for Scotch and Native oils, respectively.

At its July 19, 1990, teleconference meeting, the Committee unanimously voted to recommend that the Secretary make more Scotch and Native spearmint oils available to the market by further increasing the 1990–91 salable quantities and allotment percentages. The last two and a half years have shown record demand levels for Far West Scotch and Native spearmint oils. This began with the Midwest drought in 1988 and has continued with what has been reported as a marked increase in consumption of spearmint products both domestically and abroad. The result of this increase in demand has been the depletion of Scotch oil reserves, a large reduction of Native oil reserves, and an effort on the part of producers to produce enough oil to meet this increased demand. The spearmint oil industry is experiencing near record production levels in the current year, and input from all handlers indicates that there will again be a record year of sales and that the need for the oil is immediate.

The Committee's recommendation would increase the Scotch spearmint oil allotment percentage from 52 to 90 percent, resulting in an increase in the salable quantity from 882,440 to 1,526,848 pounds. However, the Committee states that most producers will not produce 90 percent of their individual base. This recommended action, then, will make available only 1,100,000 pounds, the estimated trade demand, of Scotch oil.

The following table summarizes the computations used in arriving at the Committee's recommendation for Scotch oil.

	Recommendation Nov. 28, 1990	Recommendation July 19, 1990
(1) Carryin	0	20,000
(2) Total supply available	882,440	[1] 1,100,000
(3) Desirable Carryout	0	0
(4) Total allotment base for Scotch oil	1,697,000	1,696,498
(5) Allotment percentage	52	90
(6) Salable quantity	882,440	1,526,848

[1] This figure is the estimated trade demand and represents the anticipated production of Scotch oil.

The Committee's recommendation also would increase the Native spearmint oil allotment percentage from 60 to 66 percent, resulting in an increase in the salable quantity from 1,125,347 to 1,237,872 pounds. By increasing the allotment percentage to 66 percent, this will make available a salable quantity of 1,125,347 pounds of Native oil. This recommendation is the Committee's response to an increase in market activity for Native oil.

The following table summarizes the computations used in arriving at the Committee's recommendation for Native oil.

	Recommendation March 7, 1990	Recommendation July 19, 1990
(1) Carryin	20,000	20,000
(2) Total supply available	1,145,347	1,286,048
(3) Desirable Carryout	0	0
(4) Total allotment base for Native oil	1,875,577	1,875,563
(5) Allotment percentage	60	66
(6) Salable quantity	1,125,347	1,237,872

Thus, based upon analysis of available information, the Department has determined that allotment percentages of 90 percent and 66 percent should be established for Scotch and Native spearmint oils, respectively, for

the 1990–91 marketing year. These increased percentages will provide salable quantities of 1,526,848 pounds and 1,237,872 pounds of Scotch and Native spearmint oils, respectively.

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

After consideration of all relevant matter presented, including that contained in the prior interim and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1990–91 marketing year, the Committee's recommendation and other available information, it is found that to revise § 985.210 (55 FR 30194) so as to change the salable quantities and allotment percentages for Scotch and Native spearmint oils as set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because:

(1) This final action increases the quantities of Scotch and Native oils that may be marketed immediately;

(2) Handlers and producers should be apprised as soon as possible of the salable quantities and allotment percentages for Scotch and Native oils contained in this interim final rule; and

(3) This action provides for a 30-day comment period.

List of Subjects in 7 CFR Part 985

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

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

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

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

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

2. Section 985.210 is amended by revising paragraphs (a) and (b) to read as follows:

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

§ 985.210 Salable quantities and allotment percentages 1990–91 marketing year.

* * * * *

(a) "Class 1" (Scotch) oil—a salable quantity of 1,526,848 and an allotment percentage of 90 percent.

(b) "Class 3" (Native) oil—a salable quantity of 1,237,872 and an allotment percentage of 66 percent.

Dated: August 30, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–20954 Filed 9–5–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 989

[Docket No. FV–90–134FR]

Raisins Produced From Grapes Grown in California; Changing Terminology Regarding Procedures for Off-Grade Raisins Received by Handlers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the administrative rules and regulations of the marketing order regulating raisins produced from grapes grown in California. This action clarifies terminology with regard to off-grade raisins received by handlers to be disposed of in nonnormal outlets or for reconditioning. This action was unanimously recommended by the Raisin Administrative Committee (RAC), which is responsible for local administration of the marketing order.

EFFECTIVE DATE: September 6, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3920.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 [7 CFR part 989], both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

There are approximately 25 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts for the last three years 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 producers and a minority of handlers of California raisins may be classified as small entities.

The marketing order requires all natural condition raisins acquired or received by handlers to meet incoming minimum grade and condition standards. Natural condition raisins are those raisins which have been produced by sun-drying or artificial dehydration but have not been further processed for marketing. The order also authorizes handlers to receive or acquire off-grade raisins for disposition in specific outlets.

This final rule revises terminology in the order's rules and regulations with regard to procedures for off-grade raisins received by handlers to be disposed of in nonnormal outlets or for reconditioning. During reconditioning, off-grade raisins are further processed to improve the quality of a raisin lot in order for it to pass the minimum grade and condition standards. Such an action is authorized pursuant to § 989.58(e) of the marketing order. That section authorizes handlers to receive or acquire off-grade raisins and the RAC to recommend rules and procedures concerning control of such raisins.

Section 989.24(b) of the marketing order defines off-grade raisins to mean raisins which do not meet the current incoming minimum grade and condition standards for natural condition raisins. Pursuant to § 989.58(e)(1) of the order, when incoming natural condition raisins fail to meet the applicable grade and

condition standards, they may be: (1) Received by the raisin handler for disposal in eligible non-normal outlets (e.g., livestock feed or distillation); (2) received by the handler for reconditioning; or (3) returned unstemmed to the raisin producer.

Currently, 989.158(a)(3) of the rules and regulations provides that raisins received by handlers as off-grade for disposition in eligible non-normal outlets or for reconditioning may be accepted under a "limited inspection." Raisin lots can be designated as off-grade by the producer if the producer determines that such raisins are in poor condition (off-grade). Therefore, the producer may decide to deliver off-grade lots to a handler for disposition in nonnormal outlets or reconditioning.

In actual handler operations, handlers submit an application, on a form provided by the RAC, to the U.S. Department of Agriculture (USDA) Inspection Service requesting a limited inspection and indicate on the form the particular defects in lots of raisins received. The USDA inspector states on the inspection worksheet that the lot is uninspected and that the applicant (handler) has stated the reason the lot is determined to be off-grade. The lot is then marked with an RAC control card which indicates that the lot is uninspected and under surveillance by the Inspection Service pending disposition or reconditioning. An RAC control card contains particular information about the lot under surveillance and is marked with a number which corresponds to inspection worksheets which are used by USDA inspectors. No inspection is actually performed as the term "limited inspection" would imply.

The information collection requirements contained in the section of the regulations that will be revised by this final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581–0083.

The RAC has indicated that the term "limited inspection," with regard to off-grade raisins received by handlers contained in the rules and regulations, is confusing to the industry since it implies that an actual inspection has been performed. The RAC therefore recommended that the rules and regulations be revised to remove the confusing terminology and describe the actual procedures performed by the Inspection Service with regard to off-grade raisins received by handlers.

A proposed rule on this action was published in the **Federal Register** on July 9, 1990 (55 FR 28051). That rule provided that interested persons could file written comments through August 8, 1990. No comments were received.

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

After consideration of all relevant information presented, including the Committee's recommendations, and other information, it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C., it is further found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The crop year began on August 1, 1990; (2) handlers need no additional time to comply; and (3) handlers are aware of this action, which was recommended by the Committee at an open meeting.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is revised to read as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

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

Subpart—Administrative Rules and Regulations

2. Section 989.158 is amended by revising paragraph (a)(3), beginning at the fifth sentence, to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 989.158 Natural condition raisins.

(a) *Incoming inspection.* * * *

(3) * * * Any raisins received by a handler as off-grade for disposition in eligible non-normal outlets or for reconditioning may be accepted uninspected: *Provided,* That an application for receiving such uninspected raisins shall be submitted by the handler, on a form furnished by the Committee, to the Inspection Service prior to, or upon physical receipt of, such off-grade raisins. Such form shall provide for at least the name and address of the tenderer (equity holder), date, number, and type of containers, net weight of the raisins, and the particular defect(s) the handler indicates would cause the raisins to be off-grade. Handlers shall complete and sign the form. The application for such uninspected raisins shall not be acceptable unless signed by the tenderer. The uninspected raisins shall be subject to surveillance by the Inspection Service. Each lot of raisins accepted by a handler for reconditioning shall be reconditioned separately from any other lot.

* * * * *

Dated: August 31, 1990.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 90–20945 Filed 9–5–90; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 90–015F]

Termination of Designation of the State of Utah With Respect to Inspection of Poultry Products and Special Purposes

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule and termination of designations.

SUMMARY: This rule amends the poultry products inspection regulations by terminating the designations of the State of Utah under sections 5(c) and 11(e) of the Poultry Products Inspection Act PPIA. The Secretary of Agriculture has determined that the State of Utah will administer and enforce a State Poultry Inspection Program with requirements at least equal to the requirements imposed under the PPIA.

DATES: The effective date of this amendment is October 21, 1990. This notice of termination of designations is effective October 21, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. L. D. Nordyke, Director, Federal-State Relations Staff, Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6313.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." It will 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 domestic or export markets. Terminating the designation of the State of Utah will allow the State to assume the responsibility, previously held by the Federal Government, of administering the poultry inspection program for operations and transactions solely within the State and for ensuring compliance by persons, firms, and corporations engaged in intrastate commerce in specified kinds of businesses. The State of Utah will be required to administer the inspection program in a manner that is at least equal to the requirements under the Poultry Products Inspection Act.

Effects on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Public Law 96–354 (5 U.S.C. 601). As stated above, the State of Utah is assuming the responsibility, previously held by the Federal Government, of administering the poultry inspection program for intrastate poultry operations and transactions. No additional requirements are being imposed on small entities.

Background

Section 5(c) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 454(c)) requires the Secretary of Agriculture to designate a State as one in which the provisions of sections 1–4, 6–10, and 12–22 of the PPIA shall apply to operations and transactions wholly within the State after he has determined that requirements at least equal to those imposed under the Act have not been developed or effectively enforced by the State.

On December 3, 1970, a notice was published in the **Federal Register** (35 FR 18410) announcing that the Secretary of Agriculture was designating the State of Utah under section 5(c) (21 U.S.C. 454(c)) of the PPIA as a State in which the Secretary is responsible for providing poultry inspection at eligible establishments and for otherwise enforcing the applicable provisions of the PPIA with respect to intrastate activities in the State.

In addition, on November 12, 1976, a notice was published in the **Federal Register** (41FR 49969) announcing that, effective on that date, the Secretary designated the State pursuant to section 11(e) of the PPIA, and would assume the responsibility of administering the authorities provided for under sections 11 (b), (c) and (d) (21 U.S.C. 460 (b), (c) and (d)) of the PPIA regarding certain categories of processors of poultry products.

The aforementioned designations were undertaken by the Department when it was determined that the State of Utah was not in a position to enforce effectively inspection requirements under State laws for product solely for distribution within the State that are at least "equal to" the requirements of the PPIA.

The Governor of the State of Utah has advised this Department that the State of Utah will now be in a position to administer and effectively enforce a State poultry inspection program which includes requirements at least "equal to" those imposed under the PPIA for products prepared for interstate commerce.

Section 5(c)(3) of the PPIA provides that whenever the Secretary of Agriculture determines that any designated State has developed and will enforce State poultry products inspection requirements at least "equal to" those imposed under the PPIA, with respect to operations and transactions within the State, he shall terminate the designation of such State. The Secretary has determined that the State of Utah has developed and will enforce such a State poultry inspection program in accordance with the said provisions of the PPIA. In addition, the Secretary has determined that the State of Utah will enforce effectively the provisions of section 11 (b), (c), and (d) of the PPIA. Therefore, the designations of the State of Utah under sections 5(c) and 11(e) of the PPIA are hereby terminated.

List of Subjects in 9 CFR Part 381

Poultry and poultry products.

Accordingly, part 381 of the poultry products inspection regulations (9 CFR part 381) is amended as follows:

PART 381—[AMENDED]

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

Authority: 21 U.S.C. 451 *et seq.*; 7 U.S.C. 450 *et seq.*

§ 381.221 [Amended]

2. Section 381.221 (9 CFR 381.221) is hereby amended by removing "Utah" from the "State" column and by removing the date which was added on the line with Utah.

§ 381.224 [Amended]

3. Section 381.224 (9 CFR 381.224) is hereby amended by removing "Utah" from the "State" column in all three places and by removing the dates which were added on the lines with "Utah" in all three places.

The amendments of the poultry products inspection regulations are necessary to reflect the determination of the Secretary of Agriculture under sections 5(c)(3) and 11(e) of the PPIA. Further, it does not appear that public participation in this matter would make additional relevant information available to the Secretary. As mentioned above, the Secretary has determined that the State of Utah will administer and effectively enforce a State poultry inspection program with requirements at least "equal to" those imposed under the PPIA. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public procedure is impracticable and unnecessary, and good cause is found for making the amendments effective less than 30 days after publication in the **Federal Register**.

Done at Washington, DC on: August 29, 1990.

Lester M. Crawford,

Administrator.

[FR Doc. 90–20824 Filed 9–5–90; 8:45 am]

BILLING CODE 3410–DM–M

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1400

Organization and Functions

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) adopts final regulations relating to the Corporation's organization and functions for the information of the public. The adoption of these regulations adds subpart A, Organization and Functions.

DATE: These regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Bobbie Jean Norris, Project Analyst, Farm Credit System Insurance

Corporation, McLean, VA 22102–0826, (703) 883–4367, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987 (Pub. L. 100–233) (1987 Act) amended the Farm Credit Act of 1971 (Act) by adding, among other provisions, a new part E of the Act to title V concerning the Farm Credit System Insurance Corporation (Corporation). The Corporation was established to carry out the responsibilities set out in part E of title V of the Act, including insuring the timely payment of principal and interest on notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 of the Act on behalf of one or more Farm Credit System banks (System banks). Each System bank became insured effective January 6, 1989.

In order to provide the Corporation with funds to meet its obligations, the Act provided for the transfer, as of January 6, 1989, of all amounts in the revolving fund established by section 4.0 of the Act to the Farm Credit Insurance Fund, which served as the initial capital of the Corporation. The Act provides for further funding of the Corporation to come from annual premium payments from System banks.

The Corporation is empowered to prescribe such rules and regulations as it considers necessary to carry out its responsibilities under the Act. The Act provides that the Corporation "shall be managed by a Board of Directors that shall consist of the members of the Farm Credit Administration Board" and that officers and employees may be appointed by its Board of Directors.

These regulations:

(1) Describe the Corporation and its Board of Directors; and

(2) Provide for the appointment of officers of the Corporation.

In acting on the regulations, the Board of Directors determined these matters were of internal agency organization, procedure, and practice and exempt from the provisions of 5 U.S.C. 553(b)(1)–(3). When regulations involve matters of agency organization, procedure, or practice, or where the agency finds good cause that the notice and public comment are unnecessary or contrary to the public interest, 5 U.S.C. 553(b) (A) and (B) provide that an agency may publish regulations in final form. Accordingly, these regulations are issued as a final rule.

Pursuant to 5 U.S.C. 553(d) and 12 U.S.C. 2252(c)(1), these regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the Federal Register.

List of Subjects in 12 CFR Part 1400

Organization and functions (government agencies).

Title 12 is amended by establishing Chapter XIV—Farm Credit System Insurance Corporation consisting at this time of part 1400 subpart A to read as follows:

Chapter XIV—Farm Credit System Insurance Corporation

PART 1400—ORGANIZATION AND FUNCTIONS

Subpart A—Organization and Functions

Sec.

1400.1 Farm Credit System Insurance Corporation.
1400.2 Board of Directors of the Farm Credit System Insurance Corporation Board.
1400.3 Organization of the Farm Credit System Insurance Corporation.

Authority: 12 U.S.C. 2277a–5; 12 U.S.C. 2277a–7.

Subpart A—Organization and Functions

§ 1400.1 Farm Credit System Insurance Corporation.

The Farm Credit System Insurance Corporation (Corporation) was created by sections 5.52 and 5.58 of the Farm Credit Act of 1971 (Act) to carry out the responsibilities set out in part E of title V of the Act, including insuring the timely payment of principal and interest on notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 of the Farm Credit Act on behalf of one or more Farm Credit System banks.

§ 1400.2 Board of Directors of the Farm Credit System Insurance Corporation.

The Board of Directors of the Farm Credit System Insurance Corporation is entrusted with the responsibility to manage the Corporation. The Board of Directors consists of the members of the Farm Credit Administration Board. The Chairman of the Corporation is elected by the members of the Board.

§ 1400.3 Organization of the Farm Credit System Insurance Corporation.

Officers of the Corporation shall be appointed by the Board of Directors of the Corporation. Current information on the organization of the Corporation may be obtained from the Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102–0826.

Dated: August 28, 1990.

James M. Morris,

Acting Secretary, Farm Credit System Insurance Corportion.

[FR Doc. 90–20847 Filed 9–5–90; 8:45 am]

BILLING CODE 6710–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 775

[Docket No. 900811–0211]

Establishment of Import Certification/Delivery Verification Procedure for the Republic of Korea

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration requires a foreign importer to file an Import Certification (IC) in support of individual validated license applications to export certain commodities controlled for national security reasons to specified destinations. The commodities are identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List, which identifies those items subject to Department of Commerce export controls. By issuing an IC, the government of the importing country undertakes to exercise legal control over the disposal of those commodities covered by the IC.

The Bureau of Export Administration also requires a Delivery Verification Certificate (DV) on a selective basis, as described in 15 CFR 775.3(i). By issuing a DV, the government of a country to which an export has been made confirms that exported commodities have either entered the export jurisdiction of that country or are otherwise accounted for by the importer.

New documentation practices adopted by the Republic of Korea (South Korea) warrant inclusion of that country in the IC/DV procedure. This rule amends that Export Administration Regulations by adding the Republic of Korea to the list of countries that issue Import Certificates and by adding the names and addresses of the Republic of Korea authorities to the list of foreign offices that administer the IC/DV systems.

EFFECTIVE DATE: This rule is effective September 6, 1990. In lieu of the 45 day grace period provided in 15 CFR 775.9(b)(2), the Republic of Korea Import Certificate must be submitted with export license applications as of March

6, 1990. In the interim, applications will be accepted if supported by either a Form BXA–629P (Statement By Ultimate Consignee and Purchaser) or the Republic of Korea IC up until March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. The Import Certificate and Delivery Verification (IC/DV) requirement set forth in part 775 supersedes the requirement for Form BXA–629P, Statement by Ultimate Consignee and Purchaser (approved by the Office of Management and Budget under control number 0694–0021) to accompany most license applications (approved under OMB control number 0694–0005) for exports and reexports to Korea. The Import Certificate and Delivery Verification are issued by the Government of the Republic of Korea and do not constitute collection of information requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 775

Exports, Reporting and recordkeeping requirements.

Accordingly, part 775 of the Export Administration Regulations is amended as follows:

1. The authority citation for 15 CFR part 775 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, Pub. L. 99–64 of July 12, 1985 and Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 775—[AMENDED]

§ 775.1 [Amended]

2. The table in § 775.1 is amended by adding "Republic of Korea" before the entry "Luxembourg" in the column titled "and the country of destination is".

§ 775.3 [Amended]

3. The list of countries in § 775.3(b) is amended by adding "Korea, Republic of" before the entry "Luxembourg".

Supplement No. 1 [Amendment]

4. Supplement No. 1 to part 775 is amended by adding a new entry for "Korea, Republic of" immediately before the entry for "Luxembourg", as follows:

Supplement No. 1 to Part 775 Authorities Administering Import Certificates/ Delivery Verification Systems in Foreign Countries [1]

* * * * *

[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660–3198 or at any U.S. Department of Commerce District Office (see listing on page ii under Commerce Office Addresses) or at the Office of Export Licensing, Room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

Country and IC/DV authorities	System administered [2]
Korea:	
Trade Administration Division, Trade Bureau, Ministry of Trade and Industry, Jungang-Dong, Kyonggi-Do, Building 3, Kwachon, Republic of Korea.	IC
Republic of Korea Customs House	DV

[2] IC—Import Certificate and/or DV—Delivery Verification.

Dated: August 31, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90–20988 Filed 9–5–90; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R–90–1156; FR–1901–F–05]

RIN 2506–AA55

Rental Rehabilitation Grants

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Final rule; announcement of effective date; technical amendment.

SUMMARY: On May 14, 1990, at 55 FR 20040, the Department published a final rule reorganizing and making final various provisions governing the Rental Rehabilitation Program. The rule became effective on June 14, 1990. However, certain sections in that final rule were not made effective because they contained information collection requirements that had been submitted for approval to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980, and were pending approval. The purpose of this document is to announce the effective date of those sections and to amend those regulations to include the OMB control number at the places where these information collection requirements are described.

EFFECTIVE DATES: The effective date for 24 CFR 511.10(e), 511.15(c)(7), 511.20 (b)(5) and (b)(11), 511.40, and 511.50(a), (final rule published on May 14, 1990, at 55 FR 20040) is September 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Rehabilitation Management Division, room 7174, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410 7000, telephone (202) 708–2470. Hearing- or speech-impaired individual may call HUD's TDD number (202) 708–2565. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in 24 CFR 511.10(e), 511.15(c)(7), 511.20 (b)(5) and (b)(11), 511.40, and 511.50(a), (final rule published in May 14, 1990, at 55 FR 20040) were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96 511) and assigned the control number 2506–0080.

List of Subjects in 24 CFR Part 511

Administrative practice and procedure, Grant programs-Housing and community development, Low and moderate income housing, Rental rehabilitation grants, reporting and recordkeeping requirements.

Text of the Amendment

Accordingly, the Department amends 24 CFR part 511 as follows:

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for part 511 continues to read as follows:

Authority: Sec. 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3534(d)).

§§ 511.10, 511.15, 511.20, 511.40, and 511.50 [Amended]

2. Sections 511.10, 511.15, 511.20, 511.40, and 511.50 are amended by adding at the end of each section, the following statement:

(Approved by the Office of Management and Budget under Control Number 2506–0080)

Dated: August 30, 1990.

Grady J. Norris,

Assistant General Counsel for Regulations

[FR Doc. 90–20879 Filed 9–5–90; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 52 and 602

[T.D. 8311]

RIN 1545–AO07

Excise Tax on Chemicals That Deplete the Ozone Layer and on Products Containing Such Chemicals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations relating to the tax on chemicals that deplete the ozone layer and on products containing such chemicals. These temporary regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1989. These temporary regulations affect manufacturers and importers of ozone-depleting chemicals, manufacturers of rigid foam insulation, and importers of products containing or manufactured with ozone-depleting chemicals. In addition, these temporary regulations affect persons, other than manufacturers and importers of ozone-depleting chemicals, holding such chemicals for sale or for use in further manufacture on January 1, 1990, and on subsequent tax-increase dates. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATES: These regulations are effective January 1, 1990. Section 52.4682–3T(f)(2)(ii) provides, however, that listings preceded by a double asterisk (**) in the Imported Products Table set forth in § 52.4682–3T(f)(6) are effective October 1, 1990. In addition, § 52.6302(c)–2T (relating to use of Government depositaries) is effective July 1, 1990, for deposits relating to the calendar quarter beginning July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior public notice procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the requirements for collecting information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1153. The estimated average annual burden per recordkeeper is 0.5 hour. The estimated average annual burden per respondent is 0.4 hour.

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 and recordkeepers may require more or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

Background

This document contains amendments to the Environmental Tax Regulations (26 CFR part 52) relating to sections 4681 and 4682 of the Internal Revenue Code. These sections were added to the Code by the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239.

Need for Temporary Regulations

Immediate guidance is needed on the tax imposed with respect to ozone-depleting chemicals. Therefore, good cause is found to dispense with the public notice requirement of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Previous Notices

Notices 90–8, 1990–5 I.R.B. 14, and 90–9, 1990–5 I.R.B. 21, provided initial guidance on the taxes imposed with respect to ozone-depleting chemicals. Notice 90–35, 1990–20 I.R.B. 9, informed taxpayers that the first payment of tax under section 4681 would be due April 30, 1990, that taxpayers would avoid interest charges if the amount of the tax was deposited by that date, that no return of taxes imposed under sections 4681 and 4682 would be due until 30 days after the date of publication of temporary regulations, and that no penalty would be imposed on account of failure to file or failure to pay the tax under section 4681 before the due date for filing the return, as extended.

These temporary regulations generally incorporate the rules provided in the Notices, but also include a number of changes and additions to those rules.

The new provisions in the temporary regulations include: (1) A rule providing that the loss or destruction of ozone-depleting chemicals or imported taxable products is not treated as a taxable use of such chemicals or products; (2) a rule under which the tax on an imported taxable product may be deferred until an article incorporating that product is sold; (3) a revised Imported Products Table; and (4) rules for filing returns, paying tax, and making deposits.

Except as provided in section I of Notice 90–9 (relating to reliance on the Imported Products Table contained in the Notice), the rules in the Notices are superseded by these temporary regulations. The Internal Revenue Service will, however, grant relief under section 7805(b) to a taxpayer adversely affected by the retroactive application of any change from the rules described in the Notices, but only if a request for such relief is submitted before January 1, 1991.

Explanation of Provisions

In General

Section 4681 imposes a tax on an ozone-depleting chemical (ODC) when the ODC is sold or used by its manufacturer or importer. That section also imposes a tax on an imported product containing or manufactured with ODCs when the product is sold or used by its importer.

Section 4682(h) imposes a floor stocks tax on ODCs that are held for sale or for use in further manufacture on January 1 of 1990, 1991, 1992, 1993, or 1994 by any person other than the manufacturer or importer of the ODC.

Sale of Use

The terms "sale" and "use" are defined in § 52.4681–1T(c) (6) and (7). Under § 52.4681–1T(c)(7)(ii), loss, destruction, warehousing, or packaging is not a use. In addition, § 52.4682–1T(b)(2)(iii) permits manufacturers and importers of ODCs to elect to treat the sale or use of mixtures containing ODCs as the first sale or use of the ODCs contained in the mixture.

Ozone-depleting Chemicals

Section 4682(a)(2) lists the chemicals that are subject to tax. The listed chemicals, which also were identified as ozone-depleting under the Montreal Protocol, are CFC–11, CFC–12, CFC–113, CFC–114, CFC–115, Halon–1211, Halon–1301, and Halon–2402.

Under section 4682(d)(1), there is no tax on ODCs that are recovered in the United States as part of a recycling process (and not as part of the original manufacturing process). Section 4682(d)(2) provides that there is no tax on ODCs used or sold for use as a feedstock. Section 4682(d)(3) provides that some ODCs may be exported tax free. Section 4682(g) provides a phase-in of tax on Halons and on ODCs used or sold for use in the manufacture of rigid foam insulation. Under the phase-in rule, no tax is imposed in 1990, and tax is imposed at a reduced rate of approximately $0.25 per pound in 1991, 1992, and 1993. Sales to State and local governments, to the Federal Government, and to nonprofit educational organization are not exempt from the tax.

Exemption for ODCs Used as a Feedstock

Section 4682(d) provides an exemption from the tax imposed under section 4681 for ODCs used or sold for use as a feedstock. Under § 52.4682–1T(c)(3), an ODC is used as a feedstock only if the ODC is entirely consumed in the manufacture of another chemical (within the meaning of 40 CFR 82.3(s) (relating to the definition of production in connection with regulations on the protection of atmospheric ozone)).

Section 52.4682–2T(a) sets forth rules relating to tax-free sales of ODCs for use as a feedstock. Under these rules, the buyer must certify to the supplier that the ODCs will be used as a feedstock, but a submission to the Internal Revenue Service is not required. Section 52.4682–2T(d) sets forth the form of the certificate to be used to support tax-free sales of ODCs for use as a feedstock.

ODCs Used in the Manufacture of Rigid Foam Insulation

Under section 4682(g), ODCs used or sold for use in the manufacture of rigid foam insulation are not taxed in 1990 and are taxed at a reduced rate in 1991, 1992, and 1993. Section 52.4682–1T(d)(3) provides that the term "rigid foam" means any closed cell polymeric foam (whether or not rigid) in which chlorofluorocarbons are used to fill voids within the polymer. The term "rigid foam insulation" means any rigid foam that is designed for use as thermal insulation. The design of a product, and not the manner in which it is actually used, determines whether the product is rigid foam insulation.

Sections 52.4682–2T (a) and (d) sets forth rules and certification requirements relating to tax-free and tax-reduced sales under the phase-in provision. In all material respects, these rules and certification requirements are the same as those applicable to tax-free sales for use as a feedstock.

Imported Taxable Products

Section 4681 imposes a tax on an imported product containing or manufactured with ODCs when the product is sold or used by its importer. Section 4681(b)(2) provides that the tax imposed on an imported product is based on the weight of the ODCs used in its manufacture (ODC weight). Section 52.4682–3T(f)(6) sets forth an Imported Products Table (Table) that contains an exclusive list of the products subject to the tax. The Table, which is based on information supplied by industry representatives, identifies products that are subject to tax by name and Harmonized Tariff Schedule heading. In addition, Table ODC weights are provided for most products. These weights are used to compute the tax when the importer cannot determine the weight of the ODCs actually used in the product's manufacture.

In some cases, no Table ODC weight is provided because information is not currently available. If an importer cannot determine the weight of ODCs actually used in the manufacture of a product for which no Table ODC weight is provided, the tax is determined under section 4681(b)(2) and § 52.4682–3T(e)(4). Section 4681(b)(2) provides that the tax in such cases is determined under rules similar to those of section 4671(b)(2) (relating to the default tax rate for purposes of the Superfund), and § 52.4682–3T(e)(4) prescribes a rate of one percent of the entry value of the product.

Section 52.4682–3T(f)(7) grants the Commissioner the authority to modify the initial Table set forth in the regulations. If the Commissioner determines that the Table should be modified, a revenue procedure providing a superseding Table will be published. Manufacturers may request modifications by following the procedures described in the regulations.

ODCs used in the manufacture of protective packaging are neither incorporated into the protected product nor released into the atmosphere during its manufacture. Accordingly, § 52.4682–3T(d)(3) provides that such ODCs are not treated as ODCs used in the manufacture of the protected product. Although it may be appropriate to treat protective packaging as a separate product that is used during the shipment and storage of the protected product, this rule presents significant administrative difficulties and is not included in the temporary regulations. The Internal Revenue Service invites public comment on whether and how

protective packaging should be taxed under section 4681.

Floor Stocks Tax

Section 4682(h) imposes floor stocks taxes on January 1 of 1990, 1991, 1992, 1993, and 1994. Section 52.4682–4T(b)(1) provides that these taxes apply only to ODCs that are held (other than by the manufacturer or importer of the ODC) for sale or for use in further manufacture on the date the floor stocks tax is imposed. For this purpose, an ODC may be held for sale or for use in further manufacture without regard to the type or size of the container in which it is stored.

Section 52.4682–4T(b)(2) identifies ODCs on which the floor stocks tax is not imposed. These include ODCs that have been recycled or reclaimed and ODCs that have been incorporated, before the date on which the tax is imposed, into a mixture or into a manufactured article in which the ODCs will be used for their intended purpose.

ODCs that have been incorporated into a mixture include all ODCs that have been mixed with other ingredients, even if that mixture is held for sale in bulk quantities. For floor stocks taxes imposed after 1990, however, the mixture exemption does not apply unless the other ingredients contribute to the purpose for which the mixture will be used.

An ODC has been incorporated into a manufactured article in which it will be used for its intended purpose if, as in the case of ODCs contained in the cooling coils of an air conditioner, it is used for its intended purpose within the article. On the other hand, an ODC is not exempt from the floor stocks tax if it will not be used for its intended purpose within the article into which it is incorporated. For example, CFC–12 that will be used to charge an air conditioner is not exempt from the floor stocks tax solely because it is contained in a 14-ounce can.

Under § 52.4682–4T(e) the tax is imposed on ODCs held by a person only if the tax is imposed on a date on which the person holds at least a specified amount of ODCs to which the tax would otherwise apply. For 1990, 1992, and 1993, the amount specified is 400 pounds. In determining whether this 400-pound threshold is met, Halons and ODCs that will be used in the manufacture of rigid foam insulation are disregarded. For 1991, the amount specified is also 400 pounds, but only Halons and ODCs that will be used in the manufacture of rigid foam insulation are taken into account. In 1994, the tax is imposed only if the person holds at least 200 pounds of ODCs that will be used in the manufacture of rigid foam insulation or at least 20 pounds of Halons.

Section 52.4682–4T(c) provides that the person holding ODCs on the date the floor stocks tax is imposed is liable for the tax. Section 52.4682–4T(f) requires inventories of ODCs that a person (other than the manufacturer of importer of the ODCs) holds for sale or for use in further manufacture. Inventories of such ODCs must be taken by the person holding the ODCs on January 1 of 1990, 1991, 1992, 1993, and 1994.

General Requirements for Filing Returns, Paying Tax, and Using Government Depositaries

Sections 6011 (relating to requiring returns), 6071 (relating to time for filing returns), and 6302(c) (relating to use of Government depositaries), authorize the Secretary to prescribe regulations imposing rules for filing returns and making deposits of tax. These temporary regulations revise and amend the provisions of the Environmental Tax Regulations relating to procedural rules so that such provisions also apply under sections 4681 and 4682.

Under § 52.6011(a)–1T, any person liable for the taxes imposed under sections 4681 or 4782 must file Form 720 (or other from designated by the Commissioner subsequent to publication of these regulations) to report that liability. The procedures relating to filing are provided in the instructions to the form. Section 52.6071(a)–2T(a)(1) provides that the return must be filed by the last day of the second month following the end of a calendar quarter. Importers of products that neither contain nor are manufactured with ODCs are not required to file a return reporting tax imposed under section 4681 with respect to such products.

Persons required by regulations to file a Form 720 on an earlier date than the date provided in these temporary regulations in order to report other taxes do not file two Forms 720 but instead file one Form 720 with respect to all excise taxes reportable on Form 720 on or before the date provided under section 4681. This rule allows persons filing a Form 720 with respect to taxes imposed by section 4681 or 4682 to defer filing their Form 720 until two months after the end of the calendar quarter, even if such persons must also report on their Form 720 excise taxes with respect to which the Form 720 is ordinarily filed one month after the end of the calendar quarter (*e.g.* Superfund taxes). However, this rule does not extend the time for making deposits or paying any other excise tax. Thus, a person that must make an additional deposit of excise taxes to pay any balance due at the time for filing the Form 720 for that quarter must make the required deposit on or before the date the Form 720 for such excise taxes would ordinarily be filed; the payment is due at that time even though the Form 720 may, under the above rule, be filed a month later.

Under § 52.6302(c)–2T(b), semimonthly deposits of tax are required to be made by all persons liable for the tax imposed under section 4681. The deposit for each semimonthly period is due on or before the last day of the second following semimonthly period. Section 52.6302(c)–2T(c) provides a safe harbor. In general, a taxpayer is considered to have met the semimonthly deposit requirement if the deposit for each semimonthly period is not less than ⅙ of the total tax liability under section 4681 for the second preceding quarter, and any underpayment for the current quarter is deposited by the due date of the return. This safe harbor rule is modified to take into account predictable increases in tax liability due to increases in the base tax amount or due to the phase-in of tax on Halons and ODCs used in the manufacture of rigid foam insulation. For example, for the first two calendar quarters of 1991, the safe harbor will be based on the taxpayer's tax liability for the second preceding calendar quarter, but calculated as if Halons and ODCs used in the manufacture of rigid foam insulation had been subject to tax for such preceding calendar quarters.

Under section 4682(h)(3), the floor stocks tax must be paid by April 1 of each year in which the tax is imposed. The full amount of the floor stocks tax for any year in which the tax is imposed must be deposited by April 1 of such year, and must be reported on the Form 720 (or other form designated by the Commissioner subsequent to the publication of these regulations) for the first calendar quarter of such year.

Special Rules for Returns and Payments of Tax Under Section 4681 for the First and Second Calendar Quarters of 1990

First Calendar Quarter of 1990

Section 52.6071(a)–2T(a)(3) provides that the Form 720 reporting tax imposed under section 4681 for the first calendar quarter of 1990 is due April 30, 1990, but the due date is extended (without application) until October 9, 1990. No penalty will be imposed on account of failure to file return before the date for filing, as extended.

The payment of tax for the first calendar quarter of 1990 is due April 30, 1990. No penalty will be imposed on

account of failure to pay the tax imposed under section 4681 for the first calendar quarter of 1990 before the date for filing the return, as extended. Interest on any underpayment of such tax will be imposed from April 30, 1990.

Second Calendar Quarter of 1990

Section 52.6071(a)–2T(a)(4) provides that the Form 720 reporting tax imposed under section 4681 for the second calendar quarter of 1990 is due September 7, 1990, but the due date is extended (without application) under October 9, 1990. No penalty will be imposed on account of failure to file the return before the date for filing, as extended.

The payment of tax for the second calendar quarter of 1990 is due September 7, 1990. No penalty will be imposed on account of failure to pay the tax imposed under section 4681 for the second calendar quarter of 1990 before the date for filing the return, as extended. Interest on any underpayment of such tax will be imposed from September 7, 1990.

Special Rule of Returns Under Section 4682 for 1990

Section 52.6071(a)–3T(a) provides that the Form 720 reporting floor stocks tax imposed under section 4682 on January 1, 1990, is due April 30, 1990, but the due date is extended (without application) until October 9, 1990. No penalty will be imposed on account of failure to file the return before the date for filing, as extended.

The payment of tax is due on April 1, 1990.

Special Rule for Deposits Relating to the First Three Semimonthly Periods of the Third Calendar Quarter of 1990

Section 52.6302(c)–2T(b)(3) provides that the deposit of tax relating to section 4681 liability for the first three semimonthly periods of the third calendar quarter of 1990 is due September 27, 1990.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that cross-references to these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 52

Excise taxes, Petroleum, Chemicals.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, title 26, parts 52 and 602 of the Code of Federal Regulations are amended as follows:

Paragraph 1. The heading for part 52 is revised to read as follows:

PART 52—ENVIRONMENTAL TAXES

Par. 2. The authority for part 52 is revised to read as follows:

Authority: 26 U.S.C. 7805. Section 52.4682–3T also issued under 26 U.S.C. 4682(c)(2); §§ 52.6011(a)–1T and 52.6011(a)–2T also issued under 26 U.S.C. 6011(a); §§ 52.6071(a)–1, 52.6071(a)–2T, and 52.6071(a)–3T also issued under 26 U.S.C. 6071(a); § 52.6091–1T also issued under 26 U.S.C. 6091; § 52.6101–1T also issued under 26 U.S.C. 6101; § 52.6109(a)–1T also issued under 26 U.S.C. 6109(a); §§ 52.6302(c)–1, and 52.6302(c)–2T also issued under 26 U.S.C. 6302(a).

Par. 3. New §§ 52.4681–0T, 52.4681–1T, 52.4682–1T, 52.4682–2T, 52.4682–3T, and 52.4682–4T are added to read as follows:

§ 52.4681–0T Table of Contents (temporary).

This section lists captions contained in §§ 52.4681–1T, 52.4682–1T, 52.4682–2T, 52.4682–3T, and 52.4682–4T.

§ 52.4681–1T Taxes imposed with respect to ozone-depleting chemicals (temporary).

(a) Taxes imposed
  (1) Tax on ODCs
  (2) Tax on imported taxable products
  (3) Floor stocks tax
(b) Cross-references
  (1) Tax on ODCs
  (2) Tax on imported taxable products
  (3) Floor stocks tax
  (4) Filing returns, paying tax, and making deposits
(c) Definitions of general application
  (1) Ozone-depleting chemical
  (2) United States
  (3) Manufacture; manufacturer
  (4) Entry into United States for consumption, use, or warehousing
  (5) Importer
  (6) Sale
  (7) Use
  (8) Pound
(d) Effective date

§ 52.4682–1T Ozone-depleting chemicals (temporary).

(a) Overview
(b) Taxable ODCs; taxable event
  (1) Taxable ODCs
    (i) In general
    (ii) Storage containers
  (2) Taxable event
    (i) In general
    (ii) Mixtures
    (iii) Mixture election
(c) ODCs used as a feedstock
  (1) Exemption from tax
  (2) Excess payments
  (3) Definition
  (4) Qualifying sale
(d) ODCs used in the manufacture of rigid foam insulation
  (1) Phase-in of tax
  (2) Excess payments
  (3) Definition
  (4) Use in manufacture
  (5) Qualifying sale
(e) Halons; phase-in of tax
(f) Recycling [Reserved]
(g) Exports [Reserved]

§ 52.4682–2T Qualifying sales (temporary).

(a) In general
  (1) Special rules applicable to certain sales
  (2) Qualifying sales
(b) Requirements for qualification
  (1) Use as a feedstock
  (2) Use in the manufacture of rigid foam insulation
(c) Good faith reliance
  (1) In general
  (2) Withdrawal of right to provide a certificate
(d) Registration certificate
  (1) In general
  (2) Certificate relating to ODCs used as a feedstock
  (3) Certificate relating to ODCs used in the manufacture of rigid foam insulation

§ 52.4682–3T Imported taxable products (temporary).

(a) Overview; references to Tables
  (1) Overview
  (2) References to Tables
(b) Imported taxable products
  (1) In general
  (2) Exceptions
    (i) In general
    (ii) *De minimis* adjusted tax
(c) Taxable event
  (1) In general
  (2) Election to treat importation as use
  (3) Treating the sale of an article incorporating an imported taxable product as the first sale or use of such product
(d) ODCs used as materials in the manufacture of imported taxable products
  (1) ODC weight

(2) ODCs used as materials in the manufacture of a product
(3) Protective packaging
(4) Example
(e) Methods of determining ODC weight; computation of tax
(1) In general
(2) Exact method
(3) Table method
(i) In general
(ii) Special rules
(4) Value method
(5) Adjustment for prior taxes
(f) Imported Products Table
(1) In general
(2) Applicability of initial Table
(3) Identification of products
(i) In general
(ii) Electronic items not listed by specific name
(4) Rules for listing products
(i) Listing in Part I
(ii) Listing in Part II
(iii) Listing in Part III
(5) Table ODC weight
(6) Initial Table
(7) Subsequent Tables
(g) Requests for modification of Table
(1) In general
(2) Form of request
(3) Public notice and comments
(4) Address
(5) Public inspection and copying

§ 52.4682–4T Floor stocks tax (temporary).

(a) Overview
(b) ODCs subject to floor stocks tax
(1) ODCs that are held for sale or for use in further manufacture
(i) In general
(ii) Held for sale
(iii) Held for use in further manufacture
(iv) Use as material
(v) Storage containers
(vi) Examples
(2) Nontaxable ODCs
(i) Mixtures
(ii) Manufactured articles
(iii) Recycled ODCs
(iv) ODCs held by the manufacturer or importer
(c) person liable for tax
(1) In general
(2) Special rule
(d) Computation of tax
(1) In general
(2) Qualifying sales
(3) Halons
(e) *De minimis* exemptions
(1) 1990, 1992, and 1993
(2) 1991
(3) 1994
(4) Examples
(f) Inventory
(g) Time for paying tax

§ 52.4681–1T Taxes imposed with respect to ozone-depleting chemicals (temporary).

(a) *Taxes imposed.* Sections 4681 and 4682 impose the following taxes with respect to ozone-depleting chemicals (ODCs):

(1) *Tax on ODCs.* Section 4681(a)(1) imposes a tax on ODCs that are sold or used by the manufacturer or importer thereof. Except as otherwise provided in § 52.4682–1T (relating to the tax on ODCs), the amount of the tax is equal to the product of—

(i) The weight (in pounds) of the ODC;

(ii) The base tax amount (determined under section 4681(b)(1) (B) or (C)) for the calendar year in which the sale or use occurs; and

(iii) The ozone-depletion factor (determined under section 4682(b)) for the ODC.

(2) *Tax on imported taxable products.* Section 4681(a)(2) imposes a tax on imported taxable products that are sold or used by the importer thereof. Except as otherwise provided in § 52.4682–3T (relating to the tax on imported taxable products), the tax is computed by reference to the weight of the ODCs used as materials in the manufacture of the product. The amount of tax is equal to the tax that would have been imposed on the ODCs under section 4681(a)(1) if the ODCs had been sold in the United States on the date of the sale or use of the imported product. The weight of such ODCs is determined under § 52.4682–3T.

(3) *Floor stocks tax*—(i) *Imposition of tax.* Section 4682(h) imposes a floor stocks tax on ODCs that—

(A) Are held by any person other than the manufacturer or importer of the ODC on a date specified in paragraph (a)(3)(ii) of this section; and

(B) Are held on such date for sale or for use in further manufacture.

(ii) *Dates on which tax imposed.* The floor stocks tax is imposed on January 1 of 1990, 1991, 1992, 1993, and 1994.

(iii) *Amount of tax.* Except as otherwise provided in § 52.4682–4T (relating to floor stocks tax), the amount of the floor stocks tax is equal to the excess of—

(A) The tax that would be imposed on the ODC under section 4681(a)(1) if a sale or use of the ODC by its manufacturer or importer occurred on the date the floor stocks tax is imposed (the tentative tax amount), over

(B) The sum of the taxes previously imposed on the ODC under sections 4681 and 4682.

(b) *Cross-references*—(1) *Tax on ODCs.* Additional rules relating to the tax on ODCs are contained in §§ 52.4682–1T and 52.4682–2T.

(2) *Tax on imported taxable products.* Additional rules relating to the tax on imported taxable products are contained in § 52.4682–3T.

(3) *Floor stocks tax.* Additional rules relating to the floor stocks tax are contained in § 52.4682–4T.

(4) *Filing returns, paying tax, and making deposits.* Rules requiring returns reporting the taxes imposed under sections 4681 and 4682 are contained in §§ 52.6011(a)–1T and 52.6011(a)–2T. Rules relating to the time for filing such returns are contained in §§ 52.6071(a)–2T and 52.6071(a)–3T. Rules relating to the use of Government depositaries in connection with taxes imposed under section 4681 are contained in § 52.6302(c)–2T.

(c) *Definitions of general application.* The following definitions set forth the meaning of certain terms for purposes of the regulations under sections 4681 and 4682:

(1) *Ozone-depleting chemical.* The term "ozone-depleting chemical" (ODC) means any chemical listed in section 4682(a)(2).

(2) *United States.* The term "United States" has the meaning given such term by section 4612(a)(4). Under section 4612(a)(4)—

(i) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(ii) The term includes—

(A) Submarine seabed and subsoil that would be treated as part of the United States (as defined in paragraph (c)(2)(i) of this section) under the principles of section 638 relating to continental shelf areas; and

(B) Foreign trade zones of the United States.

(3) *Manufacture; manufacturer.* The term "manufacture" when used with respect to any ODC or imported product includes its production, and the term "manufacturer" includes a producer.

(4) *Entry into United States for consumption, use, or warehousing*—(i) *In general.* Except as otherwise provided in this paragraph (c)(4), the term "entered into the United States for consumption, use, or warehousing" when used with respect to any goods means—

(A) Brought into the customs territory of the United States (the customs territory) if applicable customs law requires that the goods be entered into the customs territory for consumption, use, or warehousing;

(B) Admitted into a foreign trade zone for any purpose if like goods brought into the customs territory for such purpose would be entered into the customs territory for consumption, use, or warehousing; or

(C) Imported into any other part of the United States (as defined in paragraph (c)(2) of this section) for any purpose if like goods brought into the customs

territory for such purpose would be entered into the customs territory for consumption, use, or warehousing.

(ii) *Entries described in two or more provisions.* In the case of any goods with respect to which entries are described in two or more provisions of paragraph (c)(4)(i) of this section, only the first such entry is taken into account. Thus, if the admission of goods into a foreign trade zone is an entry into the United States for consumption, use, or warehousing, the subsequent entry of such goods into the customs territory will not be treated as an entry into the United States for consumption, use, or warehousing.

(iii) *Certain imported products not entered for consumption, use, or warehousing.* Imported products that are entered into the United States for consumption, use, or warehousing do not include any imported products that—

(A) Are entered into the customs territory under Harmonized Tariff Schedule (HTS) heading 9801, 9802, 9803, or 9813;

(B) Would, if entered into the customs territory, be entered under any such heading; or

(C) Are brought into the United States by an individual if the product is brought in for use by the individual and is not expected to be used in a trade or business other than a trade or business of performing services as an employee.

(5) *Importer.* The term "importer" means the person that first sells or uses goods after their entry into the United States for consumption, use, or warehousing (within the meaning of paragraph (c)(4) of this section).

(6) *Sale.* The term "sale" means the transfer of title or of substantial incidents of ownership (whether or not delivery to, or payment by, the buyer has been made) for consideration which may include money, services, or property. The determination as to the time a sale occurs shall be made under applicable local law.

(7) *Use*—(i) *In general.* Except as otherwise provided in regulations under sections 4681 and 4682, ODCs and imported taxable products are used when—

(A) Used as a material in the manufacture of an article, whether by incorporation into such article, chemical transformation, release into the atmosphere, or otherwise; or

(B) Put into service in a trade or business or for production of income.

(ii) *Loss, destruction, packaging, warehousing, and repair.* The loss, destruction, packaging, warehousing, or repair of ODCs and imported taxable products is not a use of the item lost, destroyed, packaged, warehoused, or repaired.

(iii) *Cross-references to exceptions.* For exceptions to the rule contained in paragraph (c)(7)(i) of this section, see—

(A) Section 52.4682–1T(b)(2)(iii) (relating to the mixture election);

(B) Section 52.4682–3T(c)(2) (relating to the election to treat entry of an imported taxable product as use); and

(C) Section 52.4682–3T(c)(3) (relating to treating sale of an article incorporating an imported taxable product as the first sale or use of the product).

(8) *Pound.* The term "pound" means a unit of weight that is divided into 16 ounces.

(d) *Effective date.* The regulations under sections 4681 and 4682 are effective as of January 1, 1990, and apply to—

(1) ODCs that the manufacturer or importer thereof first sells or uses after December 31, 1989;

(2) Imported taxable products that the importer thereof first sells or uses after December 31, 1989; and

(3) ODCs held for sale or for use in further manufacture by any person other than the manufacturer or importer thereof on January 1 of 1990, 1991, 1992, 1993, or 1994.

§ 52.4682–1T Ozone-depleting chemicals (temporary).

(a) *Overview.* This section provides rules relating to the tax imposed on ozone-depleting chemicals (ODCs) under section 4681, including rules for identifying taxable ODCs and determining when the tax is imposed and rules prescribing special treatment for certain ODCs (*i.e.*, ODCs used as feedstocks, ODCs used in the manufacture of rigid foam insulation, and Halons). See § 52.4681–1T(a)(1) and (c) for general rules and definitions relating to the tax on ODCs.

(b) *Taxable ODCs; taxable event*—(1) *Taxable ODCs*—(i) *In general.* Except as provided in paragraphs (c) through (g) of this section, an ODC is taxable if—

(A) It is listed in section 4682(a)(2) on the date it is sold or used by its manufacturer or importer; and

(B) It is manufactured in the United States or entered into the United States for consumption, use, or warehousing.

(ii) *Storage containers.* An ODC described in paragraph (b)(1)(i) of this section is taxable without regard to the type or size of storage container in which the ODC is held.

(2) *Taxable event*—(i) *In general.* The tax on an ODC is imposed when the ODC is first sold or used (as defined in § 52.4681–1T(c) (6) and (7)) by its manufacturer or importer.

(ii) *Mixtures.* Except as otherwise provided in paragraph (b)(2)(iii) of this section, the creation of a mixture containing two or more ingredients is treated as a use of the ODCs contained in the mixture. Thus, except as otherwise provided in paragraph (b)(2)(iii) of this section—

(A) The tax on the ODCs contained in mixtures created after December 31, 1989, is imposed when the mixture is created and not on any subsequent sale or use of the mixture; and

(B) No tax is imposed under section 4681 on the ODCs contained in mixtures created before January 1, 1990.

(iii) *Mixture election*—(A) *In general.* A manufacturer or importer may elect to treat the sale or use of mixtures containing ODCs as the first sale or use of the ODCs contained in the mixtures. If an election under this paragraph (b)(2)(iii) applies to a mixture sold or used after December 31, 1989 (including any such mixture created before January 1, 1990), the tax on the ODCs contained in the mixture is imposed on the date of such sale or use.

(B) *Applicability of election.* The only election permitted under this paragraph (b)(2)(iii) is an election for the first calendar quarter beginning after December 31, 1989, and all subsequent periods. Any such election applies to all mixtures sold or used by the manufacturer or importer after December 31, 1989 (including any such mixture created before January 1, 1990). Except as provided in § 52.6071(a)–2T(a)(3), the election may be revoked only with the consent of the Commissioner.

(C) *Making the election.* An election under this paragraph (b)(2)(iii) shall be made in accordance with the instructions for the return on which the manufacturer or importer reports liability for tax under section 4681.

(c) *ODCs used as a feedstock*—(1) *Exemption from tax.* No tax is imposed on an ODC if the manufacturer or importer of the ODC—

(i) Uses the ODC as a feedstock in the manufacture of another chemical; or

(ii) Sells the ODC in a qualifying sale (as defined in § 52.4682–2T) for use as a feedstock.

(2) *Excess payments*—(i) *In general.* Under section 4682(d)(2), a credit or refund is allowed to a person if—

(A) The person uses an ODC as a feedstock; and

(B) The amount of any tax paid with respect to the ODC under section 4681 or 4682 was not determined under section 4682(d)(2).

(ii) *Procedural rules.* See section 6402 and the regulations thereunder for rules

relating to claiming a credit or refund of tax paid with respect to ODCs that are used as a feedstock. A credit against the income tax is not allowed for the amount determined under section 4682(d)(2).

(3) *Definition.* An ODC is used as a feedstock only if the ODC is entirely consumed in the manufacture of another chemical (within the meaning of 40 CFR 82.3(s) (relating to the definition of production in connection with regulations on the protection of atmospheric ozone)). Thus, the transformation of an ODC into one or more new compounds (such as the transformation of CFC–113 into chlorotrifluoroethylene (CTFE or 1113) or of CFC–113 into CFC–115 and CFC–116)) is treated as use as a feedstock. On the other hand, the ODCs used in a mixture (including an azeotrope such as R–500 or R–502) are not used as a feedstock.

(4) *Qualifying sale.* A sale of ODCs for use as a feedstock is a qualifying sale if the requirements of § 52.4682–2T(b)(1) are satisfied with respect to such sale.

(d) *ODCs used in the manufacture of rigid foam insulation*—(1) *Phase-in of tax*—(i) *In general.* The amount of tax imposed on an ODC is determined under section 4682(g) if the manufacturer or importer of the ODC—

(A) Uses the ODC during 1990, 1991, 1992, or 1993 in the manufacture of rigid foam insulation; or

(B) Sells the ODC in a qualifying sale (as defined in § 52.4682–2T) during 1990, 1991, 1992, or 1993.

(ii) *Amount of tax.* Under section 4682(g), ODCs described in paragraph (d)(1)(i) of this section are not taxed if sold or used during 1990 and are taxed at a reduced rate if sold or used during 1991, 1992, or 1993.

(2) *Excess payments*—(i) *In general.* Under section 4682(g)(3), a credit against income tax or a refund is allowed to a person if—

(A) The person uses an ODC during 1990, 1991, 1992, or 1993 in the manufacture of rigid foam insulation; and

(B) The amount of any tax paid with respect to the ODC under section 4681 or 4682 was not determined under section 4682(g).

(ii) *Procedural rules*—(A) The amount determined under section 4682(g)(3) shall be treated as a credit described in section 34(a) (relating to credits for gasoline and special fuels) unless a claim for refund has been filed.

(B) See section 6402 and the regulations thereunder for rules relating to claiming a credit or refund of the tax paid with respect to ODCs that are used in the manufacture of rigid foam insulation.

(3) *Definition*—(i) *Rigid foam insulation.* The term "rigid foam insulation" means any rigid foam that is designed for use as thermal insulation in buildings, equipment, appliances, tanks, railcars, trucks, or vessels, or on pipes, including any such rigid foam actually used for purposes other than insulation. Information such as test reports on R-values and advertising material reflecting R-value claims for a particular rigid foam may be used to show that such rigid foam is designed for use as thermal insulation.

(ii) *Rigid foam*—(A) *In general.* The term "rigid foam" means any closed cell polymeric foam (whether or not rigid) in which chlorofluorocarbons are used to fill voids within the polymer.

(B) *Examples of rigid foam products.* Rigid foam includes extruded polystyrene foam, ployisocyanurate foam, spray and pour-in-place polyurethane foam, polyethylene foam, phenolic foam, and any other product that the Commissioner identifies as rigid foam in a pronouncement of general applicability. The form of a product identified under this paragraph (d)(3)(ii)(B) does not affect its character as rigid foam. Thus, such products are rigid foam whether in the form of a board, sheet, backer rod, or wrapping, or in a form applied by spraying, pouring, or frothing.

(4) *Use in manufacture.* An ODC is used in the manufacture of rigid foam insulation if it is incorporated into such product or is expended as a propellant or otherwise in the manufacture or application of such product.

(5) *Qualifying sale.* A sale of an ODC for use in the manufacture of rigid foam insulation is a qualifying sale if the requirements of § 52.4682–2T(b)(2) are satisfied with respect to such sale.

(e) *Halons; phase-in of tax.* The amount of tax imposed on Halon-1211, Halon-1301, or Halon-2402 (Halon) is determined under section 4682(g) if the manufacturer or importer of the Halon sells or uses the Halon during 1990, 1991, 1992, or 1993. Under section 4682(g), Halons are not taxed if sold or used during 1990 and are taxed at a reduced rate if sold or used during 1991, 1992, or 1993.

(f) *Recycling.* [Reserved]

(g) *Exports.* [Reserved]

§ 52.4682–2T Qualifying sales (temporary).

(a) *In general*—(1) *Special rules applicable to certain sales.* Special rules apply to sales of ODCs in the following cases:

(i) Under section 4682(d)(2), § 52.4682–1T(c), and § 52.4682–4T(d)(2)(i) (relating to ODCs used as a feedstock), ODCs sold in qualifying sales are not taxed.

(ii) Under section 4682(g), § 52.4682–1T(d), and § 52.4682–4T(d)(2)(ii) (relating to ODCs used in the manufacture of rigid foam insulation), ODCs sold in qualifying sales are not taxed in 1990 and are taxed at a reduced rate in 1991, 1992, and 1993.

(2) *Qualifying sales.* A sale of ODCs is not a qualifying sale unless the requirements of this section are satisfied. Although submission of a document to the Internal Revenue Service is not required to establish that a sale of ODCs is a qualifying sale, the registration certificates required by this section shall be made available for inspection by internal revenue agents and officers.

(b) *Requirements for qualification*—(1) *Use as a feedstock.* A sale of ODCs is a qualifying sale for purposes of §§ 52.4682–1T(c) and 52.4682–4T(d)(2)(i) if the manufacturer or importer of the ODCs—

(i) Obtains a registration certificate in substantially the form set forth in paragraph (d)(2) of this section from the purchaser of the ODCs; and

(ii) Relies on the certificate in good faith.

(2) *Use in the manufacture of rigid foam insulation.* A sale of ODCs is a qualifying sale for purposes of §§ 52.4682–1T(d) and 52.4682–4T(d)(2)(ii) if the manufacturer or importer of the ODCs—

(i) Obtains a registration certificate in substantially the form set forth in paragraph (d)(3) of this section from the purchaser of the ODCs; and

(ii) Relies on the certificate in good faith.

(c) *Good faith reliance*—(1) *In general.* The requirements of paragraph (b) of this section are not satisfied with respect to a sale of ODCs and the sale is not a qualifying sale if at the time of the sale—

(i) The manufacturer or importer has reason to believe that the purchaser will use the ODCs other than for the purpose set forth in the certificate; or

(ii) The Internal Revenue Service has notified the manufacturer or importer that the purchaser's right to provide a certificate has been withdrawn.

(2) *Withdrawal of right to provide a certificate.* The Internal Revenue Service may withdraw the right of a purchaser to provide a certificate to its supplier if such purchaser uses the ODCs to which its certification applies other than for the purpose set forth in such certificate. The Internal Revenue

Service may notify the supplier to whom the purchaser provided the certificate that the purchaser's right to provide a certificate has been withdrawn.

(d) *Registration certificate*—(1) *In general.* This paragraph (d) sets forth the form of the registration certificates that satisfy the requirements of paragraphs (b)(1) and (2) of this section. The registration certificate shall consist ot a statement executed and signed by the purchaser under penalties of perjury. A certificate may apply to a single purchase or may cover purchases for up to four years from its effective date. A new certificate must be given to the supplier if any information on the current certificate changes. The certificate may be included as part of any business records normally used to document a sale.

(2) *Certificate relating to ODCs used as a feedstock*—(i) *ODCs that will be resold for use by the second purchaser as a feedstock.* If the purchaser will resell the ODCs to a second purchaser for use by such second purchaser as a feedstock, the certificate provided by the purchaser must be in substantially the following form:

Certificate of Purchaser of Chemicals That Will Be Resold for Use by the Second Purchaser as a Feedstock

(To support tax-free sales under section 4682(d)(2) of the Internal Revenue Code.)

Effective Date _____

Expiration Date _____

The undersigned purchaser ("Purchaser") hereby certifies under penalties of perjury that the following percentage of ozone-depleting chemicals purchased from

_____

(name and address of seller)

will be resold by Purchaser to persons (Second Purchasers) that certify to Purchaser that they are purchasing the ozone-depleting chemicals for use as a feedstock (as defined in § 52.4682–1T(c)(3) of the Environmental Tax Regulations).

Product	Percentage
CFC–11	
CFC–12	
CFC–113	
CFC–114	
CFC–115	

This certificate applies to (check and complete as applicable):

_____ All shipments to Purchaser at the following location(s):

_____

_____

_____

_____ All shipments to Purchaser under the following Purchaser account number(s):

_____

_____

_____

_____ All shipments to Purchaser under the following Purchaser order(s):

_____

_____

_____

_____ One or more shipments to Purchaser identified as follows:

_____

_____

_____

Purchaser will not claim a credit or refund under section 4682(d)(2)(B) of the Internal Revenue Code for any ozone-depleting chemicals covered by this certificate.

Purchaser understands that any use by Purchaser of the ozone-depleting chemicals to which this certificate applies other than for the purpose set forth in this certificate may result in the withdrawal by the Internal Revenue Service of Purchaser's right to provide a certificate.

Purchaser will retain the business records needed to document the sales covered by this certificate and will make such records available for inspection by Government officers. Purchaser also will retain and make available for inspection by Government officers the certificates of its Second Purchasers.

Purchaser has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Purchaser that the right to provide a certificate has been withdrawn from any Second Purchaser who will purchase ozone-depleting chemicals to which this certificate applies.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature of Purchaser or agent representing Purchaser

_____

Title

_____

Name of Purchaser

_____

Address

_____

_____

Taxpayer Identification Number

(ii) *ODCs that will be used by the purchaser as a feedstock.* If the purchaser will use the OCDs as a feedstock, the certificate provided by the purchaser must be in substantially the following form:

Certificate of Purchaser of Chemicals That Will Be Used by the Purchaser as a Feedstock

(To support tax-free sales under section 4682(d)(2) of the Internal Revenue Code.)

Effective Date _____

Expiration Date _____

The undersigned purchaser ("Purchaser") hereby certifies under penalties of perjury that the following percentage of ozone-depleting chemicals purchased from

_____

(name and address of seller)

will be used by Purchaser as a feedstock (as defined in § 52.4682–1T(c)(3) of the Environmental Tax Regulations).

Product	Percentage
CFC–11	
CFC–12	
CFC–113	
CFC–114	
CFC–115	

This certificate applies to (check and complete as applicable):

_____ All shipments to Purchaser at the following location(s):

_____

_____

_____

_____ All shipments to Purchaser under the following Purchaser account number(s):

_____

_____

_____

_____ All shipments to Purchaser under the following purchase order(s):

_____

_____

_____

_____ One of more shipments to Purchaser identified as follows:

_____

_____

_____

Purchaser will not claim a credit or refund under section 4682(d)(2)(B) of the Internal Revenue Code for any ozone-depleting chemicals covered by this certificate.

Purchaser understands that any use of the ozone-depleting chemicals to which this certificate applies other than as a feedstock may result in the withdrawal by the Internal Revenue Service of Purchaser's right to provide a certificate.

Purchaser will retain the business records needed to document the use as a feedstock of the ozone-depleting chemicals to which this certificate applies and will make such records available for inspection by Government officers.

Purchaser has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature of Purchaser or agent representing Purchaser

_____

Title

_____

Name of Purchaser

_____

Address

Taxpayer Identification Number

(3) *Certificate relating to ODCs used in the manufacture of rigid foam insulation*—(i) *ODCs that will be resold to a second purchaser for use by the second purchaser in the manufacture of rigid foam insulation.* If the purchaser will resell the ODCs to a second purchaser for use by such second purchaser in the manufacture of rigid foam insulation, the certificate provided by the purchaser must be in substantially the following form:

Certificate of Purchaser of Chemicals that will be Resold for Use by the Second Purchaser in the Manufacture of Rigid Foam Insulation

(To support tax-free or tax-reduced sales under section 4682(g) of the Internal Revenue Code.)

Effective date _____

Expiration Date _____

The undersigned purchaser ("Purchaser") hereby certifies under penalties of perjury that the following percentage of ozone-depleting chemicals purchased from

(name and address of seller)

will be resold by Purchaser to persons (Second Purchasers) that certify to Purchaser that they are purchasing the ozone-depleting chemicals for use in the manufacture of rigid foam insulation (as defined in § 52.4682–1T(d) (3) and (4) of the Environmental Tax Regulations).

Product	Percentage
CFC–11	
CFC–12	
CFC–113	
CFC–114	
CFC–115	

This certificate applies to (check and complete as applicable):

_____ All shipments to Purchaser at the following location(s):

_____

_____

_____

_____ All shipments to Purchaser under the following Purchaser account number(s):

_____

_____

_____

_____ All shipments to Purchaser under the following purchase order(s):

_____

_____

_____

_____ One or more shipments to Purchaser identified as follows:

_____

_____

_____

Purchaser will not claim a credit or refund under section 4682(g)(3) of the Internal Revenue Code for any ozone-depleting chemicals covered by this certificate.

Purchaser understands that any use by Purchaser of the ozone-depleting chemicals to which this certificate applies other than for the purpose set forth in this certificate may result in the withdrawal by the Internal Revenue Service of Purchaser's right to provide a certificate.

Purchaser will retain the business records needed to document the sales covered by this certificate and will make such records available for inspection by Government officers. Purchaser also will retain and make available for inspection by Government officers the certificates of its Second Purchasers.

Purchaser has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Purchaser that the right to provide a certificate has been withdrawn from any Second Purchaser who will purchase ozone-depleting chemicals to which this certificate applies.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature of purchaser or agent representing Purchaser

_____

Title

_____

Name of Purchaser

_____

_____

Address

_____

Taxpayer Identification Number

(ii) *OCDs that will be used by the purchaser in the manufacture of rigid foam insulation.* If the purchaser will use the ODCs in the manufacture of rigid foam insulation, the certificate provided by the purchaser must be in substantially the following form:

Certificate of Purchaser of Chemicals That Will Be Used by the Purchaser in the Manufacture of Rigid Foam Insulation

(To support tax-free or tax-reduced sales under section 4682(g) of the Internal Revenue Code.)

Effective Date _____

Expiration Date _____

The undersigned purchaser ("Purchaser") hereby certifies under penalties of perjury that the following percentage of ozone-depleting chemicals purchased from

_____

(name and address of seller)

will be used by Purchaser in the manufacture of rigid foam insulation (as defined in § 52.4682–1T(d) (3) and (4) of the Environmental Tax Regulations).

Product	Percentage
CFC–11	
CFC–12	
CFC–113	
CFC–114	
CFC–115	

This certificate applies to (check and complete as applicable):

_____ All shipments to Purchaser at the following location(s):

_____

_____

_____

_____ All shipments to Purchaser under the following Purchaser account number(s):

_____

_____

_____

_____ All shipments to Purchaser under the following purchase order(s):

_____

_____

_____

_____ One or more shipments to Purchaser identified as follows:

_____

_____

_____

Purchaser will not claim a credit or refund under section 4682(g)(3) of the Internal Revenue Code for any ozone-depleting chemicals covered by this certificate.

Purchaser understands that any use by Purchaser of the ozone-depleting chemicals to which this certificate applies other than in the manufacture of rigid foam insulation may result in the withdrawal by the Internal Revenue Service of Purchaser's right to provide a certificate.

Purchaser will retain the business records needed to document the use in the manufacture of rigid foam insulation of the ozone-depleting chemicals to which this certificate applies and will make such records available for inspection by Government officers.

Purchaser has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

Purchaser understands that the fraudulent use of this certificate may subject Purchaser and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature of Purchaser or agent representing Purchaser

_____

Title

_____

Name of Purchaser

_____

Address

_____

_____

Taxpayer Identification Number

§ 52.4682-3T Imported taxable products (temporary).

(a) *Overview; references to tables*—(1) *Overview.* This section provides rules relating to the tax imposed on imported taxable products under section 4681, including rules for identifying imported taxable products, determining the weight of the ozone-depleting chemicals (ODCs) used as materials in the manufacture of such products, and computing the amount of tax on such products. See § 52.4681-1T (a)(2) and (c) for general rules and definitions relating to the tax on imported taxable products.

(2) *References to tables.* When used in this section—

(i) The term "Imported Products Table" (Table) refers to the initial Table set forth in paragraph (f)(6) of this section and any superseding Table issued under paragraph (f)(7) of this section; and

(ii) The term "current Imported Products Table" (current Table) used with respect to a product refers to the Table in effect on the date such product is first sold or used by the importer thereof.

(b) *Imported taxable products*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the term "imported taxable product" means any product that—

(i) Is entered into the United States for consumption, use, or warehousing; and

(ii) Is listed in the current Table.

(2) *Exceptions*—(i) *In general.* A product is not treated as an imported taxable product if—

(A) The product is listed in part I of the current Table and the adjusted tax with respect to the product is *de minimis* (within the meaning of paragraph (b)(2)(ii) of this section); or

(B) The product is listed in part II of the current Table, the adjusted tax with respect to the product is *de minimis* (within the meaning of paragraph (b)(2)(ii) of this section), and the ODCs used as materials in the manufacture of the product were not used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components.

(ii) *De minimis adjusted tax.* The adjusted tax with respect to a product is *de minimis* if such tax is less than one-tenth of one percent of the importer's cost of acquiring such product. The term "adjusted tax" means the tax that would be imposed under section 4681 on the ODCs used as materials in the manufacture of such product if such ODCs were sold in the United States and the base tax amount were $1.00.

(c) *Taxable event*—(1) *In general.* Except as otherwise provided in paragraph (c) (2) and (3) of this section, the tax on an imported taxable product is imposed when the product is first sold or used (as defined in § 52.4681-1T(c) (6) and (7)) by its importer.

(2) *Election to threat importation as use*—(i) *In general.* An importer may elect to treat the entry of products into the United States as the use of such products. In the case of imported taxable products to which an election under this paragraph (c)(2) applies—

(A) Tax is imposed on the products on the date of entry (as determined under paragraph (c)(2)(ii) of this section) if the products are entered into the United States after the election becomes effective;

(B) Tax is imposed on the products on the date the election becomes effective if the products were entered into the United States after December 31, 1989, and before the election becomes effective; and

(C) No tax is imposed if the products were entered into the United States before January 1, 1990.

(ii) *Date of entry.* The date of entry is determined by reference to customs law. If the actual date is unknown, the importer may use any reasonable and consistent method to determine the date of entry, provided that such date is within 10 business days of arrival of products in the United States.

(iii) *Applicability of election.* An election under this paragraph (c)(2) applies to all imported taxable products that are held (and have not been used) by the importer at the time the election becomes effective and all imported taxable products that are entered into the United States by the importer after the election becomes effective. An election under this paragraph (c)(2) becomes effective at the beginning of the first calendar quarter to which the election applies. Except as provided in § 52.6071(a)-2T(a) (3) and (4), the election may be revoked only with the consent of the Commissioner.

(iv) *Making the election.* An election under this paragraph (c)(2) shall be made in accordance with the instructions for the return on which the importer is required to report liability for tax under section 4681.

(3) *Treating the sale of an article incorporating an imported taxable product as the first sale or use of such product*—(i) *In general.* In the case of articles to be sold, an importer may treat the sale of an article manufactured or assembled in the United States as the first sale or use of an imported taxable product incorporated in such article, but only if the importer—

(A) Has consistently treated the sale of similar articles as the first sale or use of similar imported taxable products; and

(B) Has not made an election under paragraph (c)(2) of this section.

(ii) *Similar articles and imported taxable products.* An importer may establish any reasonable criteria for determining whether articles or imported taxable products are similar for purposes of this paragraph (c)(3).

(iii) *Establishment of consistent treatment.* An importer has consistently treated the sale of similar articles as the first sale or use of similar imported taxable products only if such treatment is reflected in the computation of tax on the importer's returns for all prior calendar quarters in which such treatment would affect tax liability.

(iv) *Example.* The following example illustrates the application of this paragraph (c)(3):

Example. (A) An importer of printed circuits and other electronic components uses those products in assembling television receivers in the United States and also uses the printed circuits in assembling VCRs in the United States. Under the importer's criteria for determining similarity, printed circuits are similar to other printed circuits, but not to the other electronic components. In addition, television receivers are similar to other television receivers, but not to VCRs. The importer has not made an election under paragraph (c)(2) of this section.

(B) Under this paragraph (c)(3), the importer may treat the sale of the television receivers as the first sale or use of the imported printed circuits incorporated into the television receivers. In that case, the tax on the printed circuits would be imposed when the television receivers are sold rather than when the printed circuits are used in assembling the television receivers.

(C) The importer may treat the sale of the television receivers as the first sale or use of the printed circuits incorporated into the television receivers even if the sale of the television receivers is not treated as the first sale or use of the other electronic components incorporated into the television receivers and even if the sale of VCRs is not treated as the first sale or use of the printed circuits incorporated into the VCRs. Under paragraph (c)(3)(i)(A) of this section, however, the importer must have consistently treated the sale of television receivers as the first sale or use of printed circuits incorporated into the receivers. Thus, in the case of television receivers that were assembled before January 1, 1990, and sold after December 31, 1989, the importer must have treated the sale of the television receivers as the first sale or use of the printed circuits incorporated into the television receivers when reporting tax under section 4681 with respect to such printed circuits

(d) *ODCs used as materials in the manufacture of imported taxable*

products—(1) *ODC weight.* The tax imposed on an imported taxable product under section 4681 is computed by reference to the weight of the ODCs used as materials in the manufacture of the product (ODC weight). The ODC weight of a product includes the weight of ODCs used as materials in the manufacture of any components of the product.

(2) *ODCs used as materials in the manufacture of a product.* Except as provided in paragraph (d)(3) of this section, an ODC is used as a material in the manufacture of a product if the ODC is—

(i) Incorporated into the product;

(ii) Released into the atmosphere in the process of manufacturing the product; or

(iii) Otherwise used in the manufacture of the product (but only to the extent the cost of the ODC is properly allocable to the product).

(3) *Protective packaging.* ODCs used in the manufacture of the protective material in which a product is packaged are not treated as ODCs used as materials in the manufacture of such product.

(4) *Example.* The provisions of this paragraph (d) may be illustrated by the following example:

Example. A, a manufacturer located outside the United States, uses ODCs as a solvent to clean the printed circuits it manufactures and as a coolant in the air-conditioning system of the factory in which the printed circuits are manufactured. The ODCs used as a solvent are released into the atmosphere, and, under paragraph (d)(2)(ii) of this section, are used as materials in the manufacture of the printed circuits. The ODCs used as a coolant in the air-conditioning system are also used in the manufacture of the printed circuits. Under paragraph (d)(2)(iii) of this section, these ODCs are used as materials in the manufacture of the printed circuits only to the extent the cost of the ODCs is properly allocable to the printed circuits.

(e) *Methods of determining ODC weight; computation of tax*—(1) *In general.* This paragraph (e) sets forth the methods to be used for determining the ODC weight of an imported taxable product and a method to be used in computing the tax when the ODC weight cannot be determined. The amount of tax is computed separately for each imported taxable product and the method to be used in determining the ODC weight or otherwise computing the tax is separately determined for each such product. Thus, an importer may use one method in computing the tax on some imported taxable products and different methods in computing the tax on other products. For example, an importer of telephone sets may compute the tax using the exact method described in paragraph (e)(2) of this section for determining the ODC weight of telephone sets supplied by one manufacturer and using the Table method described in paragraph (e)(3) of this section for telephone sets supplied by other manufacturers that have not provided sufficient information to allow the importer to use the exact method.

(2) *Exact method.* If the importer determines the weight of each ODC used as a material in the manufacture of an imported taxable product and supports that determination with sufficient and reliable information, the ODC weight of the product is the weight so determined. Representations by the manufacturer of the product to the importer as to the weight of the ODCs used as materials in the manufacture of the product may be sufficient and reliable information for this purpose. Thus, a letter to the importer signed by the manufacturer may constitute sufficient and reliable information if the letter adequately identifies the product and states the weight of each ODC used as a material in the product's manufacture.

(3) *Table method*—(i) *In general.* If the ODC weight of an imported taxable product is not determined using the exact method described in paragraph (e)(2) of this section and the current Table specifies the Table ODC weight of the product, the ODC weight of the product is the Table ODC weight. In computing the amount of tax, the Table ODC weight shall not be rounded.

(ii) *Special rules*—(A) *Articles assembled in the United States.* An importer that assembles finished articles in the United States may compute the amount of tax imposed on the imported taxable products incorporated into the finished article by using the Table ODC weight specified for the article instead of the Table ODC weights specified for the components. For example, if an importer uses 600 imported camcorder subassemblies to manufacture 100 camcorders, the importer may compute the amount of tax on the subassemblies by using the Table ODC weight specified for camcorders. Thus, the tax imposed on the 600 subassemblies is equal to the tax that would be imposed on 100 camcorders.

(B) *Combination method.* This paragraph (e)(3)(ii)(B) applies to an imported taxable product if the current Table specifies weights for two or more ODCs with respect to the product and the importer of the product can determine the weight of any such ODC (and of any ODC used as a substitute for such ODC) and can support such determination with sufficient and reliable information. In determining the ODC weight of any such product, the importer may replace the weight specified in the Table for such ODC with the weight of such ODC and its substitutes (as determined by the importer). For example, if an importer has sufficient and reliable information to determine the amount of CFC–12 included in a product as a coolant (and to determine that no ODCs have been used as substitutes for CFC–12) but cannot determine the amount of CFC–113 used in manufacturing the product's electronic components, the importer may use the weight specified in the Table for CFC–113 and the actual weight determined by the importer for CFC–12 in determining the ODC weight of the product.

(C) *ODCs used in the manufacture of rigid foam insulation.* In computing the tax using the method described in this paragraph (e)(3), any ODC for which the Table specifies a weight followed by an asterisk (*) shall be treated as an ODC used in the manufacture of rigid foam insulation (as defined in §§ 52.4682–1T (d) (3) and (4)).

(4) *Value method.* If the importer cannot determine the ODC weight of an imported taxable product under the exact method described in paragraph (e)(2) of this section and the Table ODC weight of the product is not specified, the tax imposed on the product under section 4681 is one percent of the entry value of the product.

(5) *Adjustment for prior taxes*—(i) *In general.* If any manufacture with respect to an imported taxable product occurred in the United States or the product incorporates a taxed component or a taxed chemical was used in its manufacture, the product's ODC weight (or value) attributable to manufacture within the United States or to taxed components or taxed chemicals shall be disregarded in computing the tax on such product using a method described in paragraph (e) (2), (3), or (4) of this section.

(ii) *Taxed component.* The term "taxed component" means any component that previously was subject to tax as an imported taxable product or that would have been so taxed if section 4681 had been in effect for periods before January 1, 1990.

(iii) *Taxed chemical.* The term "taxed chemical" means any ODC that previously was subject to tax.

(f) *Imported Products Table*—(1) *In general.* This paragraph (f) contains rules relating to the Imported Products Table (Table) and sets for the initial Table. The Table lists all the products that are subject to the tax on imported

taxable products and specifies the Table ODC weight of each product for which such a weight has been determined.

(2) *Applicability of initial Table*—(i) *In general.* Except as provided in paragraph (f)(2)(ii) of this section, the Table contained in paragraph (f)(6) of this section is effective on January 1, 1990, and will remain in effect until superseded by a revenue procedure issued under paragraph (f)(7) of this section.

(ii) *Treatment of certain products.* Products included in a listing that is preceded by a double asterisk (**) in the initial Table shall not be treated as imported taxable products until October 1, 1990.

(3) *Identification of products*—(i) *In general.* Each listing in the Table identifies a product by name and includes only products that are described by that name. Most listings identify a product by both name and Harmonized Tariff Schedule (HTS) heading. In such cases, a product is included in that listing only if the product is described by that name and the rate of duty on the product is determined by reference to the HTS heading. For example, the Table lists "radios—8527.19" and "radio combinations—8527.31." Therefore, a radio entered under HTS heading 8527.19 is not included within the listing for radio combinations.

(ii) *Electronic items not listed by specific name*—(A) *In general.* Part II of the Table contains a listing for electronic items that are not included within any other listing in the Table. An imported product is included in this listing only if the product is a component whose operation involves the use of nonmechanical amplification or switching devices such as tubes, transistors, and integrated circuits or more that 15 percent of the cost of the product is attributable to such components. Such components do not include passive electrical devices such as resistors and capacitors.

(B) *Certain items not included.* Items such as screws, nuts, bolts, plastic parts, and similar specially fabricated parts that may be used to construct an electronic item are not themselves included in the listing for electronic items.

(4) *Rules for listing products.* Products are listed in the Table in accordance with the following rules:

(i) *Listing in part I.* A product is listed in part I of the Table if the Commissioner has determined that—

(A) The ODC weight of the product is not *de minimis* when the product is produced using the predominant method of manufacturing the product; and

(B) None of the ODCs used as materials in the manufacture of the product under the predominant method are used for purposes of refrigeration or air conditioning, creating an aerosol or foam, or manufacturing electronic components.

(ii) *Listing in part II.* A product is listed in part II of the Table if the Commissioner has determined that the ODCs used as materials in the manufacture of the product under the predominant method as used for purposes of refrigeration or air conditioning, creating and aerosol or foam, or manufacturing electronic components.

(iii) *Listing in part III.* A product is listed in part III of the Table if the Commissioner has determined that the product is not an imported taxable product and the product would otherwise be included within a listing in part II of the Table. For example, floppy disk drive units are listed in part III because they are not imported taxable products and they would, but for their listing in part III, be included within the part II listing for electronic items not specifically identified.

(5) *Table ODC weight.* The Table ODC weight of a product is the weight, determined by the Commissioner, of the ODCs that are used as materials in the manufacture of the product under the predominant method of manufacturing. The Table ODC weight is given in pounds per single unit of product unless otherwise specified.

(6) *Initial Table.* The initial Table is set forth below:

IMPORTED PRODUCTS TABLE

Product name	Harmonized tariff schedule heading	ODC	ODC weight
Part I			
Mixtures containing ODCs, such as—			
—anti-static sprays			
—automotive products such as "carburetor cleaner," "stop leak," "oil charge"			
—cleaning solvents			
—contact cleaners			
—degreasers			
—dusting sprays			
—electronic circuit board coolants			
—electronic solvents			
—fire extinguisher preparations and charges			
—flux removers for electronics			
—insect and wasp sprays			
—propellants			
—refrigerants			
Ethylene oxide/CFC–12 mixture		CFC–12	0.88lb/lb
Part II			
Rigid foam insulation defined in § 52.4682–1T(d)(3))			
Foams made with ODCs, other than foams defined in § 52.4682–1T(d)(3))			
Scrap flexible foam made with ODCs			
Medical products containing ODCs—			
—surgical staplers			
—cryogenic medical instruments			
—drug delivery systems			
—inhalants			
Dehumidifiers, household	8415.82.00.50	CFC–12	0.344
Chillers	8415.82.00.65		
Charged with CFC–12		CFC–12	1600.

IMPORTED PRODUCTS TABLE—Continued

Product name	Harmonized tariff schedule heading	ODC	ODC weight
Charged with CFC–114		CFC–114	1250.
Charged with R–500		CFC–12	1920.
Refrigerator-freezers, household			
Not >184 liters	8418.10.00.10	CFC–11	*1.08
		CFC–12	0.13
>184 liters but not >269 liters	8418.10.00.20	CFC–11	*1.32
		CFC–12	0.26
>269 liters but not >382 liters	8418.10.00.30	CFC–11	*1.54
		CFC–12	0.35
>382 liters	8418.10.00.40	CFC–11	*1.87
		CFC–12	0.35
Refrigerators, household			
Not >184 liters	8418.21.00.10	CFC–11	*1.08
		CFC–12	0.13
>184 liters but not >269 liters	8418.21.00.20	CFC–11	*1.32
		CFC–12	0.26
>269 liters but not >382 liters	8418.21.00.30	CFC–11	*1.54
		CFC–12	0.35
>382 liters	8418.21.00.90	CFC–11	*1.87
		CFC–12	0.35
Freezers, household	8418.30	CFC–11	*2.0
		CFC–12	0.4
Freezers, household	8418.40	CFC–11	*2.0
		CFC–12	0.4
Refrigerating display counters not >227 kg	8418.50	CFC–11	*50.0
		CFC–12	260.0
Icemaking machines	8418.69		
Charged with CFC–12		CFC–12	1.4
Charged with R–502		CFC–115	3.39
Drinking water coolers	8418.69		
Charged with CFC–12		CFC–12	0.21
Charged with R–500		CFC–12	0.22
Centrifugal chiller,	8418.69		
Charged with CFC–12		CFC–12	1600.
Charged with CFC–114		CFC–114	1250.
Charged with R–500		CFC–12	1920.
Reciprocating chiller	8418.69		
Charged with CFC–12		CFC–12	200.
Mobile refrigeration systems	8418.99		
containers		CFC–12	15.
trucks		CFC–12	11.
trailers		CFC–12	20.
Refrigeration condensing units:			
not >746W	8418.99.00.05	CFC–12	0.3
>746W but not >2.2KW	8418.99.00.10	CFC–12	1.0
>2.2KW but not >7.5KW	8418.99.00.15	CFC–12	3.0
>7.5KW but not >22.3KW	8418.99.00.20	CFC–12	8.5
>22.3 KW	8418.99.00.25	CFC–12	17.0
Fire extinguishers, charged w/ODCs	8424		
Electronic typewriters and word processors	8469	CFC–113	0.2049
Electronic calculator	8470.10	CFC–113	0.0035
Electronic calculator w/ printing device	8470.21	CFC–113	0.0057
Electronic calculator	8470.29	CFC–113	0.0035
Account machines	8470 40	CFC–113	0.1913
Cash registers	8470.50	CFC–113	0.1913
Digital automatic data processing machine w/cathode ray tube, not included in subheading 8471.20.90	8471.20	CFC–113	0.3663
Laptops, notebooks, and pocket computers	8471.20.90	CFC–113	0.03567
Digital processing unit w/entry value >$100K	8471.91	CFC–113	27.6667
Digital processing unit w/entry value not >$100k	8471.91	CFC–113	0.4980
Combined input/output unit (terminal)	8471.92	CFC–113	0.3600
Keyboard	8471 92	CFC–113	0.0742
Display unit	8471.92	CFC–113	0.0386
Printer unit	8471.92	CFC–113	0.1558
Input or output unit	8471.92	CFC–113	0.1370
Magnetic disk drive unit for a disk of a diameter over 21 cm (8¼ inches)	8471 93.10	CFC–113	4.0067
Hard magnetic disk drive unit not included in subheading 8471.93.10—			
For a disk of a diameter >9 cm (3½ inches) but not >21 cm (8¼ inches)	8471.93	CFC–113	1.1671
For a disk of a diameter not >9 cm (3½ inches)	8471.93	CFC–113	0.2829
Nonmagnetic storage unit w/entry value >$1,000	8471.93	CFC–113	2.7758
Power supply	8471.99.30	CFC–113	0.0655
Electronic office machines	8472	CFC–113	0.001
Populated card for digital processing unit in subheading 8471.91 valued over $100K	8473.30	CFC–113	4.82
Populated card for digital processing unit in subheading 8471.91 valued $100K and under	8476.30	CFC–113	0.1408
Automatic goods-vending machines with refrigerating device	8476.11	CFC–12	0.45
Microwave ovens with electronic controls, with capacity of	8516.50		
0.99 cu. ft. or less		CFC–113	0.0300
1.0 through 1.3 cu. ft		CFC–113	0.0441
1.31 cu. ft. or greater		CFC–113	0.0485
Microwave oven combination with electronic controls	8516.60.40.60	CFC–113	0.595

IMPORTED PRODUCTS TABLE—Continued

Product name	Harmonized tariff schedule heading	ODC	ODC weight
Telephone sets—			
w/entry value >$11.00	8517.10	CFC–113	0.1
w/entry value not >$11.00	8517.10	CFC–113	0.0225
Teleprinters & teletypewriters	8517.20	CFC–113	0.1
Switching equipment not included in subheading 8517.30.20	8517.30	CFC–113	0.1267
Private branch exchange switching equipment	8517.30.20	CFC–113	0.0753
Modems	8517.40	CFC–113	0.0225
Intercoms	8517.81	CFC–113	0.0225
Facsimile machines	8517.82	CFC–113	0.0225
Loudspeakers, microphones, headphones, & electric sound amplifier sets, not included in subheading 8518.30.10	8518	CFC–113	0.0022
Telephone handsets	8581.30.10	CFC–113	0.042
Turntables, record players, cassette players, and other sound reproducing apparatus	8519	CFC–113	0.0022
Magnetic tape recorders & other sound recording apparatus, not included in subheading 8520.20	8520	CFC–113	0.0022
Telephone answering machines	8520.20	CFC–113	0.1
Color video recording/reproducing apparatus	8521.10.00.20	CFC–113	0.0586
Videodisc players	8521.90	CFC–113	0.0106
Cordless handset telephones	8525.20.50	CFC–113	0.1
Cellular communication equipment	8525.20.60	CFC–113	0.4446
TV cameras	8525.30	CFC–113	1.423
Camcorders	8525.30	CFC–113	0.0586
Radio combinations	8527.11	CFC–113	0.0022
Radios	8527.19	CFC–113	0.0014
Motor vehicle radios with or w/o tape player	8527.21	CFC–113	0.0021
Radio combinations	8527.31	CFC–113	0.0022
Radios	8527.32	CFC–113	0.0014
Tuner w/o speaker	8527.39.00.20	CFC–113	0.0022
Television receivers	8528	CFC–113	0.0386
VCR	8528.10.40	CFC–113	0.0586
Home satellite earth stations	8528.10.80.55	CFC–113	0.0106
Electronic assemblies for HTS headings 8525, 8527, & 8528	8529.90	CFC–113	0.0816
Indicator panels incorporating liquid crystal devices or light emitting diodes	8531.20	CFC–113	0.0146
Printed circuits	8534	CFC–113	0.001
Computerized numerical controls	8537.10.00.30	CFC–113	0.1306
Diodes, crystals, transistors and other similar discrete semiconductor devices	8541	CFC–113	0.0001
Electronic integrated circuits and microassemblies	8542	CFC–113	0.0002
Signal generators not included in subheadings 8543.90.40 and 8543.90.80	8543	CFC–113	0.6518
Avionics	8543.90.40	CFC–113	0.915
Signal generators subassemblies	8543.90.80	CFC–113	0.1265
Insulated or refrigerated railway freight cars	8606	CFC–11	*100.
Passenger automobiles	8703		
Foams (interior)		CFC–11	0.8
Foams (exterior)		CFC–11	0.7
—with fully charged a/c		CFC–12	2.0
—without charged a/c		CFC–12	0.2
Electronics		CFC–113	0.5
Light trucks	8704		
Foams (interior)		CFC–11	0.6
Foams (exterior)		CFC–11	0.1
—with fully charged a/c		CFC–12	2.0
—without charged a/c		CFC–12	0.2
Electronics		CFC–113	0.4
**Heavy trucks and tractors with GVW 33,001 lbs or more	8704		
Foams (interior)		CFC–11	0.6
Foams (exterior)		CFC–11	0.1
—with fully charged a/c		CFC–12	3.0
—without charged a/c		CFC–12	0.2
Electronics		CFC–113	0.4
Motorcycles with seat foamed with ODCs	8711	CFC–11	0.04
Bicycles with seat foamed with ODCs	8712	CFC–11	0.04
Seats foamed with ODCs	8714.95	CFC–11	0.04
Aircraft	8802	CFC–12	[1] 0.25
		CFC–113	[2] 30.0
Optical fibers	9001	CFC–12	[3] 0.005
Electronic cameras	9006	CFC–113	0.01
Photocopiers	9009	CFC–113	0.0426
Avionics	9014.20	CFC–113	0.915
Electronic drafting machine	9017	CFC–113	0.12
Complete patient monitoring systems	9018.19.80	CFC–12	0.94
		CFC–113	3.4163
Complete patient monitoring systems; subassemblies thereof	9018.19.80.60	CFC–113	1.9320
Physical or chemical analysis instruments	9027	CFC–12	0.0003
		CFC–113	0.0271
Oscilloscopes	9030	CFC–11	0.49
		CFC–12	0.5943
		CFC–113	0.2613
Foam chairs	9401	CFC–11	0.30
Foam sofas	9401	CFC–11	0.75
Foam mattresses	9404.21	CFC–11	1.60
Electronic games	9504	CFC–113	

IMPORTED PRODUCTS TABLE—Continued

Product name	Harmonized tariff schedule heading	ODC	ODC weight
Electronic items not otherwise listed in the Table	Chapters 84, 85, 90	CFC-113	* 0.0004
Part III			
Room air conditioners	8415.10.00.60		
Dishwashers	8422.11		
Clothes washers	8450.11		
Clothes dryers	8451.21		
Floppy disk drive units	8471.93		
Transformers and inductors	8504		
Toasters	8516.72		
Unrecorded media	8523		
Recorded media	8524		
Capacitors	8532		
Resistors	8533		
Switching apparatus	8536		
Cathode tubes	8540		

*See paragraph (e)(3)(ii)(C) of this section. Denotes an ODC used in the manufacture of rigid foam insulation.
**See paragraph (f)(2)(ii) of this section. Denotes products for which the effective date is October 1, 1990.
[1] Pound/1000 lbs Operating Empty Weight (OEW).
[2] Pounds/1000 lbs OEW.
[3] Pound/thousand feet.
[4] Pound/$1.00 of entry value.

(7) *Subsequent tables.* If the Commissioner determines that the Imported Products Table then in effect should be modified, a superseding Table shall be issued. Such revised Tables shall be published in revenue procedures and shall be effective prospectively for the periods prescribed by such revenue procedures.

(g) *Requests for modification of table— In general.* Any manufacturer or importer of a product may request that the Commissioner modify the Table in any of the following respects:

(i) Adding a product to the Table and specifying its Table ODC weight.

(ii) Removing a product from the Table.

(iii) Changing or specifying the Table ODC weight of a product.

(2) *Form of request.* The Commissioner will consider a request for modification that includes the following:

(i) The name, address, taxpayer identifying number, and principal place of business of the requester.

(ii) For each product with respect to which a modification is requested:

(A) The name of the product;

(B) the HTS heading or subheading;

(C) The type of modification requested;

(D) The Table ODC weight that should be specified for the product if the request relates to adding a product or changing or specifying its Table ODC weight; and

(E) The data supporting the request.

(3) *Public notice and comments*—(i) *In general.* Before considering requests for modification received during a calendar quarter, the Commissioner will—

(A) Publish a notice in the **Federal Register** summarizing such requests; and

(B) Solicit written comments on the proposed modifications.

(ii) *Form of comments.* The Commissioner will consider written comments on a proposed modification if the comments include—

(A) the name, address, taxpayer identifying number, and principal place of business of the commenter;

(B) An identification of the proposed modification to which the comments relate.

(C) An identification of incorrect statements and supporting data in the request for modification; and

(D) The data supporting each of the commenter's claims that the request contains incorrect information.

(4) *Address.* The address for submission of requests and comments under this paragraph (g) is: Internal Revenue Service, Attn: CC:CORP:T:R (Import Products Table), Room 4429, Washington, DC 20224.

(5) *Public inspection and copying.* Requests and comments submitted under this paragraph (g) will be available in the Internal Revenue Service Freedom of Information Reading Room for public inspection and copying.

§ 52.4682-4T Floor stocks tax (temporary).

(a) *Overview.* This section provides rules for identifying ozone-depleting chemicals (ODCs) that are subject to the floor stocks tax imposed by section 4682(h)(1), determining the person that is liable for the tax, and computing the amount of the tax. See § 52.4681-1T (a)(3) and (c) for general rules and definitions relating to the floor stocks tax.

(b) *ODCs subject to floor stocks tax*—(1) *ODCs that are held for sale or for use in further manufacture*—(i) *In general.* The floor stocks tax is imposed only on an ODC that is held for sale or for use in further manufacture on the date the tax is imposed. This paragraph (b)(1) provides rules for identifying ODCs held for sale or for use in further manufacture.

(ii) *Held for sale.* For purposes of determining whether an ODC is held for sale, the term "sale" shall have the meaning set forth in § 52.4681-1T(c)(6). ODCs held for sale include ODCs that will be sold in connection with the provision of services or in connection with the sale of a manufactured article and, in such cases, include ODCs that will be sold without the statement of a separate charge for those ODCs.

(iii) *Held for use in further manufacture.* An ODC is held for use in further manufacture if—

(A) The ODC will be used as a material (within the meaning of paragraph (b)(1)(iv) of this section) in the manufacture of an article; and

(B) Such article will be held for sale.

(iv) *Use as material*—(A) *In general.* Except as provided in paragraph (b)(1)(iv)(B) of this section, an ODC will be used as a material in the manufacture of an article if the ODC will be—

(*1*) Incorporated into the article; or

(*2*) Released into the atmosphere in the process of manufacturing the article.

(B) *ODCs used in equipment.* An ODC is not used as a material in the manufacture of an article if the ODC is (or will be) contained in equipment used in such manufacture and the ODC will be used for its intended purpose without

being released from such equipment. Thus, UDCs that are (or will be) used as collants in a factory's air-conditioning system are not used as materials in the manufacture of articles produced in the factory.

(v) *Storage containers.* The floor stocks tax is imposed on an ODC without regard to the type or size of the storage container in which the ODC is held. Thus, the tax may apply to an ODC whether it is in a 14-ounce can or a 30-pound tank.

(vi) *Examples.* The provisions of this paragraph (b)(1) may be illustrated by the following examples:

Example 1. A, a manufacturer of air conditioners, holds an ODC for use in air conditioners that it will manufacture and sell. A holds the ODC for use in further manufacture.

Example 2. B, a manufacturer of electronic components, holds an ODC for use as a solvent to clean printed circuits that it will sell to computer manufacturers. B holds the ODC for use in further manufacture.

Example 3. C, an automobile dealer, holds an ODC for use in charging air conditioners installed in automobiles that it sells to retail customers. C does not hold the ODC for use in further manufacture. C does, however, hold the ODC for sale, even if the customers are not separately charged for ODCs used in the automobile air conditioners.

Example 4. D operates an air-conditioning repair service and holds an ODC for use in repairing air conditioners for its customers. D holds the ODC for sale even if the customers are not separately charged for ODCs used in the repairs.

Example 5. E, a grocery-store chain, holds an ODC for use in its refrigeration units. E does not hold the ODC for sale or for use in further manufacture.

Example 6. F, a bank, holds an ODC for use in its fire extinguishers to protect the computer system. F does not hold the ODC for sale or for use in further manufacture.

(2) *Nontaxable ODCs—(i) Mixtures—*(A) *Tax imposed on January 1, 1990.* In the case of the floor stocks tax imposed on January 1, 1990, the tax is not imposed on an ODC that has been mixed with any other ingredients. For example, the tax is not imposed on the ODCs contained in the refrigerants commonly known in the industry as R–500 and R–502. As another example, the tax is not imposed on the ODCs contained in automotive products used for checking for leaks because such products are a mixture of ODCs and small amounts of dyes and oils.

(B) *Taxes imposed after 1990.* In the case of the floor stocks tax imposed on January 1 of 1991, 1992, 1993, or 1994, the tax is not imposed on an ODC that has been mixed with any other ingredients, but only if it is established that such ingredients contribute to the accomplishment of the purpose for which the mixture will be used. Thus, the tax is not imposed on the mixtures described in the examples in paragraph (b)(2)(i)(A) of this section because the ingredients mixed with the ODCs contribute to the accomplishment of the purpose for which the mixture will be used. On the other hand, a mixture is not exempt from tax under this paragraph (b)(2)(i)(B) if it contains only an ODC and an inert ingredient that does not contribute to the accomplishment of the purpose for which the mixture will be used.

(ii) *Manufactured articles.* The floor stocks tax is not imposed on an ODC that is contained in a manufactured article in which the ODC will be used for its intended purpose without being released from such article. For example, the tax is not imposed on the ODCs contained in the cooling coils of a refrigerator even if the refrigerator is held for sale. However, the tax is imposed on a can of ODC used to recharge an air conditioning unit because the ODC must be expelled from the can in order to be used. Similarly, beginning in 1991, the tax is imposed on the Halon-1211, Halon-1301, or Halon-2402 contained in a fire extinguisher held for sale because such ODCs must be expelled from the fire extinguisher in order to be used.

(iii) *Recycled ODCs.* The floor stocks tax is not imposed on ODCs that have been reclaimed or recycled. For example, the tax is not imposed on an ODC that is held for use in further manufacture after being used as a solvent and recycled.

(iv) *ODCs held by the manufacturer or importer.* The floor stocks tax is not imposed on ODCs held by their manufacturer or importer.

(c) *Person liable for tax—*(1) *In general.* The person liable for the floor stocks tax on an ODC is the person that holds the ODC on a date on which the tax is imposed. The person who holds the ODC is the person who has title to the ODC (whether or not delivery to such person has been made) as of the first moment of such date. The person who has title at such time is determined under applicable local law.

(2) *Special rule.* Each business unit that has, or is required to have, its own employer identification number is treated as a separate person for purposes of the floor stocks tax. For example, a chain of automotive parts stores that has one employer identification number is one person for purposes of the floor stocks tax, and a parent corporation and subsidiary corporation that each have a different employer identification number are two persons for purposes of the floor stocks tax.

(d) *Computation of tax—*(1) *In general—*(i) *Tentative tax amount.* Section 52.4681–1T(a)(3) provides that the amount of the floor stocks tax on an ODC is determined by reference to a tentative tax amount. The tentative tax amount is the amount of tax that would be imposed on the ODC under section 4681(a)(1) if a sale of the ODC by the manufacturer or importer had occurred on the date the floor stocks tax is imposed. This paragraph (d) provides rules for determining the tentative tax amount and the amount of the floor stocks tax.

(ii) *Floor stocks tax imposed on January 1, 1990.* The floor stocks tax imposed on January 1, 1990, is equal to the tentative tax amount. Thus, except as provided in paragraph (d) (2) or (3) of this section, the amount of the floor stocks tax imposed on January 1, 1990, is as follows:

ODC	Tax per pound
CFC–11	$1.37
CFC–12	1.37
CFC–113	1.096
CFC–114	1.37
CFC–115	0.822

(iii) *Subsequent floor stocks taxes.* The following rules apply for floor stocks taxes imposed after January 1, 1990.

(A) The tentative tax amount is determined, except as provided in paragraph (d) (2) or (3) of this section, by reference to the rate of tax prescribed in section 4681(b)(1)(B) and the ozone-depletion factors prescribed in section 4682(b).

(B) The amount of the floor stocks tax on an ODC is equal to the amount by which the tentative tax amount exceeds the amount of taxes previously imposed on the ODC.

(2) *Qualifying sale—*(i) *ODCs used as a feedstock.* In the case of an ODC that was sold in a qualifying sale for purposes of § 52.4682–1T(c) (relating to use as a feedstock), the tentative tax amount is zero.

(ii) *ODCs used in the manufacture of rigid foam insulation.* In the case of an ODC that was sold in a qualifying sale for purposes of § 52.4682–1T(d) (relating to use in the manufacture of rigid foam insulation) the tentative tax amount is determined under section 4682(g) for purposes of computing the floor stocks tax imposed on the ODC on January 1 of 1990, 1991, 1992 or 1993. For purposes of computing the floor stocks tax imposed

on the ODC on January 1, 1990, the tentative tax amount is zero.

(iii) *ODCs sold before January 1, 1990.* An ODC that was sold by its manufacturer or importer before January 1, 1990, shall be treated, for purposes of this paragraph (d)(2), as—

(A) An ODC that was sold in a qualifying sale for purposes of § 52.4682–1T(c) if the ODC will be used as a feedstock (within the meaning of § 52.4682–1T(c)(3); and

(B) An ODC that was sold in a qualifying sale for purposes of § 52.4682–1T(d) if the ODC will be used in the manufacture of rigid foam insulation (within the meaning of §§ 52.4682–1T(d) (3) and (4)).

(3) *Halons.* In the case of Halon-1211, Halon-1301, or Halon-2402 (Halon), the tentative tax amount is determined under section 4682(g) for purposes of computing the floor stocks tax imposed on the Halon on January 1 of 1990, 1991, 1992, or 1993. For purposes of computing the floor stocks tax imposed on the Halon on January 1, 1990, the tentative tax amount is zero.

(e) *De minimis exception*—(1) *1990,1992, and 1993.* In the case of the floor stocks tax imposed on January 1 of 1990, 1992, or 1993, a person is liable for the tax only if, on the date the tax is imposed, the person holds at least 400 pounds of ODCs that are not described in paragraph (d) (2) or (3) of this section and are otherwise subject to the tax.

(2) *1991.* In the case of the floor stocks tax imposed on January 1, 1991, a person is liable for the tax only if, on such date, the person holds at least 400 pounds of ODCs that are described in paragraph (d) (2)(ii) or (3) of this section and are otherwise subject to the tax.

(3) *1994.* In the case of the floor stocks tax imposed on January 1, 1994, a person is liable for the tax only if, on such date, the person holds—

(i) At last 200 pounds of ODCs that are described in paragraph (d)(2)(ii) of this section and are otherwise subject to the tax; or

(ii) At least 20 pounds of ODCs that are described in paragraph (d)(3) of this section and are otherwise subject to the tax.

(4) *Examples.* The following examples illustrate the rules of this paragraph (e):

Example 1. On January 1, 1990, A holds 300 pounds of ODCs for sale. A is not liable for the floor stocks tax imposed on January 1, 1990.

Example 2. On January 1, 1990, B holds for sale 250 pounds of CFC–12 and 250 pounds of CFC–113. None of the ODCs are described in paragraph (d) (2) or (3) of this section. Thus, B holds at least 400 pounds of ODCs that are taken into account under paragraph (e)(1) of this section and is liable for the floor stocks tax imposed on January 1, 1990, on the ODCs held for sale.

Example 3. On January 1, 1990, C holds 700 pounds of ODCs. C will use 500 pounds of these ODCs in the manufacture of rigid foam insulation (as defined in §§ 52.4682–1T(d) (3) and (4)). The remainder of the ODCs are not described in paragraph (d) (2) or (3) of this section. Under paragraph (e)(1) of this section, ODCs that will be used in the manufacture of rigid foam insulation are disregarded in determining whether the *de minimis* exemption is applicable in 1990. Thus, C holds only 200 pounds of ODCs that are taken into account under paragraph (e)(1) of this section and is not liable for the floor stocks tax imposed on January 1, 1990.

Example 4. The facts are the same as in Example 3, except that the ODCs are held on January 1, 1991. Under paragraph (e)(2) of this section, the 500 pounds of ODCs that will be used in the manufacture of rigid foam insulation are taken into account in determining whether the *de minimis* exemption is applicable in 1991. The remaining 200 pounds of ODCs are not taken into account because the base tax amount does not increase in 1991. Nevertheless, C holds at least 400 pounds of ODCs that are taken into account under paragraph (e)(2) of this section and is liable for the floor stocks tax imposed on January 1, 1991.

(f) *Inventory.* If, on the date on which the floor stocks tax is imposed, a person holds ODCs that are held for sale or for use in further manufacture and that were not manufactured or imported by such person, the following rules apply:

(1) The persons shall prepare an inventory of all such ODCs that the person holds on the date on which the tax is imposed.

(2) The inventory shall be taken as of the first moment of the date on which the tax is imposed, but work-back or work-forward inventories will be acceptable if supported by adequate commercial records of receipt, use, and disposition of ODCs held for sale or for use in further manufacture.

(3) The person must maintain records of the inventory and make such records available for inspection and copying by internal revenue agents and officers. Records of the inventory are not to be filed with the Internal Revenue Service.

(g) *Time for paying tax.* The floor stocks tax imposed under section 4682(h) shall be paid without assessment or notice on or before April 1 of the year in which the tax is imposed. See § 52.6151(a)–1T(b) for the rules relating to paying the floor stocks tax.

Par. 4. Sections 52.6011(a)–1 and 52.6011(a)–2 are removed and new §§ 52.6011(a)–1T and 52.6011(a)–2T are added to read as follows.

§ 52.6011(a)–1T Returns (temporary).

(a) *In general.* Liability for tax imposed under chapter 38 shall be reported on Form 720, *Quarterly Federal Excise Tax Return* (or any other form designated by the Commissioner subsequent to publication of these regulations for reporting such liability). Except as provided in paragraph (b) of this section, a return shall be made for a period of one calendar quarter. A return shall be filed for the first calendar quarter in which the person incurs liability for tax imposed under chapter 38 (but not before the calendar quarter ending June 30, 1981), and for each subsequent calendar quarter, whether or not liability was incurred under chapter 38 during such quarter, until the person has filed a final return in accordance with § 52.6011(a)–2T.

(b) *Monthly and semimonthly returns*—(1) *Requirement.* If the district director determines that any person that is required under the provisions of §§ 52.6302(c)–1 and 52.6302(c)–2T to make deposits of taxes has failed to make those deposits, that person shall be required, if so notified in writing by the district director, to make a return on Form 720 (or other form furnished by the district director for use in lieu of Form 720) for a monthly or semimonthly period. Every person so notified by the district director shall make a return for the calendar month or semimonthly period (as defined in § 52.6302(c)–1(b)) in which the notice is received and for each calendar month or semimonthly period thereafter until the person has filed a final return (as defined in § 52.6011(a)–2T) or until the person is notified (as provided in paragraph (b)(2) of this section) to make returns on the basis of a different return period.

(2) *Change of requirements.* The district director may, at his or her discretion, notify any person in writing to make returns on the basis of any return period that the person may be required to use under paragraphs (a) or (b)(1) of this section.

(c) *Cross reference.* For provisions relating to the time to file returns, see §§ 52.6071(a)–1, 52.6071(a)–2T, and 52.6071(a)–3T. For provisions relating to the place for filing returns, see § 52.6091–1T. For provisions relating to use of Government depositaries, see §§ 52.6302(c)–1 and 52.6302(c)–2T.

§ 52.6011(a)–2T Final returns (temporary).

(a) *In general.* Any person that is required by § 52.6011(a)–1T to make a return and that permanently ceases the operations with respect to which the person incurred liability for tax shall make a final return in accordance with the instructions applicable to the return. A person that only temporarily has ceased to incur liability for tax shall not

make a final return but shall continue to file returns in accordance with § 52.6011(a)–1T.

(b) *Statement to accompany final return.* A statement must be attached to each final return. This statement must include—

(1) The address at which the business records relating to returns required under this part will be maintained.

(2) The name of the person maintaining such records.

(3) The name and address of any person to whom the business has been transferred and the date of transfer, if the reason for filing a final return is the transfer of the business.

Par. 5. Section 52.6071(a)–1 is amending by inserting "or § 52.6011(a)–1T" after "§ 52.6011(a)–1" wherever it appears.

Par. 6. New §§ 52.6071(a)–2T and 52.6071(a)–3T are added to read as follows.

§ 52.6071(a)–2T Time for filing returns under section 4681 (temporary).

(a) *Quarterly returns*—(1) *In general.* Except as provided in paragraph (a)(2), (3), and (4) of this section, each quarterly return required by § 52.6011(a)–1T(a) relating to tax imposed under section 4681 shall be filed on or before the last day of the second calendar month following the quarter for which such return is made.

(2) *Special rule.* Except as otherwise provided in paragraph (a)(3)(ii) and (a)(4)(ii) of this section, only one quarterly Form 720 shall be filed for a calendar quarter. If a person is also required to report liability for other excise taxes for the quarter on a Form 720 and such Form 720 would otherwise be due on or before a date earlier than the date provided in paragraph (a)(1) of this section, the person shall file only one Form 720 on or before the filing date provided by paragraph (a)(1) of this section. This rule does not extend the time for making deposits or paying any other excise tax.

(3) *Returns for the first calendar quarter of 1990*—(i) *In general.* The Form 720 reporting liability for tax imposed under section 4681 for the first calendar quarter of 1990 shall be filed on or before April 30, 1990. However, the date for filing is extended (without application) until October 9, 1990. Extension of the filing date does not extend the date on which the payment of tax is due. The payment of tax for the first calendar quarter of 1990 is due on April 30, 1990.

(ii) *Special rule for persons required to file a return reporting liability for taxes other than taxes imposed under section 4681*—(A) *In general.* If a person was required to file Form 720 for the first calendar quarter of 1990 to report liability for tax imposed under section 4681 and filed Form 720 for the first calendar quarter of 1990 without reporting section 4681 liability, the person must file a supplemental Form 720 for that quarter on or before October 9, 1990. In addition, a person may file a supplemental Form 720 to make or change an election under §§ 52.4682–1T(b)(2)(iii) or 52.4682–3T(c)(2) or to reflect consistent treatment for purposes of § 52.4682–3T(c)(3).

(B) *Filing instructions.* The supplemental Form 720 shall be marked "SUPPLEMENTAL—1st QUARTER 1990" at the top. Except as otherwise provided in paragraph (a)(3)(ii)(C) of this section, only the liability for tax under section 4681 (IRS No. 19) for the first calendar quarter of 1990 shall be reported on this form. Part II of the supplemental Form 720 shall be completed as follows. Enter the amount from IRS No. 19 on Line 1 and again on Line 3. Do not make any adjustments on Line 2. Enter the amount from Line 3 on Line 4(a)F and again on Line 4(b). Enter any amount already paid relating to section 4681 liability for the first quarter of 1990 on Line 4(c). If the amount on Line 3 exceeds the amount on Line 4(c), pay the balance with the return.

(C) *Exception.* Any person that is required by § 52.6071(a)–3T(a)(2) to file a supplemental Form 720 to report liability for floor stocks tax shall file one combined supplemental Form 720 for the first calendar quarter of 1990 to report the taxes imposed by both sections 4681 and 4682. In the case of a combined supplemental Form 720, part II shall be completed as follows. Enter the total of IRS No. 19 and IRS No. 20 on Line 1 and again on Line 3. Do not make any adjustments on Line 2. Enter the amount from IRS No. 20 on Line 4(a)A and the amount from IRS No. 19 on Line 4(a)F. Enter the amount from Line 3 on Line 4(b). Enter any amount already paid relating to sections 4681 and 4682 liability for the first quarter of 1990 on Line 4(c). If the amount on Line 3 exceeds the amount on Line 4(c), pay the balance with the return.

(4) *Returns for the second calendar quarter of 1990*—(i) *In general.* The Form 720 reporting liability for tax imposed under section 4681 for the second calendar quarter of 1990 shall be filed on or before September 7, 1990. However, the date for filing is extended (without application) until October 9, 1990. Extension of the filing date does not extend the date on which payment of tax is due. The payment of tax for the second calendar quarter of 1990 is due on September 7, 1990.

(ii) *Special rule for persons required to file a return reporting liability for taxes other than taxes imposed under section 4681*—(A) *In general.* If a person was required to file Form 720 for the second calendar quarter of 1990 to report liability for tax imposed under section 4681 and filed Form 720 for the second calendar quarter of 1990 without reporting section 4681 liability, the person must file a supplemental Form 720 for that quarter on or before October 9, 1990. In addition, a person may file a supplemental Form 720 to make or change an election under § 52.4682–3T(c)(2) or to reflect consistent treatment for purposes of § 52.4682–3T(c)(3).

(B) *Filing instructions.* The supplemental Form 720 shall be marked "SUPPLEMENTAL—2nd QUARTER 1990" at the top. Only the liability for tax under section 4681 (IRS No. 19) for the second calendar quarter of 1990 shall be reported on this form. Part II of the supplemental Form 720 shall be completed as follows. Enter the amount from IRS No. 19 on Line 1 and again on Line 3. Do not make any adjustments on Line 2. Enter the amount from Line 3 on Line 4(a)F and again on Line 4(b). Enter any amount already paid relating to section 4681 liability for the second quarter of 1990 on Line 4(c). If the amount on Line 3 exceeds the amount on Line 4(c), pay the balance with the return.

(b) *Monthly and semimonthly returns*—(1) *Monthly returns.* Each monthly return required by § 52.6011(a)–1T(b) relating to tax imposed under section 4681 shall be filed not later than the last day of the month following the month for which it is made.

(2) *Semimonthly returns.* Each semimonthly return required by § 52.6011(a)–1T(b) relating to tax imposed under section 4681 shall be filed not later than the last day of the semimonthly period following the semimonthly period for which it is made.

(c) *Cross references.* For provisions relating to timely mailing treated as timely filing and paying, see section 7502. For provisions relating to time for performance of acts where last day for performance falls on Saturday, Sunday, or legal holiday, see section 7503. For provisions relating to time and place for paying tax shown on the return, see § 52.6151(a)–1T.

§ 52.6071(a)–3T Time for filing returns under section 4682(h) (temporary).

(a) *Return reporting liability for floor stocks tax imposed on January 1, 1990*—(1) *In general.* The Form 720 reporting

liability for floor stocks tax imposed on January 1, 1990, under section 4682(h) shall be filed on or before April 30, 1990. However, the date for filing is extended (without application) until October 9, 1990. This Form 720 is for the first calendar quarter of 1990. In the case of a person not otherwise required to file Form 720 for such calendar quarter, the return shall be marked "FINAL–STOCKS" at the top. Extension of the filing date does not extend the date on which the payment of tax is due. The payment of tax for 1990 is due on April 1, 1990.

(2) *Special rule for persons required to file a return reporting liability for taxes other than taxes imposed under section 4682*—(i) *In general.* If a person was required to file Form 720 for the first calendar quarter of 1990 to report liability for floor stocks tax imposed under section 4682(h) and filed Form 720 for the first calendar quarter of 1990 without reporting section 4682 liability, the person must file a supplemental Form 720 for that quarter on or before October 9, 1990.

(ii) *Filing instruction.* The supplemental Form 720 shall be marked "SUPPLEMENTAL—1st QUARTER 1990" at the top. Only the liability for tax under section 4682 (IRS No. 20) for the first calendar quarter of 1990 shall be reported on this form. Part II of the supplemental Form 720 shall be completed as follows. Enter the amount from IRS No. 20 on Line 1 and again on Line 3. Do not make any adjustments on Line 2. Enter the amount from Line 3 on Line 4(a)A and again on Line 4(b). Enter any amount already paid relating to section 4682 liability for 1990 on Line 4(c). If the amount on Line 3 exceeds the amount on Line 4(c), pay the balance with the return.

(b) *Returns for floor stocks tax imposed in 1991, 1992, 1993, and 1994*—(1) *In general.* Each return required by § 52.6011(a)–1T reporting floor stocks tax imposed under section 4682(h) shall be filed on or before May 31 of the year the tax is imposed. Each of these returns will be a return for the first calendar quarter of the year in which the tax is imposed. In the case of a person not otherwise required to file Form 720 (or other return on which this floor stocks tax is reported), the return shall be marked "FINAL—FLOOR STOCKS" at the top.

(2) *Special rule.* Only one quarterly Form 720 shall be filed for a calendar quarter. If a person is also required to report liability for other excise taxes for the quarter on a Form 720 and such Form 720 would otherwise be due on or before a date earlier than the date provided in paragraph (b)(1) of this section, the person shall file only one Form 720 on or before the date provided in paragraph (b)(1) of this section. This rule does not extend the time for making deposits or paying any other excise tax.

(c) *Cross reference.* For provisions relating to timely mailing treated as timely filing and paying, see section 7502. For provisions relating to time for performance of acts where last day for performance falls on Saturday, Sunday, or legal holiday, see section 7503. For provisions relating to time and place for paying floor stocks tax shown on the return, see § 52.6151(a)–1T(b).

Par. 7. Section 52.6091–1 is removed and new § 52.6091–1T is added to read as follows.

§ 52.6091–1T Place for filing returns (temporary).

(a) *Quarterly returns.* Quarterly returns shall be filed in accordance with the instructions applicable to the return.

(b) *Monthly and semimonthly returns.* Monthly and semimonthly returns required by § 52.6011(a)–1T(b) shall be filed in accordance with the instructions of the district director requiring such filing.

Par. 8. New §§ 52.6101–1T and 52.6109a–1T are added to read as follows.

§ 52.6109(a)–1T Identifying numbers (temporary).

Every person required by § 52.6011(a)–1T to make a return shall provide the identifying number required by the instructions applicable to the return.

Par. 9. Section 52.6151–1 is removed and new § 52.6151(a)–1T is added to read as follows.

§ 52.6151(a)–1T Time and place for paying tax shown on return (temporary).

(a) *In general.* Except as provided in paragraph (b) of this section, the tax shall be paid at the time prescribed in §§ 52.6071(a)–1 and 52.6071(a)–2T for filing the return, and at the place prescribed in § 52.6091(a)–1T for filing the return.

(b) *Floor stocks tax imposed under section 4682(h).* For each year in which tax is imposed under section 4682(h), the tax shall be paid on or before April 1 of that year. The payment shall be accompanied by Form 8109, *Federal Tax Deposit Coupon* (or any other form designated by the Commissioner for making deposits) and deposited in accordance with the instructions applicable to that form. For years in which the tax is reported on Form 720 and deposits are accompanied by Form 8109, mark the boxes on Form 8109 for "720" and "1st Quarter."

(c) *Cross reference.* For provisions relating to use of Government depositaries, see §§ 52.6302(c)–1 and 52.6302(c)–2T.

Par. 10. New § 52.6302(c)–2T is added to read as follows:

§ 52.6302(c)–2T Use of Government depositaries under section 4681 (temporary).

(a) *Overview.* This section provides rules relating to deposits of tax imposed under section 4681. The provisions of this section shall not apply to taxes for the month or the semimonthly period in which the taxpayer receives notice from the district director that returns are required under § 52.6011(a)–1T(b), or for any subsequent month or semimonthly period for which such a return is required.

(b) *Semimonthly deposits*—(1) *In general.* Except as provided in paragraph (b)(3) of this section, each person required by § 52.6011(a)–1T(a) to file a return shall make deposits of the tax imposed under section 4681 for a semimonthly period (as defined in paragraph (b)(2) of this section) on or before the last day of the second following semimonthly period.

(2) *Semimonthly period.* The term "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of the month.

(3) *Special rule for deposits relating to the first three semimonthly periods of the third calendar quarter of 1990.* The deposit of tax imposed under section 4681 for the first three semimonthly periods of the third calendar quarter of 1990 is due on or before September 27, 1990.

(c) *Safe harbor rules*—(1) *Persons eligible.* The provisions of this paragraph (c) apply only to persons that reported liability for tax under section 4681 for the second preceding calendar quarter.

(2) *In general.* Except as otherwise provided in paragraph (c)(3) of this section, a person will be considered to have complied with the semimonthly deposit requirement if the deposit for the semimonthly period is not less than ⅙ (16.67 percent) of the total tax liability under section 4681 for the second preceding calendar quarter, and the person deposits any underpayment for the current calendar quarter on or before the last day of the second calendar month following the end of the quarter.

(3) *Special rule*—(i) *Applicability.* The safe harbor rule of paragraph (c)(2) is modified for semimonthly periods during

the first and second quarters following the effective date of—

(A) An increase in the base tax amount under section 4681(b); or

(B) A change in the treatment of ODCs that are described in section 4692(g)(1).

(ii) *Rule.* With respect to semimonthly periods during such calendar quarters, a person will be considered to have complied with the semimonthly deposit requirement only if the deposit for the semimonthly period is not less than ⅙ (16.67 percent) of the tax liability the person would have had under section 4681 for the second preceding calendar quarter if the increased base tax amount or the change in treatment had been in effect for such preceding calendar quarter.

(d) *Remittance of deposits.* Each deposit shall be accompanied by Form 8109, *Federal Tax Deposit Coupon* (or any other from designated by the Commissioner for making deposits) and remitted in accordance with the instructions applicable to that form.

(e) *Effective date.* This section is effective as of July 1, 1990, for deposits relating to the tax imposed under section 4681 for quarters beginning after June 30, 1990.

PART 602—[AMENDED]

Par. 11. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 12. Section 602.101(c) is revised by inserting in the appropriate places in the table "52.4682–1T(b)(2)(iii) . . . 1545–1153", "52.4682–2T(b) . . . 1545–1153", "52.4682–2T(d) . . . 1545–1153", "52.4682–3T(c)(2) . . . 1545–1153", "52.4682–3T(g) . . . 1545–1153", and "52.4682–4T(f) . . . 1545–1153".

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: August 24, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–20976 Filed 8–31–90; 3:16 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 807

Sale to the Public

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: This part provides Air Force procedures for issuing publications and forms to the general public. It has been revised to update titles, regulation numbers, and to notify the public of the availability of Air Force Regulations through National Technical Information Service. The purpose of this notice is to inform the public of these revisions.

EFFECTIVE DATE: September 6, 1990.

ADDRESSES: SAF/AAIPD, Bolling AFB DC 20332–6468.

FOR FURTHER INFORMATION CONTACT: Mr. George Harris, SAF/AAIPD, Bolling AFB DC 20332–6468, telephone (202) 767–6077.

SUPPLEMENTARY INFORMATION: The Department of the Air Force transferred responsibility for handling all general public requests for Air Force-wide administrative publications and forms to the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

This part is published as a final rule since it gives procedures for the public to obtain Air Force regulations and forms.

The Department of the Air Force has determined this regulation is not a major rule as defined by Executive Order 12291; is not subject to the relevant provisions of the Regulatory Flexibility Act (5 U.S.C. 601–611); and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 32 CFR Part 807

Government contracts, government procurement, publications sales.

Therefore, 32 CFR part 807 is revised to read as follows:

PART 807—SALE TO THE PUBLIC

Sec

807.1 General requirements.
807.2 Charges for publications and forms.
807.3 Requests for classified material, For Official Use only material, accountable forms, storage safeguard forms, Limited (L) distribution items, and items with restrictive distribution caveats.
807.4 Availability and nonavailability of stock.
807.5 Processing requests.
807.6 Depositing payments.

Authority: 10 U.S.C. 8013.

§ 807.1 General requirements.

(a) Unaltered Air Force publications and forms will be made available to the public with or without charge, subject to the requirements of this part. Base Chiefs of Information Management will set up procedures to meet these needs and will make available Master Publications Libraries for public use according to AFR 4–61. They will also advise requesters that these libraries are available, since in many cases this will satisfy their needs and reduce workloads in processing sales requests. If the item is on sale by the Superintendent of Documents, GPO, refer the request to that outlet. Refer general public requests for Air Force administrative publications and forms to the National Technical Information Service (NTIS), Defense Publication Section, US Department of Commerce, 4285 Port Royal Road, Springfield, VA 22161–0001.

(b) The Air Force does not consider these unaltered publications and forms as records, within the meaning of the Freedom of Information Act (FOIA), as outlined in 5 U.S.C. 552 and implemented by part 806 of this chapter. Refer requests that invoke the FOIA to the chief, base information management, for processing.

(c) Units will process requests under the Foreign Military Sales Program (FMS) as specified in AFR 4–71, chapter 11.

(d) Units will send requests from foreign governments, their representatives, or international organizations to the MAJCOM foreign disclosure policy office and to HQ USAF/CVAII, Washington DC 20330–5000. Also send information copies of such requests to the base public affairs office. Commands will supplement this requirement to include policies pertaining to those items for which they have authority to release.

(e) Units will return a request for non-Air Force items to the requester for submission to appropriate agency.

§ 807.2 Charges for publications and forms.

(a) The Air Force applies charges to all requests unless specifically excluded.

(b) The Air Force applies charges according to part 813, Schedule of Fees for Copying, Certifying, and Searching Records and Other Documentary Material. Additional guidance is in part 812, User Charges, including specific exclusion from charges as listed in § 812.5. As indicated, the list of exclusions is not all inclusive and recommendations for additional exclusions are sent to the office of primary responsibility for part 812 of this chapter.

(c) When a contractor requires publications and forms to perform a contract, the Air Force furnishes them without charge, if the government contracting officer approves these requirements.

§ 807.3 Requests for classified material, For Official Use Only material, accountable forms, storage safeguard forms, Limited (L) distribution items, and items with restrictive distribution caveats.

(a) Classified material. The unit receiving the requests should tell the requester that the Air Force cannot authorize the material for release because it is currently and properly classified in the interest of national security as authority by Executive Order, and must be protected from unauthorized disclosure.

(b) For Official Use Only (FOUO) material. The office of primary responsibility for the material will review these requests to determine the material's releasability.

(c) Accountable forms. The unit receiving the request will return it to the requester stating that the Air Force stringently controls these forms and cannot release them to unauthorized personnel since their misuse could jeopardize Department of Defense security or could result in fraudulent financial gain or claims against the government.

(d) Storage safeguard forms. The unit receiving these requests returns them to the requesters stating that the Air Force specially controls these forms and that they are not releasable outside the Department of Defense since they could be put to unauthorized or fraudulent use.

(e) Limited (L) distribution items are not releasable outside the Department of Defense without special review according to AFR 700–6. Units receiving these requests should refer them to the SCS manager shown in the index or on the cover of the publications. Advise the requesters of the referral.

(f) Items with restrictive distribution caveats. Some publications have restrictive distribution caveats on the cover. Follow the instructions stated and advise the requesters of the referral.

§ 807.4 Availability and nonavailability of stock.

(a) Limit quantities furnished so that stock levels required for operational Air Force support are not jeopardized.

(b) If the item is not available from publishing distribution office (PDO) stock, obtain it from the Air Force Publishing Distribution Center. If the item is under revision, advise the requester that it is being revised and that no stock is available.

(c) If stocks are not available and the item is being reprinted, advise the requester that stocks are expected to be available in 90 calendar days and to resubmit at that time.

§ 807.5 Processing requests.

Payment is required before shipping the requested material. Payment must be by check or money order.

(a) Upon receipt of the request, determine the cost involved and request the material.

(b) Upon receipt of the item, advise the requester to resubmit the required payment and send the material after payment is received.

(c) If the material cannot be obtained, advise the requester of the reason.

§ 807.6 Depositing payments.

Obtain instructions from the local Accounting and Finance Office regarding how checks or money orders must be prepared and required procedures for depositing them.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–20926 Filed 9–5–90; 8:45 am]

BILLING CODE 3910–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR 52

[FRL–3827–3]

Approval and Promulgation of Air Quality Implementation Plans, Texas; Air Pollution Contingency Plan for Emergency Episodes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves changes to the Texas State Implementation Plan (SIP) section VIII, Texas Air Pollution Episode Contingency Plan, submitted by the State of Texas on October 2, 1987. This notice also approves revisions to Texas Air Control Board (TACB) Regulation VIII (31 TAC 118), Control of Air Pollution Episodes, as adopted on July 17, 1987, and as revised on April 14, 1989, and submitted by the State in letters dated October 26, 1987, and October 13, 1989, respectively. Most of the changes serve to clarify the text of the regulation and to make titles and text consistent in all sections. One significant change will limit the burden of developing individualized contingency plans for emergency episodes to major sources of criteria pollutants in five counties, and another adds volatile organic compounds (VOCs) to the list of pollutants that must be identified in emissions reduction plans. The revised rule also specifies a time limit in which such plans must be developed and reflects the new national ambient air quality standard (NAAQS) for particulate matter, the PM_{10} standard. Finally the rule is made more stringent by lowering the ambient concentration values associated with the action levels for air pollution episodes. These SIP revisions are made according to the terms of 40 CFR 51.104, Revisions.

DATES: This action will become effective on November 6, 1990, unless notice is received by October 9, 1990, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Notice of adverse comment should be mailed to Mr. Tom Diggs, Chief, SIP/New Source section, at the address given below for Region 6. Also, copies of the State submittal and other revelant documents may be reviewed at the following locations during normal business hours:

U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue (6T–AN), Dallas, TX 75202–2733.

Texas Air Control Board, 6330 Highway 290 East, Austin, TX 78723.

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

If you plan to visit any of these offices, please contact the person named below to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Barbara Durso, (214) 655–7214 or FTS 255–7214.

SUPPLEMENTARY INFORMATION: The majority of changes are to update the episode procedures, to improve the clarity of the text, to make titles and text consistent in all sections and to repeal obsolete text. Key changes have been made to 31 TAC 118.1 on generalized air pollution episodes. First, the State moved the ambient concentration criteria for air pollution episodes from the text into a new table (Table 1) and also lowered those values associated with action levels for episodes to the values recommended by EPA at 40 CFR part 51, appendix L. To address the new NAAQS for particulate matter established by EPA at 52 FR 24663 and 24712 (July 1, 1987), the State replaced total suspended particulate matter with inhalable particulate matter (PM_{10}) in Table 1 as recommended at 40 CFR part 51, appendix L. At 31 TAC 118.5, the State now requires that source-specific contingency plans for reducing emissions in the event of an emergency episode identify sources of volatile organic compounds (VOCs) in addition to sources of those air pollutants listed in Table 1 of 31 TAC 118.1. Finally, the State repealed 31 TAC 118.7, which

establishes the State's effective date of adoption of revisions to this chapter, because at the State level, this section is no longer necessary.

Overall EPA finds the changes to section VIII and Regulation VIII acceptable and in compliance with the requirements of 40 CFR 51.151–152. Although most of the proposed modifications are minor, one revision is substantial: EPA finds that the revised regulation 31 TAC 118.5, while acceptable, is narrower in scope than the existing regulation. EPA interprets the approved regulation 118.5 to require an individualized contingency plan for each major source state-wide. In contrast, the revised regulation requires such a customized plan only for major sources in El Paso, Galveston, Harris, Jefferson, and Orange Counties. The State assures EPA that the original intent of the approved SIP regulation and rule is the same as the proposed revisions and points to the existence of section VIII, appendix C as evidence. This appendix, titled "Texas Counties Where Emergency Episode Plans Apply," lists the same five counties incorporated into the language of the revised 31 TAC 118.5.

Unfortunately, this appendix is not referenced in the SIP section VIII or TACB Regulation VIII. Given this oversight, EPA has been operating with a different interpretation of the regulation and stands by its reading that the language of Regulation VIII clearly supports the broader, state-wide application. To avoid future misunderstandings, EPA and TACB arrived at this mutual interpretation of the revised regulation: The actions described in appendices A and B of the revised SIP section VIII apply to any geographical area in the State that experiences an emergency air pollution episode, but only major sources in El Paso, Galveston, Harris, Jefferson, and Orange Counties must prepare specific, individualized plans. Therefore, if an action stage arose in any county besides the five now identified at 31 TAC 118.5, the State would work *ad hoc* from the guidelines in appendices A and B of the revised section VIII to abate the episode. Given this interpretation, the plan meets the requirements of 40 CFR 51.152.

Because the State is seeking to relax the terms of the SIP, EPA required TACB to prepare adequate justification for its proposed revision to 31 TAC 118.5. TACB's argument for relaxation is that the probability of an air pollution episode occurring in Texas is practically zero, except for the five countries listed above, because of climatology and geography. First weather conditions in most of Texas are not conducive to the formation of inversions or stagnations that allow levels of ambient air pollutants to build up significantly. Second, the highest readings for ambient air pollutants in Texas are well below the levels for which EPA has devised the emergency episode planning requirements. Therefore, where weather conditions and pollution levels are unlikely to create conditions covered by the pollution levels addressed at 40 CFR part 51, subpart L, the State does not believe that sources in those areas should devote resources to preparing individualized contingency plans. TACB prepared detailed accounting of the meteorology of Texas to support its proposed revision and has satisfied EPA's request for adequate justification. A copy of the State's report is included in the docket file for this notice.

EPA is publishing this action without prior notice because the Agency views this as a noncontroversial revision and anticipates no adverse comments. This action will be effective 60 days from the date of publication unless notice is received within 30 days from the date of publication that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices: The first notice will withdraw the final action and the second will begin a new rulemaking action by announcing a proposal of the action and establishing a comment period.

Final Action: EPA approves the changes to section VIII of the Texas SIP as submitted October 2, 1987, and the changes to Regulation VIII, 31 TAC Chapter 118, as adopted by TACB on July 17, 1987, and revised on April 14, 1989, and submitted by the Governor in letters dated October 26, 1987, and October 13, 1989, respectively.

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of the Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

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

Authority: 42 U.S.C. 7401–7642.

Dated: December 12, 1990.

Robert E. Layton, Jr.,

Regional Administrator.

Note: This document was received for publication in the Office of the **Federal Register** on August 31, 1990.

40 CFR part 52, subpart SS, is amended as follows:

PART 52—[AMENDED]

Subpart SS—Texas

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2270 is amended by adding paragraph (c)(71) to read as follows:

§ 52.2270 Identification of Plan.

* * * * *

(c) * * *

(71) Revisions to section VIII of the Texas SIP entitled "Texas Air Pollution Episode Contingency Plan" as submitted by the Texas Air Control Board (TACB) in a letter dated October 2, 1987. Revisions to TACB Regulation VIII, 31 TAC Chapter 118, "Emergency Episode Planning," as approved by TACB on July 16, 1987, and on April 14, 1989, and submitted by the Governor in letters dated October 26, 1987, and October 13, 1989, respectively.

(i) Incorporation by reference

(A) Amended TACB Regulation VIII, 31 TAC chapter 118, Rules 118.1(a), 118.1(b)(2), 118.1(c), 118.2, 118.3, 118.4, 118.5(d), 118.5(e), 118.5(f) and 118.6 as approved on July 17, 1987, and the repeal of Rule 118.7 as approved by TACB on July 17, 1987.

(B) Amended TACB Regulation VIII, 31 TAC chapter 118, Rules 118.1(b), 118.1(b)(1), Table 1 of Rule 118.1, first paragraph of Rule 118.5, and 118.5(1),

118.5(2), 118.5(3), as approved by TACB on April 14, 1989.

(C) TACB Order 87–10, approved July 17, 1987.

(D) TACB Order 89–01, approved April 14, 1989.

(E) Texas SIP section VIII "Texas Air Pollution Episode Contingency Plan" pages VIII–3 through VIII–14, VIII–A–2 through VIII–A–4, and VIII–B–2 through VIII–B–3.

(ii) Additional material

(A) Revisions to section VIII as submitted on October 2, 1987, from Eli Bell, superceding and deleting section VIII as approved by EPA on October 7, 1982, at 47 FR 44260 (Texas Air Pollution Emergency Episode Contingency Plan).

(B) A letter dated February 10, 1989, from Steven Spaw, TACB, to William B. Hathaway, U.S. EPA.

[FR Doc. 90–20947 Filed 9–5–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3818–6]

Approval and Promulgation of Implementation Plans, Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a revision to the Indiana State Implementation Plan (SIP) for ozone. On October 21, 1987, the Indiana Department of Environmental Management submitted technical amendments to the Indiana Administrative Code (IAC) 326 IAC 8–1–5, Petition for site-specific reasonably available control technology (RACT) plan.[1] This revised rule extends the applicability of the mechanism of petitions for site-specific RACT plans to all Indiana sources subject to the State's volatile organic compound (VOC) emission limitations. USEPA is publishing this notice as a final rule to incorporate this rule into the ozone SIP.

DATES: This action will be effective November 6, 1990, unless notice is received by October 9, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone E. Marie Huntoon, at (312) 886–6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of today's revision to the Indiana SIP is available for inspection at:

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

FOR FURTHER INFORMATION CONTACT: Ms. E. Marie Huntoon, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6034.

SUPPLEMENTARY INFORMATION: Under section 107 of the Clean Air Act (Act), USEPA has designated certain areas in each State as not attaining National Ambient Air Quality Standards (NAAQS) for ozone. For Indiana, see 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). For these areas, part D of the Act requires that the State revise its SIP to provide for attaining the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982. Part D allows USEPA though, to grant extension of up to December 31, 1987, to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its air pollution control program. Indiana requested, and received, an extension to December 31, 1987, for achieving the ozone NAAQS for four countries: Clark, Floyd, Lake, and Porter.

Ozone Plan Policy and Guidance

The requirements for an approvable SIP are described in a "General Preamble" for part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

On January 22, 1981, (46 FR 7182), USEPA published guidance for the development of 1982 ozone SIPS in "State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension," 46 FR 7182.

The Act requires that for stationary sources, an approvable SIP must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT) [2] to sources of VOC.

In partial response to the requirement for RACT VOC rules, the State of Indiana has submitted rules covering all required sources in Indiana. These rules included a provision that enables sources to petition for site-specific revision to the plan. On October 27, 1987, the State of Indiana submitted to USEPA a revised regulation for incorporation into the Indiana Ozone SIP which revises Indiana's Rule 326 IAC 8–1–5, Petition for site-specific reasonably available control technology plan.

Summary of State's Submittal/USEPA's Review

Rule 326 IAC 8–1–5 has been amended to extend the applicability of the petition of site-specific RACT plans to all sources currently subject to 326 IAC, Article 8, and to remove obsolete dates.[3]

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[1] On April 9, 1988, the State recodified title 325 of the Indiana Administrative Code (IAC) to title 326. The State submitted this recodification to the USEPA for approval on November 16, 1988. USEPA is currently taking actions to recodify title 326 of the IAC, which will appear in a subsequent **Federal Register** notice. This rule was formally submitted as 325 IAC 8–1.1–5.

[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator of Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

The USEPA published Control Technique Guidelines (CTGs) in order to assist the State in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the USEPA considers the "presumptive norm" for RACT. RACT I regulations cover sources which are contained in USEPA's first set of CTGs, i.e., those which were published before January 1, 1978. These CTGs are referred to as "Group I CTGs" and pertain to "Group I Sources". Similarly, RACT II regulations cover sources which are contained in USEPA's second set of CTGs, published between January 1, 1978, and January 1, 1979. These CTGs are referred to as "Group II CTGs" and pertain to "Group II Sources". RACT III regulations cover sources which are contained in USEPA's CTGs published after January 1, 1979. These CTGs are referred to as "Group III CTGs" and pertain to "Group III Sources". As part of Indiana's control strategy for attainment of the NAAQs for ozone, the State has submitted, and USEPA has approved, regulations limiting emissions at all stationary sources of VOCs in Indiana covered by CTGs.

All other sources which are not covered by Groups I, II, or III CTGs are referred to as "non-CTG" sources. "Non-CTG major sources" are sources which have the potential to emit more than 100 tons of VOC per year and for which a CTG was not published.

[3] 325 IAC 8–1.1–5 was originally entitled "Petition for alternative controls."

This rule specifies procedures to petition for a site-specific RACT plan. USEPA has reviewed the plan and believes the criteria listed are not the sole criteria for judging the acceptability of an alternative RACT determination. USEPA will use additional criteria, such as the guidelines on what constitutes an acceptable survey of complying coatings or other controls (53 FR 45287, appendix A) when approving a SIP revision submitted under this provision. The site-specific RACT plan is approvable because the rule requires that all such plans approved by Indiana under this rule must be submitted to USEPA as site-specific revisions to the SIP. It should be noted that, as a matter of federal law, these plans are not effective unless and until approved by USEPA under section 110 of the Act.

Summary of USEPA's Action

USEPA is hereby approving the revision made to 326 IAC 8–1–5, Petition for site-specific RACT. Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on November 6, 1990. However, if we receive notice by (30 days from the date of this notice) that someone wishes to submit critical comments, then USEPA will publish: (1) a notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

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

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeal for the appropriate circuit by November 6, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by Reference, Intergovernmental relations, Ozone.

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

Dated: July 25, 1990.

David A. Ullrich,

Acting Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS, INDIANA

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

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

Authority: 42 U.S.C. 7401–7422.

2. Section 52.770 is amended by adding new paragraph (c)(76) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(76) On October 21, 1987, the State submitted 325 IAC 8–1.1–5, Petition for alternative controls, which gives the provisions and requirements for petitioning for reasonably available control technology volatile organic compound plans. On November 16, 1988, the State submitted this rule recodified as 326 IAC 8–1–5, Petition for site-specific reasonably available control technology (RACT) plan.

(i) Incorporation by Reference

(A) Title 326 Air Pollution Control Board, Indiana Administration Code (IAC) 8–1–5, Petition for site-specific reasonably available control technology (RACT) plan, as published in the April 1, 1988, *Indiana Register*, at Volume 11 IR 2530. Filed with the Secretary of State on March 10, 1988.

* * * * *

[FR Doc. 90–20948 Filed 9–5–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–1–FRL–3827–6]

Approval and Promulgation of Air Quality Implementation Plans, Rhode Island; RACT Determination for Providence Metallizing

AGENCY: Environmental Protection Agency. (EPA)

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision defines and imposes reasonably available control technology (RACT) on Providence Metallizing located in Pawtucket, Rhode Island. This revision is necessary to limit volatile organic compound (VOC) emissions from this source. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments specified in its Ozone Attainment Plan approved by EPA on July 6, 1983 (48 FR 31026).

This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on October 9, 1990.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, Tenth Floor, Boston, MA 02203; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565–3248; FTS 835–3248.

SUPPLEMENTARY INFORMATION: On September 12, 1988 (53 FR 35204), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Rhode Island. The NPR proposed approval of a source specific RACT determination for Providence Metallizing. The formal SIP revision was submitted by Rhode Island on April 26, 1990.

This revision consists of an administrative consent agreement effective July 24, 1987, an amendment to the consent agreement effective May 4, 1989, and an addendum to the consent agreement effective April 24, 1990. Further, this revision contains provisions which will allow Providence Metallizing to meet RACT on a facility-wide basis over a 24 hour period.

The consent agreement establishes and imposes RACT to control VOC emissions from Providence Metallizing. Rhode Island SIP Regulation Number 15, subsection 15.5 requires that RACT be defined for all otherwise unregulated VOC emitting stationary sources greater

than or equal to 100 tons per year. EPA approved this subsection of Regulation Number 15 on July 6, 1983 (48 FR 31026) as part of Rhode Island's Ozone Attainment Plan. That approval stipulated that all RACT determinations made by the DEM under subsection 15.5 would be submitted to EPA as source-specific SIP revisions. On May 25, 1988, EPA issued a SIP call to Rhode Island notifying the State that its ozone attainment plan was substantially inadequate to attain the ozone standard. Nevertheless, Rhode Island remains obligated to continue to control these non-CTG sources of VOC and submit the RACT determinations as SIP revisions. Providence Metallizing is considered a miscellaneous VOC emitting source because it coats plastic and metal parts, and Rhode Island does not have a RACT regulation specifically for plastic or metal parts coating.

RACT Determination

Rhode Island has determined that 3.5 pounds of VOC per gallon of coating (minus water) represents RACT for most of Providence Metallizing's operations. In certain circumstances, when only a clear top coat or a base coat is applied, the emission limit would be either 4.3 pounds of VOC per gallon of clear-top coating (minus water) or 3.0 pounds of VOC per gallon of base coating (minus water). In any case, the emission limits will be at least as stringent as those recommended by EPA's Miscellaneous Metal Parts and Products (MMP&P) Surface Coating Control Techniques Guideline (CTG) document (EPA–450/2–78–015). Further, the CTG suggested emission limits for metal coating only. The DEM has imposed these emission limits on the coating of both metal and plastic parts. Providence Metallizing will be using add-on controls on certain spray booths to generate sufficient emission reductions to compensate for emissions from uncontrolled spray booths so that RACT will be met on a facility-wide basis.

In the NPR, EPA commented that Providence Metallizing's RACT emission limitation must be as stringent as those recommended by the MMP&P surface coating CTG for the various metal coating operations at the facility. As discussed above, the DEM has submitted a consent agreement which ensures that the limitations on Providence Metallizing are at least as stringent as the limits recommended by the MMP&P CTG for the coating of metal and plastic parts done at the facility. No CTG has been published for plastic parts coating. Implementation of the requirements of the consent agreement will result in a 67 percent reduction in VOC emissions from Providence Metallizing.

Further, the consent agreement requires daily records to be kept which include the VOC content of each coating as applied, the amount of each coating used, and whether the coating was used on a controlled or uncontrolled line. An emission limit will be assigned to each coating based on the coating function (i.e., whether the coating is used as a base or top coat, or in a metallizing process). Further, Providence Metallizing must continuously monitor the incinerator combustion temperature to insure that the required destruction efficiency is maintained. For additional discussion of this RACT determination or how the DEM addressed EPA's comments in the NPR, refer to the Technical Support Document prepared for this revision.

Providence Metallizing's Bubble

Providence Metallizing will meet the RACT emission limit on a facility-wide basis over a daily averaging period. Providence Metallizing will be using add-on control equipment on certain lines to control emissions below the RACT allowable level to compensate for emissions above RACT from uncontrolled lines such that RACT will be met on a facility-wide basis. This control strategy to meet RACT on a facility-wide basis is commonly referred to as a bubble. For a complete discussion of the applicable tests of EPA's Emission Trading Policy Statement (ETPS) published on December 4, 1986 (51 FR 43814), as well as Providence Metallizing's fulfillment of these tests, see the Technical Support Document referenced above.

The State submitted this bubble to EPA on April 3, 1987, four months after EPA published the Emission Trading Policy Statement. At the time of the State's submittal, although the area was not in attainment of the national ambient air quality standard (NAAQS) for ozone, EPA had approved the SIP for the area including the attainment demonstration as providing for attainment by 1982. Thus, at the time, the area was considered a nonattainment area with an approved demonstration for purposes of applying the ETPS. Under the ETPS, a bubble in a nonattainment area with an approved demonstration is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS. The bubble for Providence Metallizing meets these requirements.

However, while EPA was considering this bubble, it determined that Rhode Island's approved SIP was not adequate to provide for attainment. On November 24, 1987, EPA stated in the **Federal Register** that air quality monitors revealed exceedances of the ozone standard in the area and that a SIP call may be issued. A SIP call is a finding by EPA under Clean Air Act subsection 110(a)(3)(H) that the SIP does not provide for attainment by the required date, and thus amounts to a revocation for certain purposes of EPA's approval of the SIP and the attainment demonstration. Further, that **Federal Register** notice outlined EPA's proposed policy for requiring revised SIPs in areas still violating the ozone standard after December 31, 1987. Since publication of this notice, air quality monitors have revealed additional exceedances of the standard during 1987, 1988 and 1989. On May 25, 1988, EPA issued a SIP call for this area.

For purposes of the general applicability of the ETPS, the issuance of the SIP call has converted the area into a nonattainment area lacking an approved demonstration. (See 51 FR 43839, column 3.) Under the general rule of the ETPS, which would apply to all submissions of bubbles by the State to EPA after the date of the SIP call, the bubble would be approvable only if it met the following three tests:

(1) The baseline must be calculated using the lower of actual, SIP-allowable, or RACT-allowable values for each baseline factor, determined as of the date the source submitted the bubble application to the State.

(2) The bubble must produce a reduction of at least 20 percent in the emissions remaining after application of the baseline specified above.

(3) The State must provide assurances that the proposed trade will be consistent with its efforts to attain the ambient standard. The ETPS sets out representations that the State must make.

However, the ETPS did not explicitly contemplate a case such as this, where the bubble was submitted by the State at a time when the area was a nonattainment area with an approved demonstration, but then the area was subsequently reclassified as a nonattainment area lacking an approved demonstration.

The ETPS is a policy statement, and not a binding regulation. EPA may apply such a policy as appropriate to a particular case, and may vary from its policy if unforeseen circumstances arise not contemplated in the policy statement. See *Pacific Gas and Electric Company* v. *Federal Power Commission*, 506 F. 2d 33, 38–39 (DC Cir. 1974). Further, the action in today's notice is consistent with the principles of

grandfathering that the Court of Appeals for the District of Columbia Circuit has applied when an agency changes policy requirements, but seeks to apply the former policy to certain actions pending before the agency at the time of the policy change. Under these principles, the agency may apply the former policy when: (i) The new policy represents an abrupt departure from well established practice; (ii) affected parties have relied on the old policy; (iii) the new policy imposes a large burden on those affected; and (iv) there is no strong statutory interest in applying the new policy generally. (*Sierra Club* v. *EPA*, 719 F. 2d 436 (DC Cir. 1982), cert. den. 468 U.S. 1204 (1984).)

Although these grandfathering principles do not literally apply in the case of this bubble because EPA has not issued any new policy, EPA believes that these principles provide a helpful analogy because of the changed circumstances, specifically the conversion from an area with an approved demonstration of attainment to an area lacking such approval, this area found itself in while EPA was considering the bubble application. EPA believes that applying the requirements outlined below will be consistent with the fact that the ETPS is a policy statement which EPA may apply as appropriate for a particular case, and with grandfathering principles.

EPA has determined that different requirements should apply to a bubble such as this one, submitted prior to the SIP call. This bubble satisfies test (1) above for a nonattainment area lacking an approved demonstration because it uses the lower of actual, SIP allowable, or RACT allowable baseline.

However, the bubble is not required to show any emission reduction beyond the baseline, as discussed in test (2). EPA believes it is appropriate to exempt this bubble from the 20 percent progress requirement on equitable grounds: The State and the source had relied on the area's classification as a nonattainment area with an approved demonstration in submitting the bubble. Subjecting the bubble to the 20 percent progress requirement would be a significant burden because the bubble would likely require significant restructuring to be approvable, which would require the State to undergo rulemaking again and further emission control requirements for the source. In light of the equitable considerations noted above, and since EPA believes, as discussed below, that state assurances should be required, exempting the bubble from the 20 percent progress test would not undermine the requirement under Clean Air Act section 110 that the SIP revision not interfere with attainment as expeditiously as practicable.

Lastly, EPA believes that the State should provide the state assurances identified in the ETPS as outlined in test (3) above. Although state assurances create some burden, EPA does not consider them overly burdensome, under these circumstances, because (1) the State is required to engage in SIP planning pursuant to the May 25, 1988 SIP call; and (2) absent satisfaction of the 20 percent progress requirement, state assurances protect the statutory requirement that the bubble does not interfere with attainment as expeditiously as practicable.

The five state assurances set forth by the ETPS (51 FR 43821) which must be met are as follows:

First, the resulting emission limits are consistent with EPA requirements for ambient air quality progress. This bubble meets this requirement because the source is meeting RACT, a controlled level of emissions first, and then is permitted to trade to meet RACT.

Second, the bubble emission limits will be included in any new SIP and associated control strategy demonstration. The State of Rhode Island affirms that the bubble emission limits will be included in any new SIP revisions and associated control strategy demonstrations proposed by the Division of Air and Hazardous Materials.

Third, the bubble will not constrain the State agency's ability to obtain any additional emission reductions needed to expeditiously attain and maintain ambient air quality standards. The State of Rhode Island affirms that the Division has the right to reopen this consent agreement if it were necessary to obtain additional reductions from the facility (see State Submittal).

Fourth, the baseline used to calculate the bubble emission limits is consistent with the baseline requirements in the ETPS. The baseline for this facility was determined by using the lower of actual or allowable values for each of the three baseline factors: Hours of operation, capacity utilization, and emission rate.

The last assurance which would need to be provided is that the State agency is making reasonable efforts to develop a complete approvable SIP and intends to adhere to the schedule for such development (including dates for completion of an emissions inventory and subsequent increments of progress). This is required to be stated in the letter accompanying the bubble approval or in previous such letters.

EPA discussed what it viewed as appropriate state assurances for this last requirement in its proposed approval of a bubble for Vulcan Materials Company in Geismar, Louisiana (54 FR 23672). Specifically, Louisiana was required to make the following representations to EPA:

(i) The State must submit assurances that: (1) The State will submit work plans with interim milestones for submitting the revised SIP and correcting deficiencies by the date specified by EPA under the Post 87 SIP call, (2) the State will submit, by the date specified by EPA, a complete plan that demonstrates attainment in accordance with the Clean Air Act and EPA Policy, and (3) the State has dedicated appropriate resources to develop the new SIP.

(ii) If the activities committed to in the above assurances are not met, EPA may propose to revisit its approval of emission trade determinations depending on the degree of failure to meet the commitments.

Basically, EPA required that Rhode Island respond to the first phase of the SIP call in two ways. (The second phase of the SIP call is contingent upon either passage of amendments to the Clean Air Act or finalization of EPA's Post 87 Policy.) First, the State was required to revise its VOC regulations to make them consistent with all of EPA guidance. Rhode Island made all the necessary changes, submitted them as a SIP revision, and EPA will soon be publishing a Notice of Proposed Rulemaking on these revisions. Second, the State was required to develop a comprehensive base year emission inventory consistent with EPA guidance. Rhode Island submitted the inventory and is presently on schedule to revise the inventory pursuant to EPA's comments. Rhode Island has responded to our SIP call and has committed to address any future EPA SIP call requirements. They have allocated appropriate resources to the task as evidenced by their timely response to the SIP call.

For all these reasons discussed above we are approving this consent agreement, an amendment to the consent agreement, and an addendum to the consent agreement as a SIP revision for Providence Metallizing in Pawtucket, Rhode Island. The consent agreement required Providence Metallizing to meet a facility-wide RACT emission limit over a 24-hour averaging period. The emission limit that Providence Metallizing is required to meet is 3.0, 3.5, or 4.3 pounds of VOC per gallon of

coating (minus water) and is defined by the type of coating used.

Other specific requirements of RACT determination and bubble and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action: EPA is approving this consent agreement, an amendment to the consent agreement and an addendum to the consent agreement submitted as a SIP revision request for Providence Metallizing in Pawtucket, Rhode Island. The consent agreement requires Providence Metallizing to meet a facility-wide RACT emission limit over a 24 hour averaging period. The emission limit that Providence Metallizing is required to meet is 3.0, 3.5, 4.3 pounds of VOC per gallon of coating (minus water) and is defined by the type of coating used.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 22, 1990.

Julie Belagar,

Regional Administrator, Region I.

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

Subpart 00—Rhode Island

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2070 is amended by adding paragraph (c)(35) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(35) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on April 26, 1990, which define and impose RACT to control volatile organic compound emissions from Providence Metallizing in Pawtucket, Rhode Island.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated April 26, 1990, submitting a revision to the Rhode Island State Implementation Plan.

(B) An administrative consent agreement (87–2–AP) between the Rhode Island Department of Environmental Management and Providence Metallizing effective July 24, 1987.

(C) An amendment to the administrative consent agreement (87–2–AP) between the Rhode Island Department of Environmental Management and Providence Metallizing effective May 4, 1989.

(B) An addendum to the administrative consent agreement (87–2–AP) between the Rhode Island Department of Environmental Management and Providence Metallizing effective April 24, 1990.

(ii) Additional materials.

Nonregulatory portions of the State submittal.

3. Section 52.2081 is amended by adding the following entry to the table. In the chart below, the date approved by EPA and the **Federal Register** citation will be the publication date and page citation of this document.

§ 52.2081 EPA-approved EPA Rhode Island State regulations.

* * * * *

TABLE 52.2081—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/ unapproved sections
*	*	*	*	*	*	*
No. 15	Control of Organic Solvent Emissions.	April 24, 1990	[Date revision is published in *FR*].	[*FR* citation from published date].	(c)(35)	RACT determination/ Bubble for Providence Metallizing under 15.5
*	*	*	*	*	*	*

[FR Doc. 90–20992 Filed 9–5–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 716

[OPTS–84014C; FRL–3739–5]

Termination of Health and Safety Data Requirements for 1-Propanamine, *N*-Propyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is terminating the reporting periods for the chemical substance 1-propanamine, *N*-propyl- (CAS No. 142–84–7) by amending the sunset date on the list of substances under the Toxic Substances Control Act section 8(d) model Health and Safety Data Reporting rule, 40 CFR part 716, redesignating Aromatic C_9 fraction from a mixture to a substance, and making a technical amendment. Pursuant to 40

CFR 716.65, EPA has reviewed all of the substances listed in § 716.120 and determined that the Agency no longer needs continuing health and safety data reporting on 1-propanamine, *N*-propyl-. Persons who believe that EPA should not terminate the reporting requirements for this substance on the section 8(d) model rule may notify EPA and provide their reasons.

DATES: This rule becomes effective on December 5, 1990. In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on September 20, 1990. Written comments must be submitted on or before October 9, 1990.

ADDRESSES: Submit written comments, identified by the docket control number "OPTS–84014C," in triplicate to: TSCA Public Docket Office (TS–793), Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 8(d) of the Toxic Substances Control Act (TSCA), EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR part 716). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking.

By adding a substance to part 716, EPA triggers the section 8(d) model rule's reporting requirements. Past, current, and prospective manufacturers, importers, and processors of the listed substances are required to submit certain information at the time the substance is listed. Further submissions are required of those who initiate a study of the listed substance or who later propose to manufacture, import, or process the listed substance within a 10–year period from the effective date of listing the substance at § 716.120. Section 716.65(a) terminates these reporting requirements at the end of the 10 years.

In addition to the 10–year sunset provision, EPA has instituted a biennial review process, as stated in § 716.65(b), to identify and terminate the reporting periods for those substances for which the Agency no longer needs continued health and safety data reporting (40 CFR 716.65(b)). Pursuant to this process, the EPA Office of Toxic Substances requested from other EPA offices and certain other Federal agencies all reasonable justifications for retaining each substance or mixture on, or removing each substance or mixture from the list at § 716.120. As a result, EPA has determined that the Agency's health and safety data needs no longer justify continued health and safety data reporting for 1-propanamine, *N*-propyl-. Amending the reporting sunset date for 1-propanamine, *N*-propyl-, removes the requirement that current manufacturers, importers, and processors of the chemical substance must notify EPA whenever they initiate a study of the substance. The amended sunset date for 1-propanamine, *N*-propyl- will be the effective date of this rule December 5, 1990, and will terminate section 8(d) reporting for this substance. However, any manufacturer, importer, or processor who initiates a study on 1-propanamine, *N*-propyl- before its amended sunset date must notify EPA of the study's initiation and submit the study upon its completion regardless of the completion date (§ 716.65(c)). EPA is amending the reporting sunset date for 1-propanamine, *N*-propyl- rather than removing the reference to the substance. EPA may at some future date promulgate a rule in which the references to the substances with past sunset dates will be eliminated.

EPA is issuing this final rule without prior proposal in accordance with 40 CFR 716.65(b). This final rule terminates the reporting period for 1-propanamine, *N*-propyl- December 5, 1990. Persons are invited to comment on the determinations presented in this document. If a reasonable justification is received for requiring continued health and safety data reporting for 1-propanamine, *N*-propyl-, EPA will, by notice published in the **Federal Register**, withdraw this sunset date amendment prior to the final rule's effective date.

II. Amendments to 40 CFR 716.120

To terminate health and safety data reporting on 1-propanamine, *N*-propyl-, EPA is amending the sunset date in § 716.120 to December 5, 1990.

Secondly, the entire mixture entry for aromatic C_9 fraction chemicals (from petroleum refining) will be removed from § 716.120(b) and will be redesignated to § 716.120(a) as: solvent naphtha (petroleum), light arom. This complex combination is treated by EPA for TSCA purposes as a chemical substance (CAS No. 64742–95–6), a complex combination of hydrocarbons obtained from the distillation of aromatic streams and consists mainly of aromatic hydrocarbons having carbon numbers predominantly in the range of approximately C_8 through C_{10} and boiling in the range of approximately 135 °C to 210 °C (275 °F to 410 °F). Solvent naphtha (petroleum), light arom. is a designation for a defined process stream agreed to by EPA and the American Petroleum Institute in the "Candidate List of Chemical Substances - Addendum 1/Generic Terms Covering Petroleum Refinery Process Streams" in January 1978. This redesignation of aromatic C_9 to solvent naphtha (petroleum), light arom. does not change the sunset date and does not affect substantive reporting requirements.

Third, this rule corrects the spelling of the last entry under the category "Alkyltin compounds", (CAS number 54849–38–6) in § 716.120(a). The correct spelling is: Mono methyltin tris(isooctyl mercaptoacetate) Acetic acid, 2,2',2''-[(methylstannylidyne)tris (thio)]tris-triisooctyl ester.

III. Rulemaking Record

EPA has established a public record for this rulemaking (docket control number OPTS–84014C). This record includes basic information considered by EPA in developing this rule. A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located in Rm. NE-G004, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not major because it will not have an effect of $100 million or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices. This rule was submitted to the Office of Management and Budget (OMB) as required under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant economic impact on a substantial number of small businesses. This determination is based upon this rule's elimination of some prospective reporting burdens.

C. Paperwork Reduction Act

This rule contains no information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and Controlling Paperwork Burdens on the Public, 5 CFR part 1320. This rule terminates some existing reporting requirements previously approved by OMB under OMB control number 2070–0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: August 27, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 716 is amended as follows:

PART 716—[AMENDED]

1. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. In § 716.120(a) by revising the entry for CAS number 142–84–7 and adding CAS number entry 64742–95–6 to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS Number	Substance	Special Exemptions	Effective Date	Sunset Date
*	*	*	*	*
142–84–7	1-Propanamine, *N*-propyl-		3/7/86	12/5/90
*	*	*	*	*
64742–95–6	Solvent naphtha (petroleum), light arom.		2/13/84	2/13/94
*	*	*	*	*

§ 716.120 [Amended]

3. In § 716.120 by removing and reserving paragraph (b).

§ 716.120 [Amended]

4. In § 716.120(c) by correcting the spelling of the last chemical substance under the alkyltin compounds category to read as follows: Mono methyltin tris(isooctylmercaptoacetate) Acetic acid, 2,2',2''-[(methylstannylidyne)tris(thio)]tris-triisooctyl ester.

[FR Doc. 90–20846 Filed 9–5–90; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 90–291]

Administrative Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order amends sections 1.115, 1.245 and 1.301 of the Commission's rules regarding review of decisions by presiding officers denying motions to disqualify themselves from adjudicatory proceedings. Under the rule amendments adopted here, review of such decisions must be sought through the filing of an interlocutory appeal as a matter of right. This action will help to expedite the Commission's adjudicatory process.

EFFECTIVE DATE: September 6, 1990.

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

FOR FURTHER INFORMATION CONTACT: Gordon Coffman, (202) 632–7220.

SUPPLEMENTARY INFORMATION:

Adopted: August 20, 1990; Released: August 30, 1990

In the Matter of Amendment of §§ 1.115, 1.245 and 1.301 of the Commission's Rules and Regulations Regarding Review of Motions to Disqualify Presiding Officer, FCC 90–291.

By the Commission:

1. By this Order, the Commission amends its procedures regarding review of decisions by presiding officers denying motions to disqualify themselves from adjudicatory proceedings. Under existing Commission rules, review of such decisions must be sought immediately through the filing of an exception with the Commission, and the hearing is suspended pending a ruling by the Commission.[1] Under the rule amendments adopted here, review of such decisions must be sought through the filing of an interlocutory appeal as a matter of right.[2] To minimize delay in the conduct of adjudication proceedings, such appeals will be heard by the Review Board, and the hearing will be suspended only until the Review Board issues its decision. Immediate Commission review of a denial of the appeal may be sought through the filing of an application for review of the Review Board's decision, but the hearing will not be automatically suspended pending Commission review.[3]

2. Authority for this amendment is contained in sections 4(i), 4(j), 5(c) and 303(r) of the Communications Act of 1934, as amended.[4] Because the amendment relates to matters of agency organization, procedure and practice, the notice and comment and effective date provisions of the Administrative Procedure Act are inapplicable.[5]

[1] 47 CFR 1.245(b) (3), (4).

[2] 47 CFR 1.301(a).

[3] To be consistent with existing Commission practice, *see WWOR–V, Inc.*, FCC 90–222 (adopted June 13, 1990), we are amending § 1.115(e) of the Rules, 47 CFR 1.115(e), to make clear that applications for review of Review Board decisions denying interlocutory appeals filed as a matter of right (which will now include appeals of disqualification denials) may be filed upon the Review Board's denial of the interlocutory appeal, and need not await the Board's decision on review of an Initial Decision. We are also correcting a reference in § 1.115(e) to the Review Board's delegated authority.

[4] 47 U.S.C. 154(i), 154(j), 155(c), and 303(r).

[5] 5 U.S.C. 553(b)(A), 553(d).

3. *Accordingly, it is ordered,* That §§ 1.115, 1.245 and 1.301 of the Commission's Rules and Regulations *are amended* as set forth below. Effective upon publication in the **Federal Register.**

List of Subjects in 47 CFR Part 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Administrative practice and procedure.

Rule Changes

Title 47 of the Code of Federal Regulations, part 1, is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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.

§ 1.115 [Amended]

2. Section 1.115(e)(1) is amended by removing the last sentence thereto and replacing it to read as follows: "Applications for review of interlocutory rulings made by the Review Board (*See* §§ 0.365 of this chapter, 1.301) of this part shall be filed only as part of the application for review of the Board's final decision, except that applications for review of rulings by the Board pursuant to § 1.301(a) of this part may be filed separately after such ruling by the Board."

3. Section 1.245 is amended by revising paragraphs (b)(3), (b)(4), (b)(5) and (b)(6) to read as follows:

§ 1.245 Disqualification of presiding officer.

* * * * *

(b) * * *

(3) The person seeking disqualification may appeal a ruling of disqualification, and, in that event, shall do so at the time the ruling is made. Unless an appeal of the ruling is filed at this time, the right to request withdrawal of the presiding officer shall be deemed waived.

(4) If an appeal of the ruling is filed, the presiding officer shall certify the question, together with the affidavit and any response filed in connection therewith, to the Review Board. The hearing shall be suspended pending a ruling on the question by the Board.

(5) The Board may rule on the question without hearing, or it may require testimony or argument on the issues raised.

(6) The affidavit, response, testimony or argument thereon, and the Board's decision shall be part of the record in the case.

* * * * *

4. Section 1.301 is amended by adding paragraph (a)(3) to read as follows:

§ 1.301 Appeal from presiding officer's interlocutory ruling; effective date of ruling.

(a) * * *

(3) If the presiding officer's ruling denies a motion to disqualify the presiding judge, the ruling is appealable as a matter of right.

* * * * *

[FR Doc. 90–20877 Filed 9–5–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB 31

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Pallid Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the pallid sturgeon (*Scaphirhynchus albus)* to be an endangered species under authority of the Endangered Species Act (Act) of 1973. Critical habitat is not being designated. The pallid sturgeon is a large fish known only to occur in the Missouri River, the Mississippi River downstream of the Missouri River, and the lower Yellowstone River. The species is threatened through habitat modification, apparent lack of natural reproduction, commercial harvest, and hybridization in parts of its range. This rule identifies the taxon as one in need of conservation, implements protective measures, and makes available recovery measures provided by the Act.

EFFECTIVE DATE: October 9, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours in the office of the Missouri River Coordinator, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, P.O. Box 986, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Dr. Kent D. Keenlyne, Missouri River Coordinator, at the above address, telephone (605) 224–8693.

SUPPLEMENTARY INFORMATION:

Background

The pallid sturgeon was first described by S.A. Forbes and R.E. Richardson in 1905 from nine specimens collected from the Mississippi River near Grafton, Illinois, in June 1904 (Forbes and Richardson 1905). Known locally as the white sturgeon, they named it *Parascaphirhynchus albus* and suggested it be considered as its own genus. Later classifications, however, placed it in the genus *Scaphirhynchus* where it has remained (Bailey and Cross 1954).

The pallid sturgeon has a flattened, shovel-shaped snout; long, slender, and completely armored caudal peduncle; and lacks a spiracle (Smith 1979). The principal features distinguishing the pallid sturgeon from the darker shovelnose sturgeon are the absence of bony plates on the belly, 24 or more anal fin rays, 37 or more dorsal fin rays, and inner barbels under the snout that are much shorter than outer barbels with the inner barbels less than 6 times the length of the head (Pflieger 1975). As with other sturgeon, the mouth is toothless, protrusible, and far under the snout while the skeletal structure is primarily cartilaginous (Gilbraith et al. 1988). It is one of the largest fish found in the Missouri-Mississippi River drainage with specimens approaching 39 kilograms (85 pounds) being reported (Gilbraith et al. 1988).

Pallid sturgeons require large, turbid, free-flowing riverine habitat with rocky or sandy substrate (Gilbraith et al. 1988). They are well adapted to life on the bottom and inhabit areas of swifter water than does the related but smaller shovelnose sturgeon (Forbes and Richardson 1909; Carlson et al. 1985).

The range of the pallid sturgeon is primarily the Missouri River and the Mississippi River downstream of the junction with the Missouri River (Gilbraith et al. 1988). Sightings have been reported from the mouth of the Mississippi to the mouth of the Missouri (1,860 kilometers or 1,154 miles), from the mouth of the Missouri to Fort Benton, Montana (3,330 kilometers or 2,065 miles), and in the lower 320 kilometers (200 miles) of the Yellowstone River. Sightings have occasionally come from near the mouths of large tributaries to the Mississippi River (Big Sunflower River and the St. Francis River) and Missouri River (Kansas River and Platte River); however, these are rare and may be due to the fish utilizing unusual flow conditions (Cross 1967). The total length of its range is approximately 5,725 kilometers (3,550 miles) of river.

A review of the literature shows a sharp decline in pallid sturgeon observations over the range of the species and especially so in the Missouri River from Gavins Point Dam to the headwaters. In the 1960's, 500 observations were made (i.e., an average of 50 per year); in the 1970's, 209 observations (i.e., an average of 21 per year); and in the 1980's, 65 observations (i.e., an average of about 7 per year) over the entire 5,725 kilometers (3,550 miles) of range. The decline of the species appears to correspond with expanded commercial harvest while, during the same itme, recruitment began to fail. The decline, however, also follows the extensive developments of the 1950's and 1960's of the Missouri and Mississippi rivers. Deacon et al. (1979), Kallemeyn (1983), and Gilbraith et al. (1988) all attribute the decline, either directly or indirectly, to habitat modification. Factors include physical blocking of normal movement patterns of the fish by construction of the big dams; alteration of water quality and temperature; alteration of flows which may affect reproduction, timing of reproduction, or food sources; alteration of previous spawning habitats; reduction of habitat diversity; and reduced productivity of the river systems.

Dr. Michael D. Zagata, on behalf of the National Audubon Society, petitioned the Service to list the pallid sturgeon as "threatened" in an April 17, 1978 letter. The Service responded that the petitioner did not supply sufficient substantial evidence of the threats to permit it to move directly on the petition and informed the petitioner that it was gathering status data on this and several other species. On December 30, 1982, the Service included the pallid sturgeon in a notice of reivew published in the Federal Register (47 FR 58456). This notice addressed vertebrate species that were currently under review for listing as endangered or threatened, and indicated that substantial information was available to support the biological appropriateness of proposing to list this species as endangered or threatened. On June 16, 1988, a petition was received by the Service from Peter Carrels on behalf of the Dakotah Chapter of the Sierra Club requesting that the pallid sturgeon be listed as an endangerd species throughout its range. A positive finding on this petition was made in September 1988 and subsequently published by the Service in the February 23, 1989, Federal Register (54 FR 7813). On August 30, 1989 (54 FR 35901), the Service provided notification that the petition was warranted and proposed to list the pallid sturgeon as endangered throughout its range and asked for information relevant to a final determination. On November 8, 1989, the Service extended the comment period on the proposed rule from October 30, 1989 to November 30, 1989 (Federal Register 54 FR 46596).

Summary of Comments and Recommendations

In the February 23, 1989, Federal Register (54 FR 7813) notice of finding on the petition to list the pallid sturgeon and in the August 30, 1989, proposed rule (54 FR 35901), and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a proposed and final rule. Appropriate State agencies, county governments, Federal agencies, scientific organziations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Omaha World Herald (NE) on September 18, 1989; the Kansas City Star and Times (MO) on September 19, 1989; the Southeast Missourian (MO), the Sioux Falls Argus Leader (SD), and the Bismarck Tribune (ND) on September 20, 1989; the Daily Capitol Journal (SD) and the Williston Daily Herald (ND) on September 21, 1989; the Billings Gazette (MT), the Helena Independent Record (MT), the Great Falls Tribune (MT), and the Rapid City Journal (SD) on September 22, 1989; the Forum (ND) on September 25, 1989; the State Times (LA), the Sunday Advocate/Morning Advocate (LA), and the Arkansas Gazette (AR) on September 27, 1989; the Randolph County Herald Tribune (IL) and the Arkansas Democrat (AR) on September 28, 1989; the Courier-Journal (KY) on September 29, 1989; the Times Pacayune/States Item (LA) on September 30, 1989; and the Clarion Ledger (MS) on October 5, 1989, all of which invited general public comment. An extension of the comment period to November 30, 1989, was published in the Federal Register on November 8, 1989 (54 FR 46596). The notification of the extension of the comment period also was published in the aforementioned newspapers in November.

During the comment period on the proposed rule, totaling approximately 3 months, 46 comments on listing were received. Of the comments recieved, 19 (41 percent) supported listing, 24 (52 percent) were neutral, and 3 (7 percent) were opposed. These comments and the concerns raised following the notice of petition finding are discussed below.

Support for the listing proposal was voiced by two Governors, eight State game and fish agencies, two Federal agencies or divisions, one nonwildlife State agency, and six conservation organizations (or branches thereof).

Opposition to listing was voiced from two farm organizations and one State legislative official. A number of State and Federal agencies and organizations submitted comments regarding the possible effects that listing and, particularly, designation of critical habitat, might have on planned activities and development. Comments obtained during the comment periods are combined in the following discussion. Comments or questions about the rule were grouped into a number of general issues, depnding on content. These issues and the Service's response to each are listed below.

Issue 1: One commenter questioned whether adequate information was available to document a decline in pallid sturgeon numbers. Another questioned whether sightings were a reliable indicator of abundance, and another suggested that future work will be necessary to better define the causes of the decline.

Response: One of the problems experienced 12 years ago, when the species was first petitioned for listing, was the inability to document population declines through scientific studies that had been directed specifically at the pallid sturgeon. Since that time, the work by Kallemeyn (1983) and Gilbraith et al. (1988), summarized much of the existing information on population status available through printed reports and personal contact with appropriate State and Federal agencies for data. Both works concluded that populations had declined and were declining. In our efforts, we reviewed comparable catch-per-effort data (particularly in the Upper Missouri River System) which fairly clearly indicated that pallid populations had declined considerably over the last 10 to 20 years. In some areas, particularly in the reservoir systems, populations had declined dramatically or had even been extirpated. The sighting records referred to are a valid indicator of population numbers since these were gathered from scientific reports, State and Federal resource agency field data reports, or public reports (e.g., fishermen) which were verified by State or Federal resource personnel. Reports from the last 10 to 15 years are unlikely to understate abundance, for sophistication in collecting equipment, more effective study techniques, and generally increased intensity of sampling within the range in recent years should have located this relatively large fish, if present in any kind of

abundance. We are confident that the fish has suffered dramatic declines throughout its range. During the comment period, 9 of the fish and wildlife agencies within the 13-State range of the species supported listing of the species as endangered. The other four States did not submit comments but already have the fish listed as rare or endangered in their own State program. Studies have begun and will continue in attempts to determine specific reasons for population declines and what can be done to remedy further declines.

Issue 2: One commenter observed that regulatory mechanisms are available within the States to limit harvest; another suggested that education of State agencies was needed to protect the species; and another offered that stiff State penalties might be more effective than listing to protect the fish.

Response: Most States within the species range have developed prohibitions against keeping pallid sturgeon that are caught. However, not all States presently have such provisions nor are the penalties for taking as substantial as they would be if the fish were listed under the Endangered Species Act (Act). The present plight is not so much that overharvest is occurring but, rather, that any harvest now further depletes a population that is not replenishing itself. There is an ongoing effort among some of the States to coordinate their rules regarding protection for the fish. While strong rules prohibiting harvest are an important tool for slowing the process, enforcement alone will not correct habitat problems affecting reproduction and other life requisite needs. Enforcement can play an important role in slowing the loss of pallid sturgeon within its range, and we have every confidence that each of the States involved will do their best, from the regulatory standpoint, to assist in insuring that the species will survive.

Issue 3: Two commenters questioned whether Federal listing could correct the plight of the pallid sturgeon; another mentioned that there is little Federal land along the lower Mississippi, which would limit the effectiveness of consultation; and another questioned whether consultation could improve the welfare of the species.

Response: The observation is correct that Federal listing, in itself, does not correct the problems. However, Federal listing triggers the protections of the Act, such as section 7 consultation on Federal activities. The entire present range of this species is classified as navigable waters of the United States and, as a result, is subject to several Federal permit review processes which may require consultation. Nearly all the range is operated as either a Federal multiuse water project or is maintained by the Federal Government as a navigation project which allows the opportunity for consultation. Listing mandates Federal consultation on any adverse effects to insure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of a listed species. Furthermore, the Act specifies that all Federal agencies shall utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of listed species.

Issue 4: One commenter indicated that there has never been documentation of any pallid sturgeon spawning; and another offered that man cannot control whether or not they will reproduce naturally.

Response: It is obvious that pallids must have reproduced naturally at one time if specimens exist today. At present, there are no documented pallid sturgeon spawning locations. One problem is that no identification keys presently exist to distinguish pallid sturgeon fry or to separate them from its close relative, the shovelnose sturgeon. Collections made in 1989 from shovelnose spawned in captivity will allow shovelnose fry to be described at various stages of development in order that they can be differentiated from young pallids. A lack of youthful specimens in the wild in recent years may be an indication that they are not reproducing today making sampling for eggs or fry fruitless; or it could mean that some spawning is occurring, but the young fish are disappearing for some reason (predation, contaminants, etc.) before they are old enough to be distinguished as pallid sturgeon. Studies are underway to determine reproduction requirements of the species, and, once known, we may have the opportunity to rectify or create situations where natural reproduction and recruitment can occur.

Issue 5: One commenter observed that the hybridization problem with the shovelnose sturgeon may be caused by an overlap of reproductive periods; another offered that human intervention will not control hybridization; and another observed that, perhaps this is nature's way of filling in a presumably vacated niche if the pallid becomes extinct.

Response: It is obvious that the two species utilize similar spawning habitat (if not the same) in order to hybridize. It also is obvious that the two species were separated by time or other parameters different enough in the past, if using the same area, to maintain themselves as distinct species. The literature suggests that the pallid may have normally spawned later than the shovelnose (as the first commenter infers) or was more prone to utilize faster waters or more main channel substrates for spawning than the shovelnose. Schmulbach (1974), who has worked extensively with sturgeon and other species on the Missouri River, indicates that hybridization is a phenomenon that occurs in association with a modified (or "hybridized") habitat. In his early 1970's studies, he concluded that the increased incidence of hybridization in the Missouri is associated with the hybridization of the habitat. In contacting Doug Carlson, Missouri Conservation Department (pers. comm. 1989), who did much of the sturgeon work in Missouri where significant hybridization was reported, it was learned that pallid hybrids were spawned in the late 1960's and early 1970's. This time period corresponds either with or immediately after much of the final channelization work that was accomplished on the Missouri downstream of the lowermost dam. Human intervention by habitat alteration likely was responsible for the significant amount of hybridization noted by forcing both species to jointly utilize a greatly diminished suitable spawning area, while temperature regimes also were altered sufficiently to interrupt the normal spacing of spawning, so that more overlap occurred resulting in hybridization. Man's intervention likely led to the problem and, presumably, could be utilized to reverse that situation as well. The hybrids were found to be infertile (Carlson, pers. comm. 1989), which means they will compete for food with the pure strain but will not be able to contribute to the support of this or other sturgeon populations.

Issue 6: Two commenters identified a need to resolve identification problems between the pallid and shovelnose sturgeons, and one expressed concern about the possible need to list the shovelnose sturgeon as "threatened due to similarity of appearance" due to its close resemblance to the pallid.

Response: The two species have a strong resemblance in body shape and both have a flattened, shovel-like nose. However, there are a number of characteristics that can be used to distinguish between the two species (see description in "Background" section). For the lay person, the lighter color and larger size of the pallid are signals that the fish is not the more common shovelnose. Some notice that it is not as

rough as the proportionately higher scaled (scuted) shovelnose. Some readily notice that the nose appears longer in the pallid sturgeon, and some notice differences in the barbel lengths between the two. Perhaps the easiest and most reliable characteristic to distinguish the two is to examine the barbels. The pallid has its fleshy barbels located about one-third of the distance from the mouth to the end of its nose, while the barbels of the shovelnose are nearly an equal distance between mouth and nose. The inner barbels of the pallid are often slightly ahead of the outer barbels and only about half as long, while the shovelnose has barbels in a nearly straight line with all approximately the same length. We believe that, with assistance from the respective State agencies, those relatively few fishermen that fish for sturgeon will be able to readily distinguish between the two species.

Issue 7: One commenter wondered whether viable pallid sturgeon populations still exist; and another wondered whether the species' decline may be a natural evolutionary process eventually leading to extinction.

Response: The question of whether any viable pallid populations still remain is one we ask ourselves. Last year, efforts were begun to develop techniques to artifically propagate and raise its closest relative, the shovelnose sturgeon, as a surrogate species for developing propagation techniques for the pallid. Biologists, for 2 years, have been developing techniques to better locate and capture the pallid sturgeon in anticipation of success in possibly artificially propagating the species. Since the species has persisted for literally thousands of years, and no broad climatic conditions or other significant natural changes have occurred throughout the range of the species, it is highly unlikely that the recent, relatively rapid decline in the species is a natural phenomenon.

Issue 8: One commenter asked about additional observations in the St. Francis River, Arkansas; and two others provided information about possible sightings in the upper Mississippi and lower Ohio rivers.

Response: Over the years there have been several reports of pallid sturgeons observed off the mainstem Missouri and Mississippi rivers. One report occurred in 1966 on the lower St. Francis River in Arkansas, one report in 1987 from 12 miles northwest of Satartia in the Big Sunflower River in Mississippi, five reports from the lower 40 miles of the Kansas River in 1952, and one report about 21 miles up the Platte River in 1979. One commenter indicated that there have been unsubstantiated reports in the lower Ohio River close to the Mississippi; and another reported a possible 1982 observation by a commercial fisherman near the town of Louisiana, Missouri, on the Mississippi, about 70 miles upriver of the mouth of the Missouri. Most of the these offstream reports have occurred under special circumstances of high flow conditions. Each of the locations noted, however, does have access to one of the two large rivers which are considered the usual habitat for the species. This listing will protect the species throughout its 13-State range, wherever found.

Issue 9: Seven commenters expressed concern about what impact listing may have on various activities. Concerns included a possible impact on power generation, pesticide labeling restrictions by the Environmental Protection Agency, water management, beneficial uses of water, impacts to irrigation water use or returns, impacts to mining activities, and possible impacts to future powerplant sitings.

Response: Although these comments are not relevant to the determination of whether the species is, indeed, threatened or endangered and, thus, should or should not be listed, the Service duly notes these concerns. It is premature at this time to discuss what changes may need to be made, if any, to these activities to protect the pallid sturgeon; they will be addressed if and when consultation is initiated on a Federal action.

Issue 10: One commenter suggested that alteration of habitat for navigation has been more devastating to the species than alterations for hydropower. Another disagreed that the lower Mississippi has been channelized.

Response: In our evaluation, no attempt was made to evaluate which of the habitat alterations had the greatest adverse effect on the species. Rather, our assessment was to determine if habitat alterations, whether by themselves or in combination, had adversely affected the species to the extent that its existence was threatened. Virtually all of the pallid sturgeon range has been altered in one form or another to the detriment of the species' survival. Future work will have to focus on those specific factors that are adversely impacting the species in order to recover the species.

Issue 11: Two commenters pointed out additional threats not mentioned in the proposed rule. One suggested that additional diversions and planned interbasin transfers are future threats to the species. Another suggested that continuing scouring and siltation set in motion by the past habitat alterations are threats to the remnant spawning and nursery areas that remain for the pallid.

Response: We do not disagree and appreciate these potential threats being pointed out to us. These comments have been included in the discussion of Factor "A".

Issue 12: One commenter suggested that the location of each fishery harvest advisory area be noted as it related to a potential pollution threat to the species.

Response: Over the years, a number of fish consumption advisories have been posted on certain reaches of the lower Missouri and middle and lower Mississippi rivers. For the purpose of determining whether a pollution threat may exist, it is sufficient to identify what those threats may be rather than the exact location of each possible threat. In the case of the pallid, which is relatively long lived and which may move extensively in the unobstructed reaches of the lower Missouri and the Mississippi during its lifetime, it may enter several fishery consumption advisory areas throughout its life and be exposed to several toxic substances. It would be of no particular value to identify specific areas at this time. More important to note is the nature of the various advisories, which usually are for persistent industrial chemicals or toxic metals or metal compounds.

Issue 13: The greatest number of comments received were in relation to the determination of critical habitat. Three agreed that no critical habitat should be declared at this time; one observed that portions of the Missouri River were already declared critical habitat under State law; and one was concerned about determination of critical habitat on the Missouri River as it may impact operation of the system. One commenter contended that the lower Mississippi River already has all the favorable habitat conditions for pallid sturgeon life requisites, while another requested that the Service reserve water rights necessary for maintenance of important pallid sturgeon habitat in the Upper Missouri Basin. One commenter formally requested that the Service declare the entire range of the species to be critical habitat, at a minimum designating the Yellowstone River and Missouri River downstream to Lake Oahe, the Missouri River from Fort Randall Dam to just above St. Louis, and the Mississippi River from its junction with the Ohio River downstream to Baton Rouge. This commenter contended that listing these areas of critical habitat will benefit the species and help alert Federal, State, and local planners to potential conflicts.

Response: Certainly one of the major advantages of designating critical habitat is to alert planners to the critical importance of the noted area to the species involved. Whether critical habitat has been declared under State law has no bearing on critical habitat being designated under the authority of the Act. Though we agree that some of the areas identified are likely to be very important to the species, we are unable, at this time, to adequately demonstrate any specific areas as critical to its survival. This is not to say that, once additional information is obtained regarding the species that demonstrates the critical nature of certain areas to the survival or recovery of the species, critical habitat would not be declared through appropriate processes. This subject is discussed further in the Critical Habitat section of this rule.

Issue 14: One commenter suggested that not enough is known about the pallid sturgeon to develop a meaningful recovery plan.

Response: Following final listing, the Service will begin the recovery planning process for this species as quickly as possible. It is likely that the recovery plan will have a strong research component that will guide recovery efforts.

Issue 15: One commenter indicated that there is a need to launch new efforts for habitat restoration for the species.

Response: We appreciate the concern of the commenter and agree that some habitat restoration may be necessary to insure natural survival of the species. One of the benefits of listing is that it provides a vehicle for new efforts to be launched in recovery or restoration of suitable habitat, in accordance with the species' recovery plan.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the pallid sturgeon should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the pallid sturgeon (*Scaphirhynchus albus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Alteration of habitat through river channelization, impoundment, and altered flow regimes has been a major factor in the decline of this species (Kallemeyn 1983, Gilbraith et al. 1988, and Williams et al. 1989). Approximately 51 percent of its range has been channelized, 28 percent impounded, and the remaining 21 percent affected by upstream impoundments and altered flow regimes. These factors have adversely affected the fish by blocking movements of fish to spawning and/or feeding areas, destroying spawning areas, altering conditions or flows of potential remaining spawning areas, reducing food sources or the ability to obtain food, or altering remaining substrates and conditions necessary for the fish's survival. Of the approximately 5,725 Kilometers (3,550 miles) of former habitat for the pallid, virtually all of it has been drastically modified in one manner or another.

Interbasin transfer of water from the basin, or other future water depletions, also could adversely affect the species. Continued scouring and siltation set in motion by past and present alterations may pose a threat to remaining suitable sturgeon spawning or nursey areas.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Since it was not described as a separate species until 1905, many of the early reports of sturgeon catches during the heyday of commercial fishing in the late 1800's, during which time many of the sturgeon populations were severely reduced, likely grouped the pallid sturgeon with the lake or shovelnose sturgeon. During the early years of the upper Missouri reservoirs (1950's and 1960's), pallid sturgeon were relatively common and were harvested commercially in both South Dakota (Gasaway 1970) and North Dakota (Carufel 1953) where they were locally called "lake" sturgeon. During this same period, however, researchers began to notice that they were unable to find evidence of reproduction of the species, even though large adults were still present (Beckman and Elrod 1971, June 1976, and Walburg 1977). By 1988, 11 of the 13 States which represent its range had classified it as a species of concern under their various programs (Gilbraith et al. 1988).

The pallid sturgeon is considered a fine eating fish, and the roe is suitable for caviar. Its large size makes it a desirable trophy sport fish (Gilbraith et al. 1988).

C. *Disease or predation.* No information is available regarding diseases of the pallid sturgeon. We are not aware of specific disease or predation problems.

D. *The inadequacy of existing regulatory mechanisms.* Adequate regulatory mechanisms do not presently exist to protect the fish. This is especially so considering that most of its range constitutes interjurisdictional waters or is connected to inter-State waters. The species is presently not classified under the State listing programs in Arkansas or Mississippi and presumably may be harvested. Kentucky still allows harvest of the species. Sturgeon over 16 pounds (presumed to be a pallid sturgeon if over that weight) must be released in Montana. Weight provisions, however, do not protect young or smaller pallid sturgeons. Cooperative studies are now underway in Montana, North Dakota, and South Dakota to better distinguish physical differences between the pallid and the shovelnose sturgeon. Pallid sturgeons must be released in Iowa, Kansas, Missouri, Nebraska, and South Dakota (Gilbraith et al. 1988). All sturgeons must be released in North Dakota.

E. *Other natural or manmade factors affecting its continued existence.* Although more information is needed, pollution could be a likely threat to the species over portions of its range. Various fish harvest and consumption advisories exist or have existed as a result of manmade pollution from near Kansas City, Missouri, to the mouth of the Mississippi. Most of the advisories represent industrial pollutant concerns downriver of industrial areas. Like other sturgeons, the pallid sturgeon is an opportunistic feeder that feeds on aquatic insects, crustaceans, mollusks, annelids, eggs of other fish, and sometimes other fish. Although utilizing aquatic insects, the pallid is noted as having a high incidence of fish in its diet (Cross 1967, Kallemeyn 1983, and Carlson et al. 1985). Being a bottom feeder of aquatic forms, one would expect it to be exposed to any persistent pollutants susceptible to uptake in the food chain.

Inability to document pallid sturgeon reproduction in recent years has been previously noted. Gilbraith et al. (1988) indicate that there has been no documented reproduction in a decade. If reproduction is occurring, survival of the young is not, thus leading to the conclusion that reduction or alteration of suitable spawning or nursery areas is such that predation of eggs or young is complete, that the young fish can no longer satisfactorily compete for foods or other necessary life requisites, or that some other unknown factor (such as contaminants) is causing them to perish.

In extensive sturgeon studies in the late 1970's, Carlson et al. (1985) found that hybridization had occurred between the pallid sturgeon in Missouri and the much more abundant shovelnose sturgeon. In 2 years of study (1978 and 1979), only 11 pallid sturgeon and 12 hybrids were found. The study area comprised approximately 25 percent of the entire range of the pallid sturgeon. The small number of pallids found, the low freqency or lack of reproduction, and the apparent lack of recruitment in the species, plus the high rate of hybridization over a significant portion of its range, portends serious problems for the fish in the area studied, and in other areas as well if the same phenomenon has or is occurring elsewhere.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the pallid sturgeon as an endangered species. Endangered status, which means that the species is in danger of extinction throughout all, or a significant portion of its range is appropriate because *Scaphirhynchus albus* is in danger of extinction throughout its range due to the apparent lack of recruitment of the species for over 15 years, and current habitat threats which have brought the species to this low level are not likely to be modified to avoid jeopardy to the species without protection under the Act. The habitat of the species has been altered through damming, channelization, altered and/or degraded water quality, and altered flow regimes to the detriment of the fish. Past harvest for commercial purposes may have surpassed replenishment capability. Commercial harvest of pallid sturgeon may still pose a threat in certain areas of its range. Existing regulations are inadequate to protect the species from further decline. Industrial or residential pollution may be a serious threat over a significant portion of its range, and hybridization is a known threat. For reasons given below, critical habitat is not proposed.

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 designation of critical habitat is not presently determinable or prudent for this species. Though it is likely that there are areas very important to the species, we are unable to adequately demonstrate any specific areas as critical to its survival. Information on critical areas is lacking because very little is known about the species. There have been no significant studies done to obtain information on the needs of the species at different life stages or on its habitat requirements. Past spawning or nursery areas were not identified in the literature, and lack of recent reproduction has prevented researchers from identifying these crucial areas for the species. Cooperative State and Federal studies, now underway on the upper Missouri River, have not identified any of these crucial areas. Even if critical habitat could be identified, it may not be prudent to identify it to the public. As noted in Factor "B" of the "Summary of Factors Affecting the Species," the pallid sturgeon is a large sturgeon and might be sought by sport fishermen as a trophy specimen. Furthermore, sturgeon roe may be harvested as caviar. Publication of critical habitat maps and descriptions in the **Federal Register** could negatively impact the species by stimulating interest in the pallid sturgeon, making it more vulnerable to take, and increasing enforcement problems. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, the Service does not propose to determine critical habitat for the pallid sturgeon at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation action by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations inplementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Since the pallid sturgeon is found primarily in navigable waters of the United States and in areas of considerable Federal land ownership interests, consultation procedures could play a significant role in improving its welfare. A variety of Federal agencies have jurisdiction and responsibilities within pallid sturgeon habitat, and section 7 consultation might be required in a number of instances. Known proposals that could require consultation include: Actions with regard to the operation of the Missouri River dams (Army Corps of Engineers (Corps) and Bureau of Reclamation), rehabilitation of Fort Peck penstocks (Corps), actions with regard to the operation and maintenance of the navigation channel on the Missouri and Mississippi Rivers (Corps), and actions with regard to the operation of Wild and Scenic River segments on the Missouri River (National Park Service and U.S. Forest Service).

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in inter-State commerce in the course of a commercial activity, or sell or offer for sale in inter-State or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified period of time to relieve undue economic hardship that would be

suffered if such relief were not available. With respect to *Scaphirhynchus albus*, it is anticipated that few, if any, trade permits would ever be sought or issued, since the species is not common in the wild and is not cultivated for roe.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Service's Pierre State Office (see **ADDRESSES** above).

Author

The primary author of this final rule is Dr. Kent D. Keenlyne, Missouri River Coordinator (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Imports, Reporting, and record-keeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended 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.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rule
Common name	Scientific name						
Fishes							
*	*	*	*	*	*	*	
Pallid sturgeon	Scaphirhynchus albus	U.S.A. (AR, IA, IL, KS, KY, LA, MO, MS, MT, ND, NE, SD, TN).	Entire	E	399	NA	NA
*	*	*	*	*	*	*	

Dated: August 26, 1990.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90–20974 Filed 9–5–90; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Parts 32 and 33

RIN 1018–AB25

Addition of Five National Wildlife Refuges to the Lists of Open Areas for Hunting, Three to the List for Sport Fishing and Pertinent Refuge-specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is adding five national wildlife refuges (NWRs) to the lists of open areas for migratory game bird hunting, upland game hunting, and/or big game hunting, three NWR's to the list for sport fishing and pertinent refuge-specific regulations, if any, for those activities. The Service has determined that such uses will be compatible with and, in some cases, enhance the major purposes for which each refuge was established. The Service has determined that this action is in accordance with the provisions of all applicable laws, is consistent with the principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

EFFECTIVE DATE: September 6, 1990.

FOR FURTHER INFORMATION CONTACT: Larry LaRochelle, U.S. Fish and Wildlife Service, Division of Refuges, MS 670–ARLSQ, 1849 C Street NW., Washington, DC 20240; Telephone: (703) 358–2043.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking opens five refuges to hunting and three to sport fishing. Some of the hunting and fishing programs have refuge-specific hunting or fishing regulations and are included in this rulemaking. In addition, refuge-specific regulations are included for the Mason Neck National Wildlife Refuge in Virginia.

On May 14, 1990, at 55 FR 19968, the Service published a proposed rule to open five NWR's to hunting and three to fishing. Department of the Interior policy is whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, written comments received on the proposed rule are addressed in the following section.

Responses to Comments Received

Written comments on the proposed rule were received from 119 parties. Many categorically supported or opposed the proposed actions or hunting and/or fishing in general. Several comments were similar or identical to those received on previous proposed rulemakings opening refuges to hunting and/or fishing contending generically that hunting on refuges is illegal, not in the spirit for which refuges are created, violates the Endangered Species Act, or is not in compliance with the National Environmental Policy Act or various other laws or regulations. These issues have been addressed by the Service—see, *e.g.*, 51 FR 30655 of August 28, 1986,

the final rule opening seven refuges to hunting and 11 to sport fishing, and the Service will not here repeat its responses given in that rulemaking, but is instead incorporating those responses here by this reference.

Substantive comments on issues not already addressed in hunting and fishing plans, Environmental Assessments or Section 7 Endangered Species Act Consultations (all of which were available for public review during the comment period) are responded to below:

Issue: The deer herd at Sunkhaze Meadows NWR is not large enough to warrant control. Deer hunting is not necessary but if the herd needs to be reduced it should be done by professional shooters, not by sport hunters.

Response: The Service recognizes sport hunting as an acceptable, traditional form of wildlife-oriented recreation that can also be used as a management tool to effectively manipulate wildlife population levels. The primary objective of refuge hunting programs is to provide the general public with a quality recreational experience and an opportunity to utilize a renewable resource; having professional shooters kill the animals would deny the public of that opportunity.

The Service endorses the generally held principle that hunting need not be allowed only when wildlife populations are so high that harvest is necessary to protect a species from the impacts of its own excessive numbers. To delay harvesting until populations reach maximum carrying capacity risks habitat damage, disease, unnecessary suffering and population crashes. Game species in suitable habitat will produce harvestable surpluses which can be taken regularly without affecting desired population levels. Refuge hunting programs are monitored and, if necessary, adjusted to achieve desired population levels. The Service believes that the hunting plans and environmental assessments available for public review during the comment period contain adequate biological and management information to support its decisions to conduct the described hunts.

Issue: The Service has undervalued the economic value of opening these refuges to hunting and/or fishing.

Response: The Service estimates that there will be 31,800 hunting visits and 8,500 fishing visits at these refuges valued at an average of $37.53 and $29.31 each respectively by the 1985 *National Survey of Fishing, Hunting, and Wildlife-Associated Recreation*, the latest survey available. Factoring in the Consumer Price Index as found in the Economic Report of the President, 1989, it is estimated that the annual receipts generated from purchases of food, transportation, lodging, hunting and fishing equipment, fees, licenses, and so forth associated with this program will be approximately $1,067,290.

Issue: Allowing hunting on refuges reduces use by nonconsumptive users.

Response: The Service endorses compatible secondary public use on its lands. Carefully considered zoning constraints and time limitations may be incorporated into public use plans to allow a wide range of simultaneous consumptive or non-consumptive uses on a given refuge. Sometimes, however, it is prudent to close hunting areas or the entire refuge to other public use on hunting days or for the entire season in consideration of safety aspects and to avoid conflicts between hunters and the general public.

Issue: Refuges should not be opened to migratory bird hunting during these times of low populations.

Response: The option of closing the duck season was considered fully at several points in the regulations development process. One of the regulatory options in the Environmental Assessment, *Waterfowl Hunting Regulations for 1989*, was a closed season on all duck hunting. This issue was addressed further in the late-seasons final frameworks documents dated September 19, 1989 (54 FR 38614).

The Service does not believe duck hunting regulations have been a major factor in the decline of duck populations. Because of the general drought in important waterfowl production areas during recent years, agricultural impacts on marshes and surrounding areas have accelerated and seriously reduced the capability of traditional prairie habitats to produce ducks. Many areas once important to breeding ducks have been permanently affected. During the 1988–89 season, restrictive regulations and low duck numbers decreased the duck harvest by 50 percent from the already low level of the 1987–88 season. This decrease was even greater for certain species such as blue-winged teal and pintails. For many species, such as mallards, harvest rates, under current restrictive regulations, are at very low levels.

The Service is concerned about the decreased participation in duck hunting. Its goal is to establish regulations that protect the breeding stock and yet provide sufficient recreational hunting opportunity to retain hunters that support and fund habitat and management efforts. We recognize that for some, hunting opportunities are necessary incentives to maintain waterfowl habitat, while others would maintain habitat even during closed seasons.

The following five issues concern big game and upland game hunts at Lake Ophelia NWR.

Issue 1: The hunt plan states that 20,000 hunter visits are anticipated on the current 14,000 acres of the refuge during the course of the State seasons and would average greater than one hunter per acre.

Response: The 20,000 hunter visits anticipated is the maximum number of total annual hunter visits when acquisition and development is completed (30,000 acres). Maximum number of visits on any given day is anticipated to be 500 upon completion of land acquisition (one Hunter per 60 acres).

Issue 2: What assurances are there that herd numbers at Lake Ophelia NWR will not be irretrievably reduced.

Response: The hunting plan states that the program will be reviewed on an annual basis and necessary changes will be made to sustain a viable deer population.

Issue 3: The hunt plan makes no mention of the timing of the deer hunt to assure that hunters minimize disturbance to wintering waterfowl.

Response: The hunt plan states that timing and zoning will be utilized to minimize disturbance to wintering waterfowl during peak waterfowl use periods.

Issue 4: Concern was expressed that since the State of Louisiana permits deer hunting with dogs and that State guidelines will be followed in conducting deer hunts on the refuge that dogs might be allowed on the refuge during the deer hunts.

Response: The use of dogs for deer hunting is prohibited on all National Wildlife Refuges in Louisiana.

Issue 5: One commenter stated that there is no information given on hunter registration procedures or of the procedure for "distribution of limited permits on a random basis."

Response: Daily hunting permits will be required. The hunt plan states that the number of hunters will be restricted by limiting permits, if necessary.

Issue 6: It is clear that Service policy prohibits the use of dogs or bait in hunting of bears, yet it is also true that the State of Maine allows such use. It is not difficult to predict law enforcement problems due to this discrepancy. Any entry of dogs into the Sunkhaze Meadows NWR in pursuit of game

constitutes a disturbance to waterfowl, as this document acknowledges.

Response: Service policy does not prohibit the use of dogs in hunting bears. Dogs used in the pursuit of bears are typically highly trained, highly valued dogs that have been trained for the specific purposes only. They have been trained to not pursue animals other than bears. As stated in the Environmental Assessment, few hunters will start their dogs on a bear track going into the Refuge because of the difficulty of traveling through the area, but occasionally a bear started off the Refuge will run onto the Refuge. Any disturbance to other upland wildlife species would be cursory. Disturbance to waterfowl would be minimal since the bear hunt is conducted for the most part in areas not frequented by waterfowl.

The hunting of bears over bait is prohibited by refuge regulations at 50 CFR 32.2(h), "The unauthorized distribution of bait and the hunting over bait is prohibited on wildlife refuge areas. (Baiting is authorized in accordance with State regulations on national wildlife refuges in Alaska)." Even though State hunting regulations allow the hunting of bears over bait, it will not be allowed on the Refuge. This more restrictive regulation has been agreed to by State Inland Fisheries and Wildlife personnel. Hunters will be informed of this regulation through news releases, targeted communications with clubs and guides, and field contact.

Issue 7: The waterfowl hunt at Humboldt Bay NWR is not consistent with the purpose of the refuge, which is to protect habitat for migratory waterfowl, particularly the black brant.

Response: No more than 40 percent of the refuge will be open to hunting at any one time. Hunting will have very little effect upon the habitat itself. The Service is confident that the feeding and resting requirements of the waterfowl population will be met through temporal and spatial zoning.

The primary feeding and resting areas of black brant are well away from the areas of the refuge proposed for hunting. In addition, over 90 percent of brant use on Humboldt Bay occurs from February to May, after the waterfowl hunting season is over.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460K) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any area within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the major purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

In accordance with the NWRSAA and the RRA, the Secretary has determined that these openings for hunting and fishing are compatible and consistent with the primary purposes for which each of the refuges listed below was established, and that funds are available to administer the programs. The hunting and fishing programs will be generally within State and Federal (migratory game bird) regulatory frameworks.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601*et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. It is estimated that opening these refuges to hunting and fishing will generate approximately 30,300 annual visits. Using data from the *1985 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation,* and the *1989 Economic Report of the President* (Consumer Price Index), total annual receipts generated from purchases of food, transportation, hunting and fishing equipment, fees, and licenses associated with these programs are expected to be approximately $1,067,290, or substantially less than $100 million. In addition, since these estimated receipts will be spread over five states, the implementation of this rule should not have a significant economic impact on the overall economy of a particular region, industry, or group or industries, or level of government.

With respect to small entities, this rule will have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. The openings will provide recreational opportunities and generate economic benefits that may not now exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal Government of law enforcement, posting, and other actions needed to implement activities under this rule will be considerably less than the income generated from the implementation of these hunting and/or sport fishing programs. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Act (44 U.S.C. 3501, *et seq.*). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approval No.
Economic and public use permits	1018-0014

Public reporting burden for this form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office and Management and Budget,

Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

The "Final Environmental Impact Statement for the Operation of the National Wildlife Refuge System" (FES 76–59) was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the Federal Register on November 19, 1976 (41 FR 51131). Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), environmental assessments (EAs) were prepared for these refuge openings. Alternatives other than public sport hunting, including live trapping and relocation, introduction of predators, increased habitat management, chemical sterilization, population reduction by refuge staff, and no-action were considered and dismissed as not meeting refuge requirements. Based upon the EAs, the Service issued Findings of No Significant Impact with respect to the openings. Section 7 evaluations were prepared, where appropriate, pursuant to the U.S. Endangered Species Act. The Service has concluded that the opening of these refuges is not likely to adversely affect endangered or threatened species.

In view of the rapidly approaching hunting seasons, there is an immediate need to place these regulations into effect. It is Service policy to conduct hunting within the framework of State laws, regulations and seasons. To delay opening the refuges to hunting may cause confusion to the public, deny a benefit to the public and small related businesses and would not be in the best interest of the Service or the public. Thus the Department of the Interior concludes that good cause exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act to make these regulations effective upon publication in the Federal Register.

Author

Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the author of this rulemaking document.

List of Subjects

50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges. Accordingly, parts 32 and 33 of chapter I of title 50 of the Code of Federal Regulations are amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i.

2. Section 32.11 is amended by adding Humboldt Bay NWR, CA, and Sunkhaze Meadows NWR, ME, alphabetically by State; removing the Columbian White-tailed Deer National Wildlife Refuge and adding the Julia Butler Hansen Refuge for the Columbian White-tailed Deer in alphabetical sequence under the State of Washington:

§ 32.11 List of open areas; migratory game birds.

* * * * *

California

* * * * *

Humboldt Bay National Wildlife Refuge

* * * * *

Maine

* * * * *

Sunkhaze Meadows National Wildlife Refuge

* * * * *

Washington

* * * * *

Julia Butler Hansen Refuge for the Columbian White-tailed Deer

* * * * *

3. Section 32.12 is amended by redesignating paragraphs (f)(4) through (15) as paragraphs (f)(5) through (16) respectively; adding new paragraph (f)(4); and revising paragraph (qq)(2) to read as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(f) *California* * * *

(4) *Humboldt Bay National Wildlife Refuge.* Hunting of geese, ducks, coots, common moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required for hunting on the Salmon Creek Unit.

(2) Hunting on the Salmon Creek Unit is permitted only on Tuesday and Saturday.

* * * * *

(qq) *Washington* * * *

(2) Julia Butler Hansen Refuge for the Columbian White-tailed Deer.

* * * * *

4. Section 32.21 is amended by adding Lake Ophelia NWR, LA; Sunkhaze Meadows NWR, ME; Lake Zahl NWR, ND; and Long Lake NWR, ND; alphabetically by State as follows:

§ 32.11 List of open areas; upland game.

* * * * *

Louisiana

* * * * *

Lake Ophelia National Wildlife Refuge

* * * * *

Maine

* * * * *

Sunkhaze Meadows National Wildlife Refuge

* * * * *

North Dakota

* * * * *

Lake Zahl National Wildlife Refuge

Long Lake National Wildlife Refuge

* * * * *

5. Section 32.22 is amended by redesignating paragraphs (q) (6) through (7) as paragraphs (q) (7) through (8); adding a new paragraph (q)(6); redesignating paragraphs (dd) (4) through (6) as paragraphs (dd) (6) through (8) and adding new paragraphs (dd) (4) and paragraph (5) as follows:

§ 32.22 Refuge-specific regulations; upland game.

* * * * *

(q) *Louisiana* * * *

(6) *Lake Ophelia National Wildlife Refuge.* Hunting of squirrel, rabbit and raccoon is permitted on designated areas of the refuge subject to the following condition: Daily permits are required.

* * * * *

(dd) North Dakota * * *

(4) *Lake Zahl National Wildlife Refuge.* Hunting of ring-necked pheasant, sharp-tailed grouse and gray partridge is permitted on designated areas of the refuge subject to the following conditions:

(1) Only steel shot may be possessed and used.

(2) Hunters may enter the refuge on foot only.

(5) *Long Lake National Wildlife Refuge.* Hunting of ring-necked pheasant, sharp-tailed grouse and gray partridge is permitted on designated areas of the refuge subject to the following conditions:

(1) Only steel shot may be possessed and used.

6. Section 32.31 is amended by adding Lake Ophelia NWR, LA and Sunkhaze Meadows NWR, ME alphabetically by State as follows:

§ 32.31 List of open areas; big game.

* * * * *

Louisiana

* * * * *

Lake Ophelia National Wildlife Refuge
* * * * *

Maine
* * * * *

Sunkhaze Meadows National Wildlife Refuge
* * * * *

7. Section 32.32 is amended by redesignating paragraphs (r) (7) and (8) as paragraphs (r) (8) and (9); adding new paragraphs (r)(7) and (t)(3); redesignating paragraph (rr)(4) as (rr)(5); adding new paragraph (rr)(4) and removing paragraph (uu)(3) as follows:

§ 32.32 Refuge-specific regulations; big game.
* * * * *

(r) *Louisiana* * * *

(7) *Lake Ophelia National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions: Daily permits are required.
* * * * *

(t) *Maine* * * *

(3) *Sunkhaze Meadows National Wildlife Refuge.* Hunting of deer, moose, or bear is permitted on designated areas of the refuge subject to the following condition:

(1) Gun hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.
* * * * *

(rr) Virginia * * *

(4) *Mason Neck National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required.

(2) Only shotguns 20 gauge or larger loaded with buckshot, and bow and arrow, are permitted.

(3) Dogs are not permitted.

(4) Only portable tree stands may be used and must be removed at the end of each hunting day.

(5) Shotgun hunters must wear in a conspicuous manner on head, chest, and back, a minimum of 400 square inches of solid-colored hunter orange clothing or material.

PART 33—[AMENDED]

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

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i.

2. Section 33.4 is amended by adding Cameron Prairie NWR, LA, Tensas River NWR, LA, and Pungo NWR, NC, alphabetically by State as follows:

§ 33.4 List of open areas; sport fishing.
* * * * *

Louisiana
* * * * *

Cameron Prairie National Wildlife Refuge
* * * * *

Tensas River National Wildlife Refuge
* * * * *

North Carolina
* * * * *

Pungo National Wildlife Refuge
* * * * *

3. Section 33.22 is amended by redesignating paragraph (h) as paragraph (j); redesignating paragraphs (b) through (g) as paragraphs (c) through (h); and adding new paragraphs (b) and (i) to read as follows:

§ 33.22 Louisiana.
* * * * *

(b) *Cameron Prairie National Wildlife Refuge.* Sport fishing is permitted subject to the following conditions:

(1) Fishing and public access is permitted during daylight hours only from March 15 through October 15 in areas designated by refuge signs and/or brochures.

(2) Fishing and public access may be permitted year-round during daylight hours only in some areas if designated by refuge signs and/or brochures.

(3) Access to refuge fishing areas is restricted to roads and trails designated by refuge signs and/or brochures.

(4) Outboard motors larger han 25 horsepower are prohibited in refuge waters.

(5) Trotlines must be attached with a length of cotton line that extends into the water.

(6) Boats may not be left on the refuge overnight.
* * * * *

(i) *Tensas River National Wildlife Refuge.* Sport fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing and public access is permitted from sunrise to sunset in areas posted by refuge signs and/or designated in refuge brochures.

(2) Only nonmotorized boats and boats with electric motors are permitted in refuge lakes. Boats may not be left on the refuge overnight.

(3) The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

(4) Access to fishing areas is restricted to those roads and trails posted by refuge signs and/or designated by refuge brochures.
* * * * *

4. Section 33.37 is amended by adding a new paragraph (f) as follows:

§ 33.4 North Carolina.
* * * * *

(f) *Pungo National Wildlife Refuge.* Sport fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted from March 1 to November 1 only from sunrise to sunset.

(2) Only bank fishing is permitted.

Dated: August 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–20975 Filed 9–5–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 91050–0019]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of Prohibition of Retention of Groundfish.

SUMMARY: NOAA announces the prohibition of retention of "Other Rockfish" by vessels fishing in the Western Regulatory Area of the Gulf of Alaska from 12:00 noon, Alaska local time, August 31, 1990 through December 31, 1990. This action is necessary to prevent the total allowable catch (TAC) for "Other Rockfish" in the Western Regulatory Area from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving "Other Rockfish" stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), August 31, 1990, through midnight, A.l.t., December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR 611.92 and part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000–800,000 metric tons (mt) for all

groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Under § 672.20(c)(3), when the Regional Director determines that the TAC of any target species or "other species" category in a regulatory area or district has been reached, the Secretary of Commerce (Secretary) will publish a notice in the **Federal Register** declaring that the species or species group is to be treated in the same manner as a prohibited species under § 672.20(e) in all or part of that regulatory area or district.

The 1990 TAC specified for "Other Rockfish" in the Western Regulatory Area is 4,300 mt (55 FR 3223, January 31, 1990). The Regional Director reports that U.S. vessels have caught 3,115 mt of "Other Rockfish" through August 4, 1990, in the Western Regulatory Area. At current catch rates, the TAC will be taken on August 31, 1990.

Therefore, pursuant to §§ 672.20(c)(3) and (e), the Secretary is declaring that "Other Rockfish" must be treated in the same manner as prohibited species in the Western Regulatory Area of the Gulf of Alaska effective 12:00 noon, A.l.t., August 31, 1990, through midnight, December 31, 1990.

Classification

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

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

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

Dated: August 30, 1990.

David S. Crestin,

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

[FR Doc. 90-20909 Filed 8-31-90; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea Subarea

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

ACTION: Notice of apportionment; request for comments.

SUMMARY: NOAA announces the apportionment of amounts of the Alaska groundfish to Domestic Annual Processing (DAP) operations for pollock in the Bering Sea (BS) subarea. This action is necessary to promote optimum use of groundfish in the BS subarea. It is intended to carry out the management objectives contained in the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP).

DATES: *Effective* from noon, Alaska local time (A.l.t.), August 31, 1990.

Comments are invited on or before September 17, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: David R. Cormany, Resource Management Specialist, NMFS, (907) 586-7229.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands (BSAI) Management Area under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and is implemented by regulations codified at 50 CFR 611.93 and part 675. Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI management area. Total allowable catches (TACs) for target species and the "other species" category are specified annually within the OY range and apportioned under § 675.20(a)(2)(i). Under § 675.20(a)(3), 15 percent of the TAC for each target species and the "other species" category is placed in a reserve not designated by species or species group. Under § 675.20(b)(1)(i), the Secretary will apportion reserve amounts to a target species or to the "other species" category as needed, provided that the apportionments do not result in overfishing.

The initial 1990 TAC specified for pollock in the BS subarea was 1,088,000 mt, all of which was apportioned to DAP (55 FR 1434, January 16, 1990). At the same time, 22,451 mt from the reserve was apportioned to pollock for joint venture processing (JVP), bringing the combined pollock TAC in the BS subarea for domestic annual harvesting (DAH) to 1,110,451 mt (55 FR 1434, January 16, 1990). Later, an additional 300 mt from the reserve was apportioned to JVP pollock, bringing the combined DAH pollock TAC in the BS subarea to 1,100,751 mt (55 FR 26208, June 27, 1990).

Under § 675.20(b)(1)(i), the Secretary now finds that the DAP fishery in the BS subarea requires an additional 200,000 mt of pollock for the remainder of the year, and therefore, apportions 200,000 mt from the reserve to DAP pollock, resulting in a revised DAP pollock TAC of 1,288,000 mt in the BS subarea (Table 1). This apportionment is consistent with § 675.20(a)(2)(i) and does not result in overfishing of pollock because the revised TAC is less than the acceptable biological catch for pollock in the BS subarea.

Classification

This action is taken under § 675.20 (b)(1)(i) and (a)(2)(i), and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen participating in DAP pollock operations who would otherwise be prohibited from fishing unnecessarily due to a premature closure. However, interested persons are invited to submit comments in writing to the above address on or before September 17, 1990.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

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

Dated: August 31, 1990.

David S. Crestin,

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

TABLE 1.—BERING SEA/ALEUTIAN ISLANDS REAPPORTIONMENT OF TAC

[All values are in metric tons]

	Current	This action	Revised
Pollock (Bering Sea Subarea) ABC=1,450,000; TAC=1,088,000;			
DAP	1,088,000	+200,000	1,288,000
JVP	22,751	0	22,751
Total (TAC=2,000,000)			
DAP	1,499,710	+200,000	1,699,710
JVP	257,992	0	257,992
Reserves	242,298	−200,000	42,298

[FR Doc. 90-20963 Filed 8-31-90; 12:47 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 173
Thursday, September 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Docket No. FV-90-174PR]

Navel Oranges Grown in Arizona and Designated Part of California; Proposed Weekly Levels of Volume Regulation for the 1990-91 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the need for regulation of the quantity of fresh California-Arizona navel oranges that may be shipped to domestic markets, the weekly shipping schedule and the weekly percentage allocation between districts, and the dates for the onset and duration of volume regulation for the 1990-91 navel orange season. Consistent with program objectives, such action may be needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges during the 1990-91 season. This proposal is based on a marketing policy which was adopted by the Navel Orange Administrative Committee (Committee) on July 10, 1990. The Committee locally administers the marketing order covering navel oranges grown in Arizona and a designated part of California.

DATES: Comments must be received by October 9, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, room 2525-S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456. Such comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marueen T. Pello, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2524-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 382-1754.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and a designated part of California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the U.S. Department of Agriculture (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 requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action as small entities.

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

There are approximately 130 handlers of navel oranges who are subject to regulation under the marketing order and approximately 4,070 producers in the regulated area. 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 producers and handlers of California-Arizona navel oranges may be classified as small entities.

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

The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona navel oranges that each handler may handle on a weekly basis may contribute to the Act's objectives of orderly marketing and improving producers' returns.

The navel orange, like many citrus varieties, is unique in that mature oranges can be stored on the tree, to be marketed at a later time. Usually a high proportion of the crop is mature early in the season and could be marketed; but markets may be insufficient to absorb that quantity of fruit in a short period of time. The on-tree storage characteristic of the navel orange permits the effective use of the flow-to-market (volume regulation) provisions of the order. Thus, volume regulations can be a valuable tool in achieving the goal of market stabilization for navel oranges.

The major reason for the use of volume regulations under the navel orange marketing order is to establish and maintain orderly marketing conditions for navel oranges and thereby benefit producers through higher returns. Such regulation can at the same time benefit consumers by maintaining adequate supplies of navel oranges in the marketplace.

The navel orange marketing order also contains a variety of provisions designed to provide handlers with marketing flexibility within an established volume regulation week. When volume regulation is established by the Secretary for a given week, the Committee calculates the quantity of oranges (allotment) which may be handled by each handler. The provisions of the order allow handlers to ship navel oranges in excess of their allotments, within specified limits, in response to marketing opportunities. The order includes provisions for: (1) Marketing incentive allotments; (2) shipment of oranges in excess of a handler's allotment (overshipments); (3) shipment of oranges in quantities less than a handler's allotment (undershipments); and (4) allotment loans. Marketing incentive allotments provide handlers

additional allotment (up to 10 percent of each handler's weekly allotment for a specified number of weeks) for market development programs and allow handlers to take advantage of special marketing opportunities. Handlers who want to ship more than their allotment are permitted to overship that amount by one car (one car equals 1,000 cartons at 37.5 pounds net weight each) or by 20 percent of their allotment level, whichever is greater. A handler may overship in a given week, but the overshipment must be offset against the following week's allotment. Handlers may also ship less than their allotment during a given week which would give them the opportunity to ship more than their allotment during the next two succeeding weeks. Finally, handlers may borrow allotment from other handlers who choose to ship less than their allotment or who cannot fully utilize their allotment.

In addition, the order includes provisions that exempt the handling of certain navel oranges from volume regulation. Oranges which are used for the following purposes are exempt from volume regulation: (1) Charitable institutions or relief organizations for distribution by such agencies; (2) commercial processors for processing into products, including juice; (3) export markets; and (4) parcel post and express shipments. The Committee may also recommend for approval by the Secretary the exemption of minimum quantities of oranges from order provisions.

Pursuant to § 907.50 of the marketing order, the Committee is required to submit a marketing policy to the Secretary prior to recommending volume regulations for the ensuing season. The order authorizes volume and size regulations applicable to fresh shipments of California-Arizona navel oranges to markets in the continental United States and Canada. The marketing order does not authorize regulation of export shipments of navel oranges or navel oranges utilized in the production of processed orange products.

The Committee adopted its marketing policy for the 1990–91 season at its July 10, 1990, meeting in Los Angeles, California. The Committee plans to present its policy at district meetings for further discussion and review. Those meetings are tentatively scheduled as follows: (1) Districts 1 and 4 on September 25, 1990; (2) District 3 on October 2, 1990; and (3) District 2 on October 9, 1990.

The Committee estimates the 1990–91 navel orange crop to be 68,650 cars. This compares to last year's total production of nearly 89,000 cars. The National Agricultural Statistics Service's forecast of the 1990–91 California-Arizona navel orange crop will be available in October.

The Committee estimates District 1, Central California, 1990–91 production at 59,200 cars compared to 79,300 cars produced in 1989–90. In District 2, Southern California, the crop is expected to be 8,100 cars compared to 8,400 cars produced last year. In District 3, the Arizona-California Desert Valley, the Committee estimates a production of 850 cars compared to 650 cars produced last year. In District 4, Northern California, the crop is expected to be 500 cars compared to 600 cars produced last year. The Committee's production estimates are based on historical data and are expected to be modified as the season progresses.

The Committee reported that navel orange groves throughout the production area appear to be in good condition at this time. Following a heavy bloom, developing fruit apears to be good and plentiful with individual orange sizes ranging from ¼ to ⅔ of an inch in diameter. This narrow size spread is usual for this time of the year, as the inherent difference in metabolic rates of the individual oranges has not had time to assert itself. Differences in growth rates will have their greatest impact between July and October 1, and ultimately will determine the size distribution of the upcoming crop.

According to the Committee, crop and tree conditions in District 1 appear favorable at this time with the fruit appearing mostly normal for this stage of development. District 2's crop also appears to be in good condition; however, the fruit is more variable in shape than usual. District 3's production is reported to be lighter than average due to a mid-February freeze, but is improved over last season. Crop conditions in District 4 are reported as average. In addition, water shortage problems throughout the production area, particularly in Districts 1 and 4, could have a serious impact on this season's crop.

There may be times when small sizes as well as excessively large sizes will be shipped in fresh fruit channels at heavily discounted proces which could produce a negative return to producers. Such discontining could be disruptive to the orderly marketing of navel oranges. This condition could be alleviated through the use of size regulations authorized under the marketing order. The Committee has indicated that if size regulation would achieve program objectives, it would make such recommendations to the Secretary. There is no size regulation in effect during the current season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges while the export market continues to grow. According to the Committee, major export markets continue to be Hong Kong and Japan with nearly 176 percent of all navel orange exports shipped to these two markets in the past year. Navel oranges which are diverted to processing are generally those oranges which do not meet grade requirements or are too small to market economically as fresh fruit.

In terms of total crop utilization, the Committee estimates that approximately 45,000 cars of the 1990–91 crop (65 percent) will be utilized in fresh domestic markets compared with 54,000 cars (61 percent) in 1989–90; fresh exports are projected at 9,500 cars (14 percent) of the total 1990–91 crop compared to 10,000 cars (11 percent) in 1989–90; and 14,150 cars (21 percent) of the 1990–91 crop will be utilized in by-product channels and other forms of processing compared with 25,000 cars (28 percent) in 1989–90. The Committee's crop utilization estimates, like its production estimates, are also expected to be revised during the season.

The 1990–91 season average on-tree price for California-Arizona navel oranges is not expected to exceed the season's average fresh parity equivalent price. Domestic fresh utilization about equal to the Committee's mid-point estimate of 45,000 cars is expected to result in a season average fresh on-tree price of $5.29 per carton, about 82 percent of the estimated fresh on-tree parity equivalent price of $6.49 per carton. In contrast, the preliminary estimate of the 1989–90 season average fresh on-tree price is $3.70 per carton, or 58 percent of the preliminary on-tree parity equivalent price of $6.34 per carton.

It is our view, based on the Committee's deliberations and the marketing policy, that the Committee will recommend the implementation of volume regulation for the 1990–91 season. At this time, the Committee is uncertain as to when the beginning of harvest may occur and when volume recommendations may first be recommended to the Secretary. However, the Committee considers it essential to establish orderly marketing conditions through volume regulation early in the season whenever there is a large quantity of early maturing fruit

available for shipment. According to the Committee, recommendations for volume regulation will cease when it is clear that they are no longer necessary to achieve orderly marketing conditions. At this time, the Committee estimates that recommendations for volume regulation may continue through the month of April.

The shipping schedule as proposed would begin with the week ending on November 22, 1990. The Committee's current schedule lists shipments through the week ending on May 30, 1991. Therefore, this proposed rule would provide for volume regulation for the period from the week ending on November 22, 1990, through the week ending on May 30, 1991.

Based on the information available and for the purposes of this rulemaking process, the Committee recommended to the Secretary a proposed weekly schedule of the quantities of navel oranges that can be shipped, if volume regulation is recommended, approved and implemented for the 1990–91 season. The proposed shipping schedule is based on the initial crop estimate. Due to the anticipated normal distribution of orange sizes and crop conditions, the Committee estimates that fresh domestic shipments this season will be between 40,700 and 50,500 cars. The shipping schedule is therefore based on the mid-point total of 45,000 cars. This figure may be adjusted to reflect revised crop estimates throughout the season. The shipping schedule is proposed to be specified in a new section 907.1020 of the marketing order's rules and regulations.

In developing the proposed shipping schedule, the Committee considered equity of marketing opportunity and established an equity factor pursuant to section 907.51(b). The Committee compiles production estimates in cars for each district. These production estimates are based on the entire anticipated tree crop in each district. The Committee combines these production estimates to project the total production for all four districts. The Committee then projects the number of cars that could be marketed in fresh domestic channels. From the relationship between these two totals an equity factor is derived and then applied to each district's estimated production in order to determine the estimated amount of each district's production that could be moved into fresh domestic markets under regulation. Therefore, all districts, no matter how much handlers ship weekly to fresh domestic markets, should be provided the opportunity to ship, under volume regulation, the same proportionate amount to fresh domestic markets during the season. The equity factor for this season is 69 percent, or 47,250 cars, and is the same for all districts.

The shipping schedule also establishes the percentage allocation, pursuant to § 907.110(d) of the regulations, for each district for each week which is used to determine each district's proportionate share of volume regulations issued for a particular week. Each district's volume limitation for a particular week is then equitably apportioned among all handlers in each district. Thus, each handler's individual allotment is based on the entire quantity of navel oranges available for all uses, including export.

The Department invites comments on the need for volume regulation during the 1990–91 fiscal year, the proposed shipping schedule, the percentage allocation shown in the shipping schedule, and the beginning and ending dates of regulation. Commenters proposing alternative levels of shipments and beginning and ending dates for regulation, including no regulation, for the 1990–91 season should provide as much information as possible in support of their suggested alternatives. Interested persons are also invited to comment on the possible regulatory and informational impact of this marketing policy and volume regulations on small businesses.

The Department will analyze comments received in response to this proposed rule and, if warranted, issue a final rule which would include an analysis of the comments received. Throughout the season, the Committee meets on a weekly basis to consider current and prospective marketing conditions. If this rule is adopted and regulation is implemented during the 1990–91 season, the Committee would be expected to recommend amendments, when necessary, to the amounts allotted for each district for the upcoming week and to provide adequate justification for levels of regulation different from the established shipping schedule. If warranted, the Department would issue a rule amending the established schedule.

This proposed rule is based on information currently available. The issuance of this proposed rule does not preclude the possibility that crop and/or marketing conditions could change and that the Committee may recommend the implementation of volume regulations sooner or later than contemplated by the proposed rule. As more information becomes available, the Committee may find it necessary or desirable to revise the shipping schedule proposed herein. The Department would consider the Committee's recommendations and take whatever action is appropriate under the order to achieve the order's and the Act's purposes and objectives.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is proposed to be amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR part 907 continues to read as follows:

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

2. A new § 907.1020 is added to read as follows:

§ 907.1020 Navel orange regulation 720.

The shipping schedule below establishes the quantities of navel oranges grown in California and Arizona, by district, which may be handled during the specified weeks as follows:

Week ending	District 1	District 2	District 3	District 4	Total
	cartons/ % (000)	cartons/ % (000)	cartons/ % (000)	cartons/ % (000)	cartons (000)
(a) 11-22-90	1,080/94	10/1	50/4	10/1	1,150
(b) 11-29-90	1,315/94	15/1	55/4	15/1	1,400
(c) 12-06-90	1,690/94	35/2	55/3	20/1	1,800
(d) 12-13-90	1,750/92	75/4	55/3	20/1	1,900
(e) 12-20-90	1,500/89	85/5	70/4	35/2	1,700
(f) 12-27-90	765/85	70/8	35/4	30/3	900
(g) 01-03-91	1,060/85	110/9	40/3	40/3	1,250
(h) 01-10-91	1,450/88	150/9	15/1	35/2	1,650

Week ending	District 1	District 2	District 3	District 4	Total
	cartons/ % (000)	cartons/ % (000)	cartons/ % (000)	cartons/ % (000)	cartons (000)
(i) 01-17-91	1,480/87	170/10	15/1	35/2	1,700
(j) 01-24-91	1,460/86	190/11	15/1	35/2	1,700
(k) 01-31-91	1,375/81	275/16	15/1	35/2	1,700
(l) 02-07-91	1,395/82	275/16	15/1	15/1	1,700
(m) 02-14-91	1,410/83	270/16		15/1	1,700
(n) 02-21-91	1,410/83	270/16		15/1	1,700
(o) 02-28-91	1,410/83	270/16		15/1	1,700
(p) 03-07-91	1,495/83	290/16		20/1	1,800
(q) 03-14-91	1,510/84	290/16			1,800
(r) 03-21-91	1,510/84	290/16			1,800
(s) 03-28-91	1,510/84	290/16			1,800
(t) 04-04-91	1,510/84	290/16			1,800
(u) 04-11-91	1,510/84	290/16			1,800
(v) 04-18-91	1,430/84	270/16			1,700
(w) 04-25-91	1,260/84	240/16			1,500
(x) 05-02-91	1,175/84	225/16			1,400
(y) 05-09-91	1,010/84	190/16			1,200
(z) 05-16-91	745/83	155/17			900
(aa) 05-23-91	420/84	80/16			500
(bb) 05-30-91	165/83	35/17			200

Dated: August 30, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-20951 Filed 9-5-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AC83

Full-Time Attendance by Elementary or Secondary School Student

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We propose to amend our rule on full-time attendance by an elementary or secondary school student to provide that, in some situations, we may determine that scheduled attendance of fewer than 20 hours per week will be considered full-time attendance for purposes of entitlement to child's insurance benefits. We believe that this amendment will enable us to fulfill more equitably the intent of Congress in providing these benefits.

DATES: Your comments will be considered if we receive them no later than November 6, 1990.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8471.

SUPPLEMENTARY INFORMATION: With several exceptions, child's insurance benefits under the Social Security Act (the Act) usually terminate when the child attains age 18. One exception allows benefits for persons under age 19 who are full-time elementary or secondary school students.

Section 202(d)(7)(A) of the Act, 42 U.S.C. 402(d)(7)(A), provides that a full-time elementary or secondary school student is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Secretary of Health and Human Services, in accordance with regulations prescribed by him, in the light of the standards and practices of the schools involved.

Our regulations require that an elementary or secondary school student must be scheduled to attend school at least 20 hours per week to be considered a full-time student. Our experience has shown that this is generally a reasonable standard. However, we are aware that there are some unique situations in which students are enrolled for full-time attendance under the school's standards and practices but, because of special circumstances, the students are unable to schedule attendance of at least 20 hours per week.

For example, in the case of *Haberman* v. *Finch*, 418 F. 2d 664 (2d Cir. 1969), a claimant had been forced to discontinue her schooling at age 14 because of a serious illness. When she was able to resume school at age 17, she applied for admission to the public and private schools where she lived, and was told by school authorities that she was too old to enroll as a full-time high school day student. The only program available to her was an evening high school program at a fully accredited private school that enabled her to take 16½ hours of class per week. This scheduled attendance was considered to be the equivalent of full-time day instruction. The court held that where a child takes the maximum number of hours available in the only accredited school program available to the child and meets the other conditions for entitlement to child's benefits, there should be little question of the child's right to receive benefits under a limited exception to the 20-hour rule.

For the above reasons, we propose to amend 20 CFR 404.367(b) to provide for exceptions to the 20-hour rule where the student is considered to be full-time for day students under the school's standards and practices and either the school does not schedule at least 20 hours per week for the child and attending that school is the student's only reasonable alternative, or the student's illness prevents him or her from scheduled attendance of at least 20 hours per week. We believe that this modification to our rules is consistent with the intent of Congress that child's insurance benefits be paid to full-time elementary or secondary school

students under age 19 who have suffered a loss of parental support. Our experience has shown that 20 hours per week is a reasonable attendance standard for most students, but that there is a need to provide for exceptional situations, such as the one presented in *Haberman*, where students are prevented by reasons beyond their control from enrolling in a program that provides for attendance of at least 20 hours per week.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the small number of cases involved will result in negligible program and administrative costs. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities since these rules affect only the entitlement of individuals to monthly benefits. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This proposed rule imposes no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability Insurance.

Dated: June 6, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: July 9, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart D of part 404 of 20 CFR chapter III is proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

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

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 228(a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 428(a)–(e), and 1302.

2. Section 404.367 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 404.367 When you are a "full-time elementary or secondary school student".

Beginning August 1982, you may be eligible for child's benefits if you are a full-time elementary or secondary school student. For the purposes of determining whether the conditions of entitlement are met throughout the first month as stated in § 404.352(a)(2)(i), if you are entitled as a student on the basis of attendance at an elementary or secondary school, you will be considered to be in full-time attendance for a month during any part of which you are in full-time attendance. You are a full-time elementary or secondary school student if you meet all the following conditions:

* * * * *

(b) You are in full-time attendance in a day or evening noncorrespondence course of at least 13 weeks duration and are carrying a subject load which is considered full-time for day students under the institution's standards and practices. Additionally, your scheduled attendance must be at the rate of at least 20 hours per week unless we find that:

(1) The school attended does not schedule at least 20 hours per week and going to that particular school is your only reasonable alternative; or

(2) Your illness prevents you from having scheduled attendance of at least 20 hours per week. To prove that your illness prevents you from scheduling 20 hours per week, we may request that you provide appropriate medical evidence or a statement from the school.

* * * * *

[FR Doc. 90–20938 Filed 9–5–90; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–62–89]

RIN 1545–A011

Regulations Under Section 392 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to § 1.382–2T of the temporary Income Tax Regulations and § 1.382–3 of the proposed Income Tax Regulations under section 382 of the Internal Revenue Code of 1986. The amendments provide option attribution rules for purposes of determining stock ownership in order to determine whether certain transactions in title 11 or similar cases qualify under section 382(l)(5). The rules are necessary to limit relief under section 382(l)(5) to ownership changes in which pre-change shareholders and qualified creditors maintain a substantial continuing interest in the loss corporation following the title 11 or similar case.

DATES: Written comments and requests for a public hearing must be received by November 6, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention CC:CORP:T:R [CO–62–89], room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: David P. Madden of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention CC:CORP:T:R), or telephone (202) 566–3205 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to part 1 of title 26 of the Code of Federal Regulation (CFR) under section 382 of the Code. The proposed regulations relate to the operation of option attribution rules in determining when an ownership change occurs in a title 11 or similar case and whether the transaction qualifies under section 382(l)(5). Section 382 was amended by section 621 of the Tax Reform Act of 1986 (Pub. L. No. 99–514, 100 Stat. 2085 (1986) and subsequent acts. Temporary regulations regarding the determination of an ownership change were added to the CFR as § 382–2T by T.D. 8149, published in the **Federal Register** on August 5, 1987 (52 FR 29668). Proposed regulations were issued under section 382(l)(5) by a notice of proposed rulemaking published in the **Federal Register** on August 14, 1990 (55 FR 33137).

Explanation of Provisions

Overview of Relevant Provisions of the Code and Regulations

Under section 382(a) of the Code, as amended, if an ownership change occurs

with respect to a loss corporation (as defined in section 382(k)(1) and § 1.382–2T(f)(1) of the temporary Income Tax Regulations), the amount of the loss corporation's taxable income for a post-change year that may be offset by the pre-change net operating losses (and certain built-in losses) of the loss corporation cannot exceed the section 382 limitation. The section 382 limitation for a post-change year is generally equal to the fair market value of the loss corporation's stock immediately before the ownership change multiplied by the applicable long-term tax-exempt rate published in the Internal Revenue Bulletin.

In general, an ownership change involves an increase of more than 50 percentage points in stock ownership by 5-percent shareholders during the testing period (usually the three-year period ending on the date on which a transaction is tested for an ownership change).

Ownership of stock for these purposes is determined by applying option attribution rules set forth in section 382(l)(3)(A) of the Code and § 1.382–2T(h) of the temporary regulations. Section 382(l)(3)(A)(iv) provides that, except to the extent provided in regulations, an option to acquire stock is treated as exercised if the exercise results in an ownership change. Under § 1.382–2T(h)(4), subject to certain exceptions, the owner of an option (or similar interest) to acquire stock is treated as acquiring the underlying stock on a testing date if that treatment would result in an ownership change.

Section 382(l)(5) of the Code provides that the limitation imposed by section 382(a) does not apply after an ownership change of a loss corporation if (1) the corporation is under the jurisdiction of a court in a title 11 or similar case immediately before the ownership change, and (2) the corporation's pre-change shareholders and qualified creditors (determined immediately before the ownership change) own at least 50 percent of the value and voting power of the loss corporation's stock (or stock of a controlling corporation if also in bankruptcy) immediately after the ownership change and as a result of being pre-change shareholders or qualified creditors immediately before the ownership change. Section 382(l)(5) applies only to a transaction that is ordered by a court or is pursuant to a plan approved by a court. *See* H.R. Rep. 841, 99th Cong., 2d Sess. II–192 (1986), 1986–3 C.B. (Vol. 4) 192. Although the limitation imposed by section 382(a) does not apply, the loss corporation may be required to reduce a portion of its pre-change losses and credits following a transaction qualifying under section 382(l)(5).

The proposed regulations.

Section 382(l)(5) of the Code is intended to provide relief from the application of the section 382 limitation only for bankruptcy reorganizations in which pre-change shareholders and qualified creditors maintain a substantial continuing interest in the loss corporation. Because the continuity requirement contemplated by the statute may be easily circumvented through the issuance of options, the Internal Revenue Service has determined that the application of option attribution rules is necessary to limit relief under section 382(l)(5) to ownership changes in which prechange shareholders and qualified creditors do, in fact, maintain a substantial continuing interest. Without option attribution rules, a loss corporation could emerge from a bankruptcy reorganization with no limitation on its use of pre-change losses, even though more than 50 percent of the ownership interest in the loss corporation is effectively transferred to new investors as a result of a plan of bankruptcy reorganization.

The proposed regulations therefore provide option attribution rules that apply for purposes of determining whether the stock ownership requirements of section 382(l)(5) of the Code are satisfied. Under these rules, options (and similar interests) are generally deemed exercised if their exercise would cause the pre-change shareholders and qualified creditors to own less than the requisite amount of stock. The rules are proposed to be effective as of [Insert date that the Treasury Decision adopting this notice of proposed rulemaking is filed with the Federal Register and to be applicable to ownership changes occurring on or after September 5, 1990.

Options created pursuant to the plan of reorganization in a title 11 or similar case are subject to the option attribution rules of § 1.382-2T(h)(4)(i) of the temporary regulations upon confirmation of the plan by the court. The proposed regulation, however, adds new § 1.382–2T(h)(4)(x)(J) to provide that the option attribution rules of § 1.382–2T(h)(4)(i) do not apply to an option created by the confirmation of a plan of reorganization in a title 11 or similar case (including an option created under the plan), but only until the time that the plan of reorganization becomes effective. The amendment to § 1.382–2T is proposed to be effective as of [Insert date that the Treasury Decision adopting this notice of proposed rulemaking is filed with the Federal Register and to be applicable for any testing date occurring on or after September 5, 1990.

No inference should be drawn from the proposed regulations as to the application of option attribution rules for any other purpose or as to future regulations concerning section 1504(a)(5) of the Code.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is David P. Madden, Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Service and the Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects in 26 CFR 1.301–1 through 1.383–3

Corporate adjustments, Corporate distributions, Corporations, Income taxes, Reorganizations.

Proposed Amendments to the Regulations

The notice of proposed rulemaking (to amend 26 CFR part 1) that was published on August 14, 1990 (55 FR 33137) is amended and additional amendments to 26 CFR part 1 are proposed as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citations to read in part:

Authority: 26 U.S.C. 7805; * * * § 1.382–2T also issued under 26 U.S.C. 382(g)(4)(C), and 26 U.S.C. 382(m), and § 1.382–3 also issued under 26 U.S.C. 382(l)(3)(A) and 382(m).

Par. 2. A new § 1.382–2T(h)(4)(x)(J) is added to read as set forth below:

§ 1.382–2T Definition of ownership change under section 382 as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(h) * * *

(4) * * *

(x) *Options not subject to attribution.*

* * *

(J) *Title 11 or similar case.* Any option created by the confirmation of a plan of reorganization in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), but only until the time that the plan becomes effective. This paragraph (h)(4)(x)(J) applies to any testing date occurring on or after September 5, 1990.

Par. 3. Section 1.382–3, as proposed on August 14, 1990 (55 FR 33137), is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.382–3 Special rules under section 382 for a corporation in a title 11 or similar case.

* * * * *

(c) *Option attribution*—(1) *Determination of stock ownership for purposes of section 382(l)(5)(A)(ii).* Solely for purposes of determining whether the stock ownership requirements of section 382(l)(5)(A)(ii) and § 1.382–3(a)(2) are satisfied at the time of an ownership change, stock of the loss corporation (or of a controlling corporation if also in bankruptcy) that is subject to an option is treated as acquired at that time, pursuant to an exercise of the option by its owner, if such deemed exercise would cause the pre-change shareholders and qualified creditors of the loss corporation to own (after such ownership change and as a result of being pre-change shareholders or qualified creditors immediately before such change) less than an amount of such stock sufficient to satisfy the ownership requirements of section 382(l)(5)(A)(ii) and § 1.382–3(a)(2). An option that is owned as a result of being a pre-change shareholder or qualified creditor and that, if exercised, would result in the ownership of stock by a pre-change shareholder or qualified creditor will not be treated as exercised under this section. For purposes of this paragraph, rules similar to the rules of paragraphs (iii), (iv), (v), (vii), and (x)(A), (B) (except with respect to a debt instrument that was issued after the filing of the petition of the title 11 or similar case), (D), (E), (G), (H), (J), and (Z) of § 1.382–2T(h)(4) (relating to certain rules regarding option attribution rules for purposes of determining whether an ownership change occurs) apply. Rules similar to the rules of § 1.382–2T(h)(4)(viii) also apply with respect to an option except to the extent any person owning the option at any time on or after the change date acquires additional stock or an option to acquire additional stock during the period of time on or after the ownership change and on or before the lapse or forfeiture of the option.

(2) Examples.

Example 1. L is a loss corporation in a title 11 case. The plan of reorganization of L approved by the bankruptcy court provides for the cancellation of all existing L stock, the issuance of 100 shares of new L common stock to qualified creditors, and the issuance of an option to a new investor to acquire, at any time during the next 3 years, 90 shares of new L common stock from L at its fair market value on the date the plan is effective. Under paragraph (c)(1) of this section, upon the effective date of the plan, the option held by the new investor is deemed exercised if the exercise would cause the qualified creditors of L to own less than 50 percent of the total voting power or value of the L stock after the ownership change. Because the qualified creditors would receive at least 50 percent of the voting power and value of the new L common stock even if the option were deemed exercised, the stock ownership requirements of section 382(l)(5)(A)(ii) are satisfied.

Example 2. The facts are the same as in Example (1), except that L issues an option to the new investor to acquire 110 shares of new L common stock. This option is deemed exercised under paragraph (c)(1) of this section upon the effective date of the plan, because, as a result of the deemed exercise, the qualified creditors would receive only 100 of 210 shares of the new L common stock (approximately 48 percent) after the ownership change. Accordingly, the stock ownership requirements of section 382(l)(5)(A)(ii) are not satisifed and section 382(a) applies to the ownership change.

(3) *Effective date.* This paragraph (c) applies to ownership changes occurring on or after September 5, 1990.

(d) *Coordination with the definitions and nomenclature used in section 382*—(1) *In general.* Terms and nomenclature used in this section, and not otherwise defined herein, have the same respective meaning as in section 382 and the regulations thereunder.

(2) *Pre-change shareholders.* [reserved]

(3) *Qualified creditors.* [reserved]

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90–20984 Filed 9–5–90; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 52 and 602

[PS–73–89]

RIN 1545–AO08

Excise Tax on Chemicals That Deplete the Ozone Layer and on Products Containing Such Chemicals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations relating to the tax on chemicals that deplete the ozone layer and on products containing such chemicals. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be received before November 6, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 4429, Attention: CC:CORP:T:R (PS–73–89), Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:CORP:T:R (PS–73–89), Internal Revenue Service, room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The requirements for collection of information contained in this notice of proposed rulemaking have been submitted to the Office of Management

and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments concerning the accuracy of the burden estimates and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The requirements for collection of information in this proposed regulation are in §§ 52.4682–1T(b)(2)(iii), 52.4682–2T(b), 52.4682–2T(d), 52.4682–3T(c)(2), 52.4682–3T(g), and 52.4682–4T(f). This information required by the Internal Revenue Service to verify compliance with sections 4681 and 4682 of the Internal Revenue Code. This information will be used as evidence that qualifying sales have taken place, to determine whether modifications to the list of imported taxable products are necessary, and to determine the amount of floor stocks tax for which a person is liable. The likely respondents and/or recordkeepers are businesses and other organizations.

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 and recordkeepers may require more or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 75,022 hours.

Estimated average annual burden per recordkeeper: 0.5 hour.

Estimated number of recordkeepers: 150,216.

Estimated total annual reporting burden: 120 hours.

Estimated average burden per respondent: 0.4 hour.

Estimated number of respondents: 300.

Estimated frequency of responses: On occasion.

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Environmental Tax Regulation (26 CFR part 52) by adding rules under sections 4681 and 4682 of the Internal Revenue Code. The temporary regulations contain rules concerning the tax on chemicals that deplete the ozone layer and on products containing such chemicals.

This document proposes to adopt the temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. For the text of the temporary regulations, see T.D. published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the proposed and temporary rules.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is scheduled, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90–20977 Filed 8–31–90; 3:16 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed amendments to the Alabama regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments relate to revegetation, siltation structures, roads, exploration, performance bonds and other topics. Also included are extensive changes relative to Alabama's regulations covering the extraction of coal incidental to the extraction of other minerals. These amendments are primarily in response to changes in the Federal regulations (30 CFR, chapter VII) between June 8, 1988 and August 30, 1989 (Regulation Reform Review III).

This notice sets forth the times and locations that the Alabama program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearings, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 9, 1990. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on October 1, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 21, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert A. Penn, Director, Birmingham Field Office, at the address listed below. Copies of the Alabama program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSM's Birmingham Field Office.

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 280 West Valley Avenue, Room 302, Birmingham, Alabama 35209, Telephone: (205) 731–0890.
Alabama Surface Mining Commission, First Federal Bank Building, 2nd Floor, 1811 Second Avenue, Jasper, Alabama 35501, Telephone: (205) 221–4130.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert A. Penn, Director, Birmingham Field Office, (205) 731–0890.

SUPPLEMENTARY INFORMATION:

I. Background

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Information regarding general background on the Alabama program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982 **Federal Register** (47 FR 22030). Subsequent actions taken with regard to Alabama's program and program amendments can be found in 30 CFR 901.10, 901.15 and 901.30.

II. Discussion of Amendments

Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Alabama on February 7, 1990 (two separate letters of the same date) that a number of the Alabama regulations are less effective than or inconsistent with the revised Federal requirements. One of the letters was relative to Alabama regulations regarding the extraction of coal incidental to the extraction of other minerals. The other letter was relative to all other Alabama regulations which were less effective than the Federal requiremtns as revised between June 8, 1988 and August 30, 1989.

By letter dated July 16, 1990 (Adminsitrative Record No. AL–462), Alabama submitted to OSM a State program amendment package consisting of approximately 34 revisions to the Alabama program and an entirely new chapter on the extraction of coal incidental to the extraction of other minerals (8809–X–2E). These revisions address changes in the Alabama program required by both of the above mentioned letters of February 7, 1990.

The Alabama Surface Mining Commission proposes the following rule making actions:

Ruyle No. and Title: [Intended Action]

880–X–2A–.06 Definition [Amend]
880–X–2A–.07(3) Jurisdiction [Amend]
880–X–2E Incidental Extraction [New Rule]
880–X–8B–.03 Unpermitted Reclamation [Amend]
880–X–8C–.01 Exploration [Amend]
880–X–8C–.04 Exploration [Amend]
880–X–8C–.04(1)(c) Mapping [Amend]
880–X–8C–.05 Exploration [Amend]
880–X–8C–.09 Permitting [Amend]
880–X–8F–.17(1) Permit and Certification [Amend]
880–X–8F–.17(2) Certifications [Amend]
880–X—8F.19 Support Facilities [Amend]
880–X–8I–.17(1) Permit and Certification [Amend]
880–X–8I–.17(2) Certification [Amend]
880–X–8I–.19 Support Facilities [Amend]
880–X–9A–.04(2) Increments, Size and Configuration [Amend]
880–X–9B–.04(2)(b) Revegetation [Amend]
880–X–9B–.04(2)(c) Revegetation [Amend]
880–X–9C–.03 Self Bonding [Amend]
880–X–9C–.04(2) Liability Insurance [Amend]
880–X–9D–.02(4) Interest in Bonds/Access [Amend]
880–X–9E–.05(1)(b) Bond Money [Amend]
880–X–9E–.05(3) Excess Costs Collection [Amend]
880–X–10C–.20 Impoundments [Amend]
880–X–10C–.67(2) Environmental Standards [Amend]
880–X–10C–.67(3) Design and Construction [Amend]
880–X–10C–.67(5) Road Maintenance [Amend]
880–X–10C–.67(6) Road Reclamation [Amend]
880–X–10C–.68 Primary Roads [Amend]
880–X–10D–.20 Impoundments [Amend]
880–X–10D–.65(2) Environmental Standards [Amend]
880–X–10D–.65(3) Design and Construction [Amend]
880–X–10D–.65(5) Road Maintenance [Amend]
880–X–10D–.65(6) Road Reclamation [Amend]
880–X–10D–.66 Primary Roads [Amend]

III. Public Comment Procedure

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Alabama satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Records.

Public Hearing

Persons wishing to comment at the public hearing should contact the perion listed under **"FOR FURTHER INFORMATION CONTRACT"** by 4 p.m. September 21, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT"**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES"**. A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 23, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–20935 Filed 9–5–90; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on Revised Program Amendment No. 43 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has proposed further revisions to one rule which are intended to make that rule as effective as the

corresponding Federal regulations concerning sediment pond and impoundment spillways.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 9, 1990. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on October 1, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 21, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, Federal Register (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated November 17, 1989 (Administrative Record No. OH–1240), the Director of OSM notified Ohio of a number of Federal regulations promulgated between June 9, 1988 and July 30, 1989 for which OSM had determined that the corresponding Ohio rules were now less effective than the new Federal counterparts. In response to the OSM notification, Ohio submitted proposed Program Amendment No. 43 by letter dated January 16, 1990 (Administrative Record No. OH–1265). This amendment proposed revisions to seven sections of the Ohio Administrative Code (OAC), including OAC section 1501:13–9–04.

OSM announced receipt of proposed Program Amendment No. 43 in the February 2, 1990 Federal Register (55 FR 3604), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on March 5, 1990. The public hearing scheduled for February 27, 1990 was not held because no one requested an opportunity to testify.

By letter dated August 17, 1990 (Ohio Administrative Record No. OH–OH–1354), Ohio proposed two further revisions to OAC section 1501:13–9–04. These revisions are intended to make the proposed rule as effective as the corresponding Federal regulations concerning sediment pond and impoundment spillways.

Ohio is further revising OAC section 1501:13–9–04 paragraphs (G)(3)(b)(iii) (a) and (b) and (H)(1)(h)(iii) (a) and (b) to specify that sedimentation ponds and impoundments may use a single spillway if the spillway:

(1) Is an open channel of nonerodible construction and designed to carry sustained flows, or

(2) Is earth- or grass-lined and is designed to carry infrequent flows at nonerosive velocities where sustained flows are not expected.

Ohio is deleting previously proposed language which would have allowed use of grass-lined emergency spillways where a combination of principal and emergency spillways is used.

The remaining revisions previously proposed by Ohio to the six other rules in Program Amendment No. 43 are unchanged.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. on September 21, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT"**. All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **"ADDRESSES"**. A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 24, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–20936 Filed 9–5–90; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Mandatory Aggregation of Currency Transactions for Certain Financial Institutions and Mandatory Magnetic Media Reporting of Currency Transaction Reports

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury is issuing this Notice of Proposed Rulemaking to solicit comments on two related proposed regulations. The first proposed regulation would require: (1) That banks with deposits of over $100 million be required to maintain systems to aggregate currency transactions that, at a minimum, are conducted by or on behalf of accountholders at the bank and that affect an account during a business day; and, (2) that currency dealers and exchangers (including check cashers) and transmitters of funds, regardless of asset size, also be required to maintain systems and procedures to aggregate currency transactions that are conducted by or on behalf of customers at the financial institution during a business day. The second proposed regulation would require financial institutions that file more than 1,000 Currency Transaction Reports a year to file by use of magnetic media.

DATES: Comments are due on December 5, 1990.

ADDRESSES: Comments should be sent to Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566–8022.

FOR FURTHER INFORMATION CONTACT: Julie Stanton, Supervisory Bank Secrecy Act Specialist, Office of Financial Enforcement, (202) 566–8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Public Law No. 91–508 (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951, *et seq.*, and 31 U.S.C. 5311–5326), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax or regulatory matters. Pursuant to 31 U.S.C. 5313 and the regulations thereunder, financial institutions are required to file reports on IRS Form 4789, the Currency Transaction Report ("CTR"), that occur on transactions in currency in excess of $10,000 "by, through or to such financial institution." 31 CFR 103.22(a). In addition, § 103.22(a)(1) provides that multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are "by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any one business day." Financial institutions at the present time are not required to purchase new software or hardware in order to aggregate currency transactions. If they do not have an automated or manual system for aggregating transactions, they must rely upon the personal knowledge of their employees, officers, directors or partners to determine if reportable multiple transactions have taken place.

Mandatory Aggregation

As noted above, financial institutions currently are not required to purchase new computer software or hardware in order to aggregate currency transactions. However, if they have computer systems which aggregate transactions, they must use those systems to comply with the Bank Secrecy Act. Thus, while many financial institutions have sophisticated computer systems or less sophisticated manual systems to enable them to track and aggregate currency transactions during the business day, others have opted instead to rely on the personal knowledge of the employees, officers, directors or partners of the institution in aggregating transactions.

While it is true that the number of CTR's filed rises each year, many transactions continue to go unreported by financial institutions because automated or manual systems and programs are not being used to track and aggregate multiple currency transactions. At some smaller financial institutions within limited cash activity, it is possible for the employees, officers, directors or partners to notice when multiple transactions are being conducted by or on behalf of the same person. That is not generally true with the larger multi-branch financial institutions which have large numbers of customers coming into the financial institution every day.

In addition, as many banks have become increasingly more expert in detecting possible structuring activity directed against them, many people seeking to evade the CTR reporting requirements have turned to non-bank financial institutions, particularly transmitters of funds and currency dealers and exchangers (including check cashers), to structure currency transactions.

These institutions generally do not have the Bank Secrecy Act training and compliance programs which are found at banks, generally are not subject to regular Federal or State regulatory oversight and examination, and may not have employees, officers, partners or directors who are as knowledgeable about possible money laundering schemes as employees, officers, partners or directors at banks.

Therefore, Treasury is proposing that certain financial institutions be required to put into place systems and procedures to capture multiple transactions conducted by or on behalf of the same person that exceed $10,000 during any one business day. Banks, as defined in 31 CFR 103.11(b), with deposit assets over $100 million would be required to put into place systems and procedures to track and capture, at a minimum, multiple currency transactions that exceed $10,000 by or on behalf of the same accountholder that affect an account during any one business day (*i.e.*, deposits and withdrawals). In addition, all currency dealers and exchangers (including check cashers) and transmitters of funds, regardless of asset size, also would be required to put into place aggregation systems and procedures that track and capture currency transactions by or on behalf of any one person during one business day. These systems and procedures may be manual or computerized.

Treasury arrived at the $100 million figure for banks by reviewing the present top filers of CTR's and these filers' asset sizes. It also considered the fact that many $100 million banks have multiple branches. After review of the comments, the $100 million figure may be adjusted, either up or down.

Treasury feels that a multi-branch bank that does not have an aggregation system in place should be required to take sufficient steps to detect multiple transactions and to prevent possible structuring activity. Banks must take measures to know their customer's cash transaction activity and protect themselves from being used by individuals who are able to structure their transactions at one institution by merely going from branch to branch. Banks which do not have systems linking their branches are unable to determine if multiple transactions totaling more than $10,000 have

occurred by or on behalf of the same person on the same business day. Commenters should note that, with respect to banks only, this provision does not require the aggregation of transactions occurring at a bank by or on behalf of non-accountholders, or by or on behalf of accountholders that do not affect an account (*e.g.*, cash sale of a traveler's check). However, Treasury would encourage all banks to aggregate such transactions if they have systems that can do so.

In addition, non-bank financial institutions such as transmitters of funds and currency dealers and exchangers which are especially susceptible to possible abuse by money launderers need to be particularly sensitive to that possibility and take extra precautions to prevent it. Thus, it is in their own interest for these financial institutions to have a system for determining whether multiple currency transactions exceeding $10,000 have taken place by or on behalf of a person at their institutions. Commenters should note that this particular part of the proposal applies only to limited categories, not all, of the non-bank financial institutions subject to the Bank Secrecy Act regulations. For example, the proposal is not applicable to securities brokers and dealers, the Postal Service and casinos.

Finally, Treasury encourages all financial institutions to have aggregation systems and, to the extent possible, to have systems to track all currency transactions by or on behalf of all persons, whether or not they affect one account or multiple accounts.

Mandatory Magnetic Media Filing

On March 30, 1987, the Department of the Treasury issued a Notice stating that it was conducting a voluntary pilot program for financial institutions which preferred to file required CTR's on magnetic media. 52 FR 10183. Prior to that time, only paper reporting was permitted by the Secretary. After evaluating the pilot program, Treasury made the voluntary magnetic media filing program permanent. (52 FR 49567, December 31, 1987).

CTR's are required to be filed at the time and in the manner prescribed by the Secretary. 31 U.S.C. 5313, 31 CFR 103.27. Since 1970, the number of CTR's being filed by financial institutions has steadily increased, with approximately 6 million CTR's filed in 1989. However, at the present time, less than one percent (1%) of all CTR's are filed magnetically.

All information required on a CTR form must be reported regardless of whether a financial institution files CTR's on paper or by magnetic media. In addition, the magnetic tape must be accompanied by a transmittal document containing the signature of an official of the financial institution attesting to the completeness and accuracy of the information transmitted. Both paper CTR's and CTR's filed by magnetic media are sent to the Internal Revenue Service ("IRS") Detroit Computing Center.

Treasury has studied this issue and believes that mandatory magnetic media filing would be of benefit to both Treasury and the financial institutions. The advantages to Treasury include the receipt of more complete and accurate information as well as more timely access to, and thus quicker analysis of, CTR information.

Rapid analysis of CTR information is especially important in money laundering, drug and other investigations. In addition, IRS has found that there is a 90 percent reduction in original filing errors on magnetically filed CTR's. Moreover, IRS estimates that the average time before a magnetic document is available for use by investigative personnel is reduced from an average of about 45 days for a paper CTR to approximately 18 days for a magnetically filed CTR.

The benefits to the financial community include: (1) Immediate acknowledgment of receipt of the tape by Detroit, thus helping the financial institution to account for filings; (2) reduced costs for preparation, correction and storage of documents once a financial institution's program is in operation; and (3) an ability to ensure better compliance with the Bank Secrecy Act regulations, thereby preventing misuse of the financial institutions by narcotics traffickers, money launderers and other criminals.

Therefore, Treasury is proposing that financial institutions filing over 1,000 CTR's a year be required to file by magnetic media. After consideration of the comments, the 1,000 number may be lowered or increased. Magnetic media could be accomplished by filing by magnetic tape or diskettes. It is estimated that the 1,000 CTR's a year threshold for mandatory filing would affect approximately 740 financial institutions, less than 2.65 percent of the approximately 30,000 financial institutions filing CTR's per year, yet would represent approximately 57 percent of the annual volume of reports received by Treasury. Of course, if mandatory aggregation systems are required for all currency dealers and exchangers (including check cashers) and transmitters of funds, and for banks with more than $100 million in deposits, the number of filers reaching the 1,000 CTR's treshhold probably will increase.

Treasury envisions that financial institutions filing more than 1,000 CTR's a year for 1990 would be required to begin filing magnetically by July 1, 1991. Those financial institutions that reach the 1,000 CTR's in a year subsequent to 1990 would have six months from the beginning of the following year to begin filing magnetically. For example, a financial institution filing 950 CTR's in 1990 and 1,150 CTR's in 1991, would be required to begin filing magnetically by July 1, 1992. Once a financial institution is filing magnetically, it will continue to do so, even if the financial institution's filings fall below 1,000 in a subsequent year.

In addition, those filers with fewer than 1,000 CTR annual filings could, and are encouraged to, file magnetically, but would not be required to do so. Filers who would like more information about the magnetic media filing program should address inquiries to: Chief, Currency and Banking Reports Division, Internal Revenue Service Computing Center, 1300 John Lodge Drive, Detroit, MI 48226, Attention: Roger Hatcher, CTR Magnetic Filing Coordinator.

Comments

Treasury welcomes comments on all aspects of the proposal, but in particular wishes to receive information and comments on the following issues:

Aggregation Issues

(1) For those financial institutions not currently possessing aggregation systems, a comparison of the present number of CTR's the financial institution files per year against the projected number of CTR's that would be filed if an aggregation system, whether manual or computerized, were put into place;

(2) The costs of putting in aggregation systems, whether manual or computerized, for those banks with over $100 million in deposits; and

(3) The costs of putting in aggregation systems, whether manual of computerized, for money transmitters and currency dealers.

Magnetic Media

The costs of mandatory magnetic media filing for those financial institutions not filing magnetically at the present time.

In providing comments, it would be helpful if the financial institution commenting would indicate whether it currently aggregates and to what extent it uses the exemption provisions in 31 CFR 103.22. Estimation of costs should be as specific as possible and should include, not only the dollar amount for filing magnetically, but the costs

involved in training, purchasing system enhancements and other related costs associated with mandatory aggregation systems and/or mandatory magnetic media filing that the financial institution does not presently incur. Treasury also welcomes any alternative that commenters may wish to propose.

Submission of Comments

Treasury requests comments from all interested persons concerning the proposed amendments. All comments received before the closing date will be carefully considered. Oral comments must be reduced to writing and submitted to Treasury to receive consideration. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at the number listed above.

Executive Order 12291

This proposed rule, if adopted as a final rule, is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collections of information contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information and the burden estimate should be directed to the Office of Financial Enforcement at the address noted above or to the Office of Management and Budget, Paperwork Reduction Project (1505–0063), Washington, DC 20503.

The collections of information in this regulation are authorized by 31 U.S.C. 5313. This information is required by Treasury, and will be used, to accurately determine the number and amount of large currency transactions taking place by, through or to financial institutions. The likely respondents are financial institutions within the definition in 31 CFR 103.11(h).

Mandatory Aggregation

It is estimated that the mandatory aggregation proposal would increase the present recordkeeping and reporting burden for CTR's by 17%.

Estimated number of financial institutions that would be required to put an aggregation system into place under this proposal that do not otherwise have one in place now: 15,000 (1,000 banks and 14,000 nonbank financial institutions).

Estimated number of additional CTR's that would be filed as a result of this proposal: 1,000,000.

Magnetic Media

For those filers who would be required to file CTR's by magnetic media as opposed to paper, the estimated reporting burden per form would be 12 minutes. In contrast, the total reporting burden per form for filing by paper is 24 minutes.

It is also estimated that the average annual recordkeeping burden per respondent who would be required to file by magnetic media under this proposal as opposed to paper would decrease by 50%.

Estimated number of respondents that would be affected by this proposal: 740. The total number of filers of CTR's, by both paper and magnetic media, is approximately 30,000.

The estimated annual number of reports filed is 6.5 million. That number does not necessarily change merely because the filer is filling by magnetic media as opposed to paper.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendment

For the reasons set forth below in the preamble, it is proposed to amend 31 CFR part 103 as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 would continue to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951–1959); and the Currency and Foreign Transactions Reporting Act; Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5326).

2. It is proposed to amend § 103.22 by adding a new paragraph (a)(5) to read as follows:

§ 103.22 Reports of currency transactions.

(a) * * *

(5) Each bank with depository assets over $100 million shall have in place systems and procedures that, at a minimum, capture multiple currency transactions that are by or on behalf of the same person and result in cash-in to or cash-out from an account totaling more than $10,000 on the same business day. In addition, each transmitter of funds, and each currency dealer and exchanger (including a check casher) shall have in place systems and procedures that capture multiple currency transactions that result in cash-in or cash-out totaling more than $10,000 on the same business day by or on behalf of the same person.

* * * * *

3. It is proposed to amend § 103.27 by adding a new paragraph (a)(5) to read as follows:

§ 103.27 Filing of reports.

(a) * * *

(5) Financial institutions that file more than 1,000 reports required by § 103.22 in 1990 shall begin filing such reports by magnetic media by July 1, 1991. Financial institutions that file more than 1,000 reports required by § 103.22 in a subsequent calendar year shall, within

six months of the close of that calendar year, begin to file such reports for all subsequent calendar years by magnetic media as specified by the Secretary.

* * * * *

Dated: August 23, 1990.

John P. Simpson,

Acting Assistant Secretary, (Enforcement).

[FR Doc. 20933 Filed 9–5–90; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–90–80]

Drawbridge Operation Regulations: Waccamaw River, SC

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Waccamaw Coast Line Railroad Company (WCLRC), the Coast Guard is considering adding regulations governing the railroad swingbridge across the Waccamaw River, mile 44.4, Horry County, South Carolina by requiring that advance notice of opening be given Monday through Friday between 8 a.m. and 6 p.m.. This proposal is being made because no requests have been made to open the draw during this period since February, 1990. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before October 22, 1990.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Ave., Miami, FL 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickel Plaza Federal Building, Room 406, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Gary D. Pruitt (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended change to, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelop.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

DRAFTING INFORMATION: The drafters of this notice are Mr. Gary D. Pruitt, project officer, and LCDR D. G. Dickman, project attorney.

DISCUSSION OF PROPOSED REGULATIONS: The bridge is presently required to open on signal. The railroad bridge has been owned and operated by Horry County since 1984. During this period the county only closed the bridge to waterway traffic when a train was actually crossing the Waccamaw River. They were carrying about 1,200 cars per year and had only two crossing per day. WCLRC bought the railroad company in February, 1990. The WCLRC has advised that they now carry about 9,000 cars per year and have six to ten movements across the waterway per day. They received no requests for bridge openings between 8 a.m. and 6 p.m. on weekdays during the first eight weeks of operation. They now request that special regulations be established to allow one hour advance notice during this period.

FEDERALISM: This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

ECONOMIC ASSESSMENT AND CERTIFICATION: The proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Departemnt of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the proposed rule will not alter the type of frequency of vessel traffic on this reach of the Waccamaw River. Since the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entites.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 USC 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.938 is added to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.938 Waccamaw River.

The draw of the Waccamaw Coast Line Railroad bridge, mile 44.4 at Conway, shall open on signal; except that from 8 a.m. to 6 p.m. Monday through Friday, the draw shall open on signal if at least one hour notice is given.

Dated: August 16, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90–20449 Filed 9–5–90; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 167

[CGD 90–039]

RIN 2115–AD43

Traffic Separation Scheme in the Approaches to Chesapeake Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the traffic separation scheme (TSS) in the Approaches to Chesapeake Bay by realigning and reconfiguring the Southern Approach to incorporate a deep water route. The Coast Guard suspended the Southern Approach lanes on October 15, 1988, because the water depth was too shallow to accommodate the deeper draft vessels which can now call on the port after completion of a U.S. Army Corps of Engineers (COE) channel deepening project in Hampton Roads. A system of safewater buoys was established to direct vessels to naturally occurring deeper water in the vicinity until an amended TSS is implemented.

DATES: Comments must be received on or before November 6, 1990.

ADDRESSES: Comments should be submitted to Executive Secretary, Marine Safety Council (G–LRA–2/3406),

U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593–0001. Comments may be delivered to and will be available for inspection and copying in room 3406 between the hours of 8 a.m. and 3:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Project Manager, Short Range Aids to Navigation Division, Officer of Navigation Safety and Waterway Services at (202) 267–0415.

SUPPLEMENTARY INFORMATION:

Request for Comments

The public is invited to participate in this rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD 90–039, and give the reasons for the comment. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if requested in writing and it is determined to be beneficial to this rulemaking.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are: John R. Walters, Project Officer, Fifth Coast Guard District, Portsmouth, VA; Margie G. Hegy, Project Manager, Coast Guard Headquarters, Washington, DC, and Christena G. Green, Project Attorney, Office of Chief Counsel, Washington, DC.

Background

The Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223 authorizes the Secretary of the Department in which the Coast Guard is operating to establish TSSs and shipping safety fairways, where necessary, to provide safe access routes for vessels proceeding to or from United States ports.

A TSS is an internationally recognized routing measure that minimizes the risk of collision by separating vessels into opposing streams of traffic through the establishment of traffic lanes. To be internationally recognized, as TSS must be approved by the International Maritime Organization (IMO). IMO approves TSSs only fi the proposed routing system complies with IMO principles and guidelines on ships routing. Vessel use of a TSS is voluntary; however, vessels operating in or near an IMO approved TSS are subject to Rule 10 of the International Regulations for Preventing Collisons at Sea, 1972 (72 COLREGS).

The TSS in th Approaches to Chesapeake Bay was established on December 1, 1969, and was adopted by IMO on October 12, 1971. It consists of three parts: Part I, Precautionary Area; Part II, Eastern Approach; and Part III, Southern Approach.

Regulatory History

The 1978 amendments to the PWSA required the Coast Guard to undertake a port access route study to determine the need for TSSs or shipping safety fairways to increase vessel traffic safety in offshore areas subject to the jurisdiction of the United States. The Coast Guard initiated this study by publishing a Notice of Study on April 16, 1979 (44 FR 22543).

The Notice of Study Results for the TSS in the Approaches to Chesapeake Bay was published on July 22, 1982 (47 FR 31766). The study concluded that the existing TSS was adequae for the foreseeable future.

The Water Resources Development Act of 1986, Public Law 99–662, authorized the deepening of the Thimble Shoals, Newport News, Craney Island Reach, Norfolk Harbor Reach, and the Entrance Reach Channels in the port of Hampton Roads to a depth of 55′ below mean low water (MLW) and construction of a new channel, to be known as the Atlantic Ocean Channel. The Atlantic Ocean Channel will connect deep water at the entrance to Chesapeake Bay with deep water in the Atlantic Ocean.

Completion of the dredging of all channels except the Atlantic Ocean Channel to 50′ (MLW) allows vessels with drafts exceeding the water depths in the Southern Approach lanes to call on the ports of Hamption Roads. The COE conducted hydrographic surveys in 1985 and 1986 and found that the water depth in the Southern Approach lanes was only 48′; however, water depths of 50′ were found in the immediate vicinity. To ensure safe navigation for vessels with drafts exceeding the water depth in the Southern Approach lanes, the Coast Guard suspended the Southern Approach lanes (Notice to Mariners No. 31, 30 July 1988). A system of safewater buoys was established, as an interim measure, to direct vessels to naturally occurring deeper waters in the immediate vicinity.

The Coast Guard opened a Port Access Route Study on July 12, 1988 (53 FR 26282). The study, conducted by the Fifth Coast Guard District in Portsmouth, VA, evaluated the need for vessel routing measures in the approaches to Chesapeake Bay. The study area encompassed the approaches to Chesapeake Bay, including the TSS.

The study results were published on July 13, 1989, at 54 FR 29627. The study, concluding that there is a continuing need for the TSS, recommended that the Southern Approach be realigned and reconfigured to incorporate a deep water route with specific rules for vessels operating therein.

A deep water route is an internationally recognized routing measure primarily intended for use by ships, which because of their draft in relation to the available depth of water in the area concerned, require the use of such a route. In the Southern Approach, water depths outside of the planned deep water route are insufficient for use by vessels drawing more than 45′ of water. It is also a general requirement of IMO that traffic that does not require use of the deep water route should avoid using the route.

Discussion of Proposal

The Coast Guard proposes to reconfigure the Southern Approach which is crucial to continued navigation safety and protection of the marine environment.

The proposed Southern Approach would consist of an inbound and outbound lane for vessels drawing up to 45′ of water, separated by a 1300′ wide deep water route for inbound and outbound vessels drawing over 45′ of water and vessels carrying cargoes of oil or hazardous materials.

The inbound and outbound lanes for vessels drawing up to 45′ of water, would each measure 0.75 nautical miles in width. The width was determined by multiplying the published standard error of LORAN-C (0.25 NM) by three. Because of Virginia's low-lying coast and the lack of prominent landmarks, LORAN C is the most reliable aid to navigation for use in these inbound and outbound lanes.

The deep water route for vessels drawing over 45′ of water would measure 1300′ in width, and have a charted natural depth of 50′. A separation line in the center would separate inbound and outbound traffic into 650′ wide traffic lanes. As currently planned, the COE will construct the Atlantic Ocean Channel in this location. The 1300′ wide channel will be constructed in two phases. Phase I will dredge a 650′ wide 60+′ deep outbound lane; and Phase II will dredge a 650′ wide, 60+′ deep inbound lane. The dredging project is scheduled to be complete in 1992.

Recommended Practices Under Consideration

Because of the lack of a highly accurate position fixing method in the approach to Chesapeake Bay, and the Coast Guard's desire to improve the margin of safety, the Coast Guard is considering recommending several practices to IMO that vessels should follow when operating in the deep water route. Your comments are particularly solicited on these items.

It is recommended that vessels drawing more than 45' of water; vessels carrying cargoes of petroleum and petroleum distillate or certain dangerous cargoes; and naval aircraft carriers use the deep water route. Certain dangerous cargoes are defined in the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 and in 33 CFR 160.203.

Vessels using the deep water route should announce their intentions on VHF–FM Channel 16 as they approach Chesapeake Bay Southern Approach Lighted Whistle Buoy CB on the south end, or Chesapeake Bay Junction Lighted Buoy CBJ on the north end of the route. It would also be recommended that vessels avoid, as far as practicable, overtaking other vessels operating in the deep water route, and keep as near to the outer limit of the route which lies on the vessel's starboard side as is safe and practicable.

Regulatory Evaluation

These regulatory changes are considered to be non-major under Executive Order 12292 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that further evaluation is unnecessary. The Coast Guard certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposal contains no collection of information requirements.

Environmental Impact

The Coast Guard has determined that this action will not have a significant impact on the environment and that an environmental impact statement is not necessary. A draft Finding of No Significant Impact (FONSI) is on file in the docket. The decision on whether or not to prepare a final FONSI will be based on the comments received from this NPRM.

Federalism

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 167

Navigation (water), Vessels, Traffic separation schemes.

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR part 167 as set forth below.

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

1. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. Part 167 is amended by adding new §§ 167.200 through 167.203 to read as follows:

§ 167.200 Chesapeake Bay approach traffic separation scheme.

The traffic separation scheme in the approaches to Chesapeake Bay consists of three parts as described in the sections that follow.

§ 167.201 Precautionary area.

Bounded by a circle with a two mile radius, centered on the following geographic position:

Latitude	*Longitude*
36°56.13′ N	75°57.45′ W

§ 167.202 Eastern approach.

(a) A separation line is established bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
36°58.67′ N	75°48.65′ W
36°56.80′ N	75°55.10′ W

(b) An inbound traffic lane is established between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
36°59.15′ N	75°48.90′ W
36°57.25′ N	75°55.36′ W

(c) An outbound traffic lane is established between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
36°56.30′ N	75°54.95′ W
36°58.19′ N	75°48.50′ W

§ 167.203 Southern approach.

(a) A separation line connects the following geographical positions:

Latitude	*Longitude*
36°55.05′ N	75°55.34′ W
36°52.27′ N	75°52.20′ W
36°49.61′ N	75°46.87′ W

(b) An inbound traffic lane is established between the following geographical positions:

Latitude	*Longitude*
36°50.33′ N	75°46.29′ W
36°52.90′ N	75°51.52′ W
36°55.96′ N	75°54.97′ W
36°55.11′ N	75°55.23′ W
36°52.35′ N	75°52.12′ W
36°49.70′ N	75°45.80′ W

(c) An outbound traffic lane is established between the following geographical positions:

Latitude	*Longitude*
36°49.52′ N	75°46.94′ W
36°52.18′ N	75°52.29′ W
36°54.97′ N	75°55.43′ W
36°54.44′ N	75°56.09′ W
36°51.59′ N	75°52.92′ W
36°48.87′ N	75°47.42′ W

(d) A deep water route is established between the following geographical positions:

Latitude	*Longitude*
36°55.11′ N	75°55.23′ W
36°52.35′ N	75°52.12′ W
36°49.70′ N	75°46.80′ W
36°49.52′ N	75°46.94′ W
36°52.18′ N	75°52.29′ W
36°54.97′ N	75°55.43′ W

(e) Recommended practices for vessels using the deep water route.

(1) It is recommended that the following vessels use the deep water route when bound for Chesapeake Bay from sea or to sea from Chesapeake Bay:

(i) Deep draft vessels (drafts defined as greater than 13.5 meters/45′ in fresh water);

(ii) Vessels carrying petroleum and petroleum distillate cargoes in bulk;

(iii) Vessels carrying "certain dangerous cargo" as defined and listed in 33 CFR 160.203 and in the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978; and

(iv) Naval aircraft carriers.

(2) It is recommended that a vessel using the Deep Water Route:

(i) Announce its intention on VHF–FM Channel 16 as it approaches

Chesapeake Bay Southern Approach Lighted Whistle Buoy CB on the south end, or Chesapeake Bay Junction Lighted Buoy CBJ on the north end of the route.

(ii) Avoid, as far as practicable, overtaking other vessels operating in the Deep Water Route.

(iii) Keep as near to the outer limit of the route which lies on the vessel's starboard side as is safe and practicable.

Dated: August 13, 1990.

R.A. Appelbaum,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90-20904 Filed 9-5-90; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1094-AA39

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Hearings and Appeals is proposing to amend certain regulations in 43 CFR part 4, subpart D—Rules Applicable in Indian Affairs Hearings and Appeals, which concern probate of estates of Indians who die owning property in Indian trust or restricted status, as follows:

1. To permit the administrative law judge to approve a compromise settlement of an estate where all of the devisees and potential heirs of the decedent agree to a disposition of the decedent's estate, even though the disposition under such agreement differs from that established by the decedent in a will or from that which would obtain under the appropriate law of intestate succession if the decedent did not have a will.

2. To require a petitioner who requests reopening of an estate which has been closed for more than 3 years to show he or she has exercised due diligence in pursuing the claim.

3. To allow the administrative law judge discretion to allow immediate payment of claims against the estate and to order partial distribution to a probable heir or devisee under hardship conditions.

DATES: Comments should be received on or before October 9, 1990.

ADDRESSES: Written comments should be mailed or delivered to Chief Administrative Law Judge Parlen L. McKenna, Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Parlen L. McKenna, Chief Administrative Law Judge, Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: 703-235-3800 (not toll free).

SUPPLEMENTARY INFORMATION: Presently § 4.207 permits the administrative law judge to accept a compromise settlement on an estate only when the parties disagree. The proposed amendment would permit a "friendly family agreement," *i.e.*, the parties could work out a mutually beneficial and acceptable disposition of the property without being required to undergo a sham dispute. Although in will cases such agreements would probably conflict with the testator's intent at least to some extent, such alterations are already permitted in disputed cases. It is expected that in determining whether the first two criteria of § 4.207(a) are met, namely, that all parties to the compromise are fully advised as to all material facts and that all parties to the compromise are fully cognizant of the effect of the compromise upon their rights, the administrative law judge would ensure that no family member was being coerced into the agreement.

The additional provision in paragraph (h) of § 4.242 would place in the regulation case law which has been developed over the past 18 years that requires a person to exercise due diligence in pursuing a claim through a request for reopening when the estate has been closed for more than 3 years.

The new paragraph (c) in § 4.274, pertaining to immediate payment of claims against the estate, would allow better conservation of the estate especially in those cases in which a claim or claims involve accumulating interest.

The new paragraph (d) in § 4.274, would allow the administrative law judge to provide funds for the maintenance of the family during the pendency of probate in those cases where the ultimate distribution is unlikely to be disputed. Because of the possibility that a probable heir or devisee would not ultimately receive any portion of the decedent's estate, the administrative law judge should be free to exercise his or her discretion in deciding either to grant or deny a request for partial distribution, being cognizant of the probable impossibility of recovering monies once distributed.

Paperwork Reduction Act

The proposed amendments do not contain information collection requirements which require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule under Executive Order No. 12291 (Feb. 17, 1981), and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* These determinations are based on the fact that the proposed amendments only set forth details of agency practice and procedure. Any economic effect of the proposed amendment relating to distribution of estates would be primarily on the family and creditors in the locality and would allow for earlier payments from the estates.

National Environmental Policy Act

This proposed rulemaking is categorically excluded from the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4347, process because it is of an administrative, financial, legal, technical, and procedural nature, and therefore neither an environmental assessment nor an environmental impact statement is required. 40 CFR 1508.4; 516 DM 2.3A.

Takings Implication Assessment

The proposed rules do not pose any takings implications requiring preparation of a Takings Implication Assessment under Executive Order 12630 of March 18, 1988.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians.

Accordingly, 43 CFR part 4, subpart D, is proposed to be amended as set forth below.

Dated: July 20, 1990.

James L. Byrnes,

Acting Director.

PART 4—[AMENDED]

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

1. The authority citation for 43 CFR part 4, subpart D, continues to read as follows:

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301, 25 U.S.C. secs. 2, 9. 372, 373, 374, 373a, 373b.

2. In § 4.207, the introductory text of paragraph (a) is proposed to be revised to read as follows:

§ 4.207 Compromise settlement.

(a) If during the course of the probate of an estate it shall develop either that an issue between contending parties is of such nature as to be substantial, and it further appears that such issue may be settled by agreement preferably in writing by the parties in interest to their advantage and to the advantage of the United States, or that all of the devisees and potential heirs of the decedent agree to a disposition of the decedent's estate, even though the disposition under such agreement differs from that established by the decedent in a will or from that which would obtain under the appropriate law of intestate succession if the decedent did not have a will, such an agreement may be approved by the administrative law judge upon findings that:

* * * * *

3. In § 4.242, the first setence of paragraph (h) is proposed to be revised to read as follows:

§ 4.242 Reopening.

* * * * *

(h) If a petition for reopening is filed more than 3 years after the entry of a final decision in a probate, it shall be allowed only upon a showing that a manifest injustice will occur; that a reasonable possibility exists for correction of the error; that the petitioner had no actual notice of the original proceedings; that petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices were posted; and that the petitioner has exercised due diligence in pursuing the claim. * * *

4. Section 4.274 is proposed to be amended by adding new paragraphs (c) and (d) to read as follows:

§ 4.274 Distribution of estates.

* * * * *

(c) When the assets of the estate are sufficient to cover approved claims, the administrative law judge may in his or her discretion order the immediate payment of those claims.

(d) Where need is shown and in his or her sole discretion, an administrative law judge may order partial distribution of money from the estate to a probable heir or devisee. Partial distribution will be from the portion of the estate to which the probable heir or devisee would be entitled under the decedent's will or the laws of intestate succession, whichever is appropriate. Preference under this section will be given to family members who were actually being supported by the decedent.

[FR Doc. 90-20189 Filed 9-5-90; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 153

[CGD 90-100]

RIN 2115-AC35

Bulk Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its table summarizing the minimum requirements for the carriage of liquid, liquefied gas, or compressed gas hazardous materials in bulk by tankship. These amendments would assign additional carriage requirements, a higher Pollution Category, or both to certain commodities already listed in the table. These amendments are necessary to align the minimum requirements in the table with those approved by the International Maritime Organization for inclusion in its Chemical Codes. These amendments should result in a further reduction in maritime pollution from tankships.

DATES: Comments must be received on or before October 9, 1990.

ADDRESSES: Comments may be mailed to Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 90-100), U.S. Coast Guard, Washington, DC 20593-0001. Comments received may be inspected or copied at the Office of the Marine Safety Council, Room 3406, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267-1577.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each letter should include the name and address of the person submitting the comments, reference the docket number (CGD 90-100) and the specific section of the proposal to which each comment applies, and give the reasons for each comment. If acknowledgment of receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposal may be changed in view of the comments received. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background and Purpose

On September 29, 1989, the Coast Guard published an interim rule (54 FR 40005) updating its chemical tables in 46 CFR parts 30, 150, 151, and 153. On April 24, 1990, this interim rule was published as a final rule (55 FR 17275), which became effective on May 24, 1990. The preamble to the interim rule (54 FR 40006) stated:

> This interim final rule reflects the International Maritime Organization's (IMO's) final and provisional determinations, with the exception of upgrades to entries currently in the IMO Chemical Codes ("upgrades" include increased carriage requirements or revised, higher Pollution Categories, or both) and the category of commodities called "Lube Oil Additive" (LOA). The upgrades and LOA's will be incorporated into the Coast Guard's regulations by future rulemaking projects.

The present rulemaking addresses the "upgrades". The LOA's will be addressed in a separate rulemaking.

This proposal would amend Table 1 of 46 CFR Part 153, which summarizes the minimum requirements for the carriage of liquid and gas hazardous materials in bulk by tankship. The proposed changes all consist of "upgrades" to commodities already listed in Table 1. An "upgrade" means that a commodity is assigned additional carriage requirements, a higher Pollution Category (Pol. Cat.), or both. Under this rulemaking, certain commodities would become subject to one or more of the following existing special carriage requirements:

(a) *46 CFR 153.409—High level alarms.* Most commodities referenced in this proposal would become subject to this requirement. High level alarms on

tankships reduce the likelihood of a tank accidentally overflowing.

(b) *46 CFR 153.440—Cargo temperature sensors.* Four commodities would be subject to this requirement. Sensors are needed to determine the cargo's temperature in order that the viscosity and melting point information under 46 CFR 153.908 may be applied. See paragraph (e) of this section.

(c) *46 CFR 153.488—Design and equipment for tanks carrying high melting point NLSs: Category B.* This requirement would apply only to the commodity "Creosote (coal tar)." Though this requirement requires carriage in tankships with a double bottom, there are no U.S. tankships known to carry this commodity.

(d) *46 CFR 153.903—Operating a United States ship in special areas: Category A, B, and C.* Seven commodities would be affected by this section, which specifies special requirements for certain geographic areas, such as the Baltic Sea, Black Sea, and Mediterranean Sea. Presently, however, there are no U.S. tankships known to operate in these waters.

(e) *46 CFR 153.908—Cargo viscosity and melting point information; measuring cargo temperatures during discharge: Category A, B, and C.* Seven commodities would be affected by this section, which requires that the person in charge of a tankship be furnished with viscosity and melting point information on the commodity to be carried. Commodities subject to this requirement require heating to reduce their viscosity for efficient offloading. This in turn means less cargo remaining in a tank to be discharged overboard during tank cleaning or collected as slops to be disposed of at a port collection facility.

These proposals will bring the carriage requirements for these commodities in line with the requirements for other cargoes with the same Pol. Cat. All of these proposals have been approved by IMO for incorporation in their Chemical codes. IMO's incorporation is scheduled for October 16, 1990. These proposals, if promulgated, also would be made effective on that date.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary.

This rulemaking would amend a chemical table by adding requirements consistent with international law to further control pollution hazards. Two special requirements imposed by this proposal, 46 CFR 153.488 and 153.903, would have no known effect on U.S. tankships. The requirement that cargo viscosity and melting point information be furnished the person in charge would impose minimal burden in that this information should be readily available.

As for the high level alarm and cargo temperature sensor requirements, the Coast Guard is uncertain as to their impact on the U.S. tankship industry. Therefore, the Coast Guard is specifically requesting comments and data on the impact of these requirements.

Regulatory Flexibility Act

Because the impact of this proposal is expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this proposal will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rulemaking contains no information collection or record-keeping requirements.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the evnironmental impact of the proposed regulations and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, the proposed regulations are categorically excluded from further environmental documentation. This rulemaking would add more stringent requirements for the carriage of certain chemicals to further control pollution hazards. A Categorical Exclusion Determination statement has been prepared and is included in the regulatory docket.

List of Subjects in 46 CFR Part 153

Barges, Hazardous materials transportation, Marine safety, Tank vessels.

For the reasons set out in the preamble, 46 CFR part 153 is proposed to be amended as follows:

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

1. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703, 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

Table 1 [Amended]

2. Table 1 is amended as follows:

(a) For the entry "Alkylbenzenesulfonic acid (*greater than 4%*)", in the "Special requirements" column, add ".903".

(b) For the entry "(iso-, n-) Butyl acrylate", in the "pollution category" column, remove the letter "D" and add, in its place, the letter "B" and, in the "Special requirements" column, add ".409".

(c) For the entry "2- or 3-Chloropropionic acid", in the "Special requirements" column, add ".903" and remove ".908(b)" and add, in its place, ".908(a),(b)".

(d) For the entry "Creosote (coal tar)", in the "pollution category" column, remove the letter "C" and add, in its place, the letter "A" and, in the "Cargo containment system" column, remove the Roman numeral "III" and add, in its place, the Roman numeral "II".

(e) For the entry "Diisopropanolamine", in the "Special requirements" column, add ".903".

(f) For the entry "Ethyl acrylate", in the "pollution category" column, remove the letter "B" and add in its place, the letter "A" and, in the "Special requirements" column, add ".409".

(g) For the entry "2-Ethylhexyl acrylate", in the "pollution category" column, remove the letter "D" and add, in its place, the letter "B" and, in the "Special requirements" column, add ".409".

(h) For the entry "Formaldehyde solution (37% to 50%)", in the "Special requirements" column, add ".440" and ".908(b)".

(i) For the entry "Methyl acrylate", in the "pollution category" column, remove the letter "C" and add, in its place, the letter "B" and, in the "Special requirements" column, add ".409".

(j) For the entry "Neodecanoic acid", in the "Special requirements" column, remove the word "None" and add, in its place, ".903".

(k) For the entry "Oleum", in the "Special requirements" column, add ".903".

(l) For the entry "Phthalic anhydride (molten)", in the "Special requirements" column, add ".903" and remove ".908(b)" and add, in its place, ".908(a), (b)".

(m) For the entry "Rosin oil", in the "Special requirements" column, remove the word "None" and add, in its place, ".409, .440, .488, .908(a), (b)".

(n) For the entry "Tall oil (*crude and distilled*)", in the "Special requirements" column, remove the word "None" and add, in its place, "409, .440, .488, .908(a), (b)".

(o) For the entry "Tall oil, fatty acid (*resin acids less than 20%*)", in the "Special requirements" column, remove the word "None" and add, in its place, ".440, .903, .908(a), (b)".

(p) For the entry "Toluenediamine", in the "Special requirements" column, remove ".908(b)" and add, in its place, ".908(a), (b)".

(q) For the entry "Vinyl neodecanate", in the "pollution category" column, remove the letter "C" and add, in its place, the letter "B" and in the "Special requirements" column, add ".409".

(r) For the following entries, in the "Special requirements" column, remove the word "None" and add, in its place, ".409".

Calcium naphthenate in Mineral oil
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution
2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution
Diphenyl ether
Diphenyl ether, Biphenyl phenyl ether mixtures
Dodecene (all isomers)
Glycidyl ester of Tridecyl acetic acid
N-Methyl-2-pyrrolidone
Methyl salicylate
Rosin soap (disproportionated) solution
Tributyl phosphate
1,1,1-Trichloroethane
1-Undecene

(s) For the following entries, in the "Special requirements" column, add ".409":

(n-, crude) Butyraldehyde)
Chloroform
o-Chlorotoluene
m-Chlorotoluene
Coal tar naphtha solvent
Crotonaldehyde
Decyl alcohol (all isomers)
1,1-Dichloroethane
2,2'-Dichloroethyl ether
2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution
1,1-, 1,2-, or 1,3-Dichloropropane
Diglycidyl ether of Bisphenol A
Diisobutyl phthalate
Dodecanol
Dodecyl diphenyl ether disulfonate solution
2-Ethylhexylamine
2-Ether-3-propylacrolein
Fumaric adduct or rosin, water dispersion
2-Methyl-5-ethylpyridine
Pyridine
Sodium hydrosulfide solution (45% or less)
Sodium-2-mercaptobenzothiazol solution
Styrene *monomer*
Tall oil soap (disproportionated) solution
1,1,2,2-Tetrachloroethane
1,1,2-Trichloroethane
Trichloroethylene
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4- isomers)
Vinylidene chloride
Xylenol

Dated: July 25, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–20903 Filed 9–5–90; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 90–132; DA 90–1112]

Communications Common Carriers; Competition in the Interstate Interexchange Marketplace

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; extension of time for filing reply comments.

SUMMARY: In an Order released August 22, 1990, the Common Carrier Bureau (the Bureau) of the Federal Communications Commission extended by fourteen days, until September 18, 1990, the deadline for filing reply comments in Competition in the Interstate Interexchange Marketplace, CC Docket No. 90–132, 55 FR 18007 (April 30, 1990). The Bureau's order granted an August 20, 1990, motion filed by the United States Department of Justice (DOJ) requesting the extension. DOJ stated that additional time was necessary because of the importance and complexity of the issues presented, the volume of comments that were filed, and the conflicting demands placed on its limited resources.

DATES: Reply comments must be filed on or before September 18, 1990.

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

FOR FURTHER INFORMATION CONTACT: Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

Order

Adopted: August 21, 1990.

Released: August 22, 1990.

By the Deputy Chief, Common Carrier Bureau:

1. On August 20, 1990 the United States Department of Justice (DOJ) filed a motion seeking a fourteen-day further extension of the deadline for filing reply comments in this proceeding.[1] DOJ states that it needs additional time because of the importance and complexity of the issues presented, the volume of comments that were filed, and the conflicting demands placed on DOJ's limited resources by ongoing proceedings before the United States District Court for the District of Columbia concerning removal of the information services restriction imposed on the Bell Operating Companies by the Modification of Final Judgment.[2]

2. Although it is the policy of the Commission that extensions of time shall not be routinely granted,[3] we believe, in light of the importance of the issues presented in this proceeding, that the public interest would be served by allowing DOJ the additional time it requests for filing reply comments. Therefore, we grant DOJ's motion and extend the date for filing reply comments by an additional fourteen days, until September 18, 1990.

3. Accordingly, It is ordered, pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291, that the motion of DOJ for further extension of time is GRANTED. The deadline for filing reply comments is extended to September 18, 1990.

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Chief, Operations, Common Carrier Bureau.

[FR Doc. 90–20920 Filed 9–5–90; 8:45 am]

BILLING CODE 6712–01–M

[1] This proceeding was initiated by a Notice of Proposed Rulemaking, released April 13, 1990. *See* Competition in the Interstate Interexchange Marketplace, 5 FCC Rcd 2627 (1990). On July 13, 1990, we granted a DOJ motion seeking a thirty day extension of the deadline for reply comments. *See* Competition in the Interstate Interexchange Marketplace, CC Docket No. 90–132, DA 90–956, released July 16, 1990. We had previously extended the period for filing comments from June 12, 1990 to June 27, 1990, and then from June 27 to July 3, 1990. *See* Competition in the Interstate Interexchange Marketplace, 5 FCC Rcd 3451 (1990) (extending comment deadline to June 27, 1990), and competition in the Interstate Interexchange Marketplace, 5 FCC Rcd 3530 (1990) (extending comment deadline to July 3, 1990).

[2] *See United States* v. *AT&T*, 552 F. Supp. 131 (D.D.C. 1982).

[3] *See* 47 CFR 1.46(a).

Notices

Federal Register
Vol. 55, No. 173
Thursday, September 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Commission on Wildfire Disasters

AGENCY: Office of the Secretary, USDA.

ACTION: Notice; request for nominations.

SUMMARY: The Secretary of Agriculture solicits nominations of persons to serve as members of the National Commission on Wildfire Disasters. Authorized by the Wildfire Disaster Recovery Act of 1989, the Commission will be composed of 25 members, 13 appointed by the Secretary of Agriculture and 12 by the Secretary of the Interior. The role of the Commission, selection criteria and how to make nominations are described in the "SUPPLEMENTARY INFORMATION" of this notice.

DATES: Nominations must be received in writing by October 9, 1990.

ADDRESSES: Send written nominations to Chief (5100), Forest Service, USDA, Auditors Building, F&AM, 2nd Floor, SW., Wing, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Dennis W. Pendleton, Fire and Aviation Management Staff, Forest Service (202) 453–9511.

SUPPLEMENTARY INFORMATION:

Commission Purpose

The National Commission on Wildfire Disasters is established by the "Wildfire Disaster Recovery Act of 1989" (16 U.S.C. 551 note.) to study the effects of disastrous wildfires on natural resources and on the financial and cultural aspects of the affected communities and to make recommendations on such policies as are needed to assist in an effective and efficient recovery of those resources and communities.

The Commission must make a final report of findings and recommendations of the Secretaries of Agriculture and the Interior no later than December 1, 1991. As required by the Act, these findings and recommendations shall address the effects of disastrous fires on:

(1) The current and future economy of affected communities;
(2) The availability of sufficient timber supplies to meet future industry needs;
(3) Fish and wildlife habitats;
(4) Recreation in the affected areas;
(5) Watershed and water quality protection plans in effect within National Forest System lands;
(6) Ecosystems in the areas;
(7) Management plans of the affected National Forest System lands;
(8) National Parks;
(9) Bureau of Land Management Public Lands;
(10) Wilderness; and
(11) Biodiversity of the affected areas.

Commission Membership

The Commission is to be composed of 25 people, 13 members to be appointed by the Secretary of Agriculture and 12 to be appointed by the Secretary of the Interior.

The Act requires the Secretary of Agriculture to appoint at least one member from each of the following categories:

The timber industry,
Non-industrial private forest landowners,
State or local officials,
Employees of the Department of Agriculture,
Scientists from the academic community,
Wildlife biologists,
Members of private nonprofit forestry organizations,
Members of environmental organizations, and
Local community leaders.

In making appointments, the Secretaries will seek to achieve diversity in membership. To ensure that the recommendations of the Commission have taken into account the needs of the diverse groups served by the Departments, membership shall include minorities, women, and persons with disabilaities. No more than three members will be named to the Commission from any one State. Each Secretary shall appoint at least five members from areas that have experienced disastrous firest since 1986 in the following States: California, Oregon, Idaho, Wyoming, Montana, Colorado, Florida, North Carolina, and Arizona.

All nominees should have demonstrated ability to analyze and interpret data and information, evaluate programs, identify problems, and formulate and recommend corrective actions.

The Commission will meet at least twice in the next year. Additional meetings may be called by the Commission Chairperson, to be elected by the Commission members.

The "Wildfire Disaster Recovery Act of 1989" specifies that the work of this Commission is to be funded through contributions. Commission members will serve without compensation; however, they may be reimbursed for travel expenses from contributions received.

How to Submit Nominations

Nominations must be received by October 9, 1990. The Secretary has designated the Forest Service as the USDA agency to receive and transmit the nominations to the Secretary. Persons wishing to make nominations should include a brief summary of the nominee's suitabilaity to serve on the Commission, including relevant experience, current employer or organizational affiliation on Form AD–755. Forms are available upon request by contacting Dennis W. Pendleton at (202) 453–9511. Send nominations to the address listed earlier in this notice.

Dated: August 29, 1990.

James R. Moseley,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 90–20943 Filed 9–5–90; 8:45 am]
BILLING CODE 3410–11–M

Review of Need for United States Sugar Import Controls

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice announces the determination of the Secretary of Agriculture that continued operation of paragraphs (b), (c), (d), and (e) of Additional U.S. Note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), with respect to quotas applicable to the importation of sugar into the United States, is necessary to provide due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties

to the General Agreement on Tariffs and Trade (GATT).

FOR FURTHER INFORMATION CONTACT: Cleveland H. Marsh, Foreign Agricultural Service, Department of Agriculture, Washington DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: In accordance with paragraph (f) of Additional U.S. Note 3 to chapter 17 of the HTS, the Secretary of Agriculture has consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies as to whether the continued operation of paragraphs (b), (c), (d), and (e) of Additional U.S. Note 3 to chapter 17 of the HTS would give due considertion to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the GATT. An analysis of various elements pertinent to the operation of Additional U.S. Note 3 to chapter 17 of the HTS is set forth below.

A. Current World and U.S. Sugar Market Situation

World sugar consumption for 1989/90 is expected to exceed production for the fifth straight year. As a result, world ending stocks have been gradually declining, leading to a recovery in world sugar prices. World production in 1989/90 is estimated at 106.3 million metric tons, raw value, while consumption is estimated at 108.1 million metric tons, raw value, and ending stocks are projected to decline by about 1.1 million metric tons, raw value. However, in comparison to 1984/85, ending stocks for 1989/90 are expected to decline by 9.3 million metric tons.

Since the middle of June, 1990, the world sugar prices (f.o.b.s., Caribbean, No. 11 spot contract as published by the New York Coffee, Sugar & Cocoa Exchange) has settled into the 12 to 13 cents-per-pound range. Prices are not as strong as earlier in 1990 because of recent indications that 1990/91 world sugar production could be better than earlier forecast and demand could be weaker. It is difficult to predict the direction of prices in the coming year; futures contracts for 1990 and 1991 are currently trading in the 10.5 to 11.5 cents-per-pound range and have recently been moving up and down within that range.

U.S. Centrifugal sugar production 1989/90 is estimated at about 6.0 million metric tons, raw value (6.6 million short tons, raw value), and domestic utilization is expected to be about 7.6 million metric tons, raw value (8.4 million short tons, raw value). During the period January 1, 1989, through August 5, 1990, 2,307,407 metric tons, raw value of sugar were charged against the quotas for the 40 countries which have quota allocations totaling 2,833,050 metric tons, raw value. The domestic price of raw cane sugar (c.i.f., duty and fee paid, No. 14 nearby futures contract, as quoted by the New York Coffee, Sugar & Cocoa Exchange) has exceeded 23 cents per pound, raw value, every day since March 2, 1990.

B. Outlook for World and U.S. Sugar Market

It is difficult to accurately predict future trends in world centrifugal sugar production and consumption. However, both consumption and production during 1990/91 are expected to be above their levels for 1989/90, and to be somewhat more in balance than in 1988/89. These trends provide no precise indication as to the direction of prices and their impact on expected production and consumption trends.

As already indicated, current world futures prices for contracts due to mature in 1990 and 1991 have settled into the 10.5 to 11.5 cents-per-pound range. Current domestic futures prices for contracts also due to mature in 1990 and 1991 have stabilized in the 22.7 to 23.5 cents-per-pound range, about 12 cents per pound above world futures contracts for this period.

Accordingly, it has been determined world prices will remain at such levels that, without the continued operation of paragraphs (b), (c), (d), and (e) of Additional U.S. Note 3 to chapter 17 of the HTS, it would be impossible to achieve conditions in the United States sugar market which would give due consideration to the interests of domestic producers and materially affected contracting parties to the GATT.

C. GATT Council Decision on U.S. Sugar Import Restrictions

On June 22, 1989, the GATT Council adopted the report of the panel which examined U.S. restrictions on imports of sugar and which concluded that the quotas maintained under Additional U.S. Note 3 to chapter 17 of the HTS are inconsistent with the General Agreement. The Council requested the United States to either terminate the restrictions or bring them into conformity with the General Agreement.

Following the Council's action, the U.S. Department of Agriculture and other appropriate Government agencies developed and evaluated options for implementing U.S. Law with respect to imports of sugar in a manner consistent with our GATT obligations. The Department and other appropriate Government agencies have made their recommendations to the President. The President has not yet made a final decision.

In the interim and since no final decision has been made by the date that this notice must be published, continuation of the operation of paragraphs (b), (c), (d), and (e) of Additional U.S. Note 3 to chapter 17 of the HTS gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

Determination

After having consulted with the U.S. Trade Representative, the Department of State, and other concerned agencies in accordance with paragraph (f) of Additional U.S. Note 3 to chapter 17 of the HTS, I have determined that the continued operation of paragraphs (b), (c), (d) and (e) of Additional U.S. Note 3 to chapter 17 of the HTS, pending the decision of the President with respect to modifications of the quota limitations set forth therein, gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

Signed at Washington, DC on August 31, 1990.

Clayton Yeutter

Secretary of Agriculture.

[FR Doc. 90–21034 Filed 8–31–90; 8:46 pm]

BILLING CODE 3410–19–M

Agricultural Stabilization and Conservation

Commodity Credit Corporation

1990–91 National Marketing Quota and Price Support Level for Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to to the 1990 crop of flue-cured tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture determined the 1990 marketing quota for flue-cured tobacco to be 877.7 million pounds and that the

price support level for 1990 would be $1.488 per pound.

EFFECTIVE DATE: December 15, 1989.

FOR FUTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736–South Building, P.O. Box 2415, Washington, DC 20013m (202) 447–8839. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1990 marketing year for flue-cured tobacco the following:

1. The amount of domestic manufacturers' intentions;
2. The amount of the average exports for the 1987, 1988, and 1989 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national average yield goal;
7. The national acreage allotment;
8. The national acreage reserve;
   A. For establishing acreage allotments for new farms, and
   B. For making corrections and adjusting inequities in old farms;
9. The national acreage factor;
10. The national yield factor; and
11. The price support level.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government.

Marketing Quotas

Section 317(a)(1)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 317(a)(1)(C) further provides that, with respect to the 1990 through 1993 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cirgarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1990 crop of flue-cured tobacco by December 1, 1989. Six such manufacturers were required to submit such a statement for the 1990 crop and the total of their intended purchases for the 1990 crop was 491.5 million pounds.

The three-year average of exports is 366.1 million pounds. For the 1989 quota determination, actual Census data was used. However, a 1989 Office of Inspector General investigation of General Sales Manager (GSM) program documents reported that certain tobacco shipments (both flue-cured and burley) that had been declared as U.S.-origin tobacco were actually foreign-grown. Accordingly, Census exports were adjusted downward to reflect this misclassification.

In accordance with section 301(b)(14)(C) of the 1938 Act, the reserve stock level is the greater of 100 million pounds or 15 percent of the 1989 marketing quota for flue-cured tobacco. The national marketing quota for the 1989 crop year was 890.5 million pounds (54 FR 22339). Accordingly, the reserve stock level for use in determining the 1990 marketing quota for flue-cured tobacco is 133.6 million pounds.

As of December 3, the Flue-Cured Tobacco Stabilization Corporation had in its inventory 113.5 million pounds of flue-cured tobacco (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is an increase of 20.1 million pounds.

The total of the three marketing quota components for the 1990–91 marketing year is 877.7 million pounds. Section 317(a)(1)(B) of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. However, the Secretary abstained from using his discretionary authority. Accordingly, the national marketing quota for the marketing year beginning July 1, 1990 for flue-cured tobacco is 877.7 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level, which on a national average basis, the Secretary determines will improve or insure the usability of the tobacco and increase the net return per pound to the growers. Since yields in crop year 1989 did not change significantly from the previous year, no change in the national average yield goal is contemplated at this time. Accordingly, it is has been determined that the national average yield goal for the 1990–91 marketing year will be 2,008 pounds per acre, the same as last year.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 1990 crop of flue-cured tobacco is determined to be 420,354.41 acres, which is the result of dividing the national marketing quota by the new national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary

has determined that a national reserve for the 1990 crop of flue-cured tobacco of 1,050 acres is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1990 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106(d) and (f) of the 1949 Act. Section 106(f)(A) of the 1949 Act provides that the level of support for the 1990 crop of flue-cured tobacco shall be: (1) The level in cents per pound at which the 1989 crop of flue-cured tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than

(II) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

For the purpose of calculating the market-price component of the support level, the 1949 Act provides that the average market price be reduced 25 cents per pound for the 1985 marketing year and 30 cents per pound for prior marketing years.

The difference between the two 5-year averages (the difference between (A)(I) and (A)(II) is 3.4 cents per pound. The difference in the cost index from January 1 to December 31, 1989 is 2.4 cents per pound. Applying these components to the price support formula (3.4 cents per pound, two-thirds weight; 2.4 cents per pound, one-third weight) result in an increase in the price support level of 3.1 cents per pound. However, section 106 further provides that the Secretary may limit the change in the price support level to no less than 65 percent of the change that otherwise would have occurred if an oversupply exists for such kind of tobacco. Because the total supply of flue-cured tobacco is sufficient for about 2.5 years use, with 2.4 years being considered normal, the Secretary has determine that supplies of flue-cured tobacco are excessive. Accordingly, the 1990 crop of flue-cured tobacco will be supported at 148.8 cents per pound, 2.0 higher than in 1989.

The level of support for the 1990 crop of flue-cured tobacco and the national marketing quota for the 1990 flue-cured marketing year were announced on December 15, 1989 by the Secretary of Agriculture. This notice affirms these determinations.

Accordingly, the following determinations have been made for flue-cured tobacco for the marketing year beginning July 1, 1990:

(a) *Domestic manufacturers intentions.* Manufacturers intentions for the 1990 year totaled 491.5 million pounds.

(b) *3-year average exports.* The 3-year average of exports is 366.1 million pounds, based on exports of 370.0 million pounds, 358.3 million pounds and 370.0 million pounds for the 1987, 1988, and 1989 crop years, respectively.

(c) *Reserve stock level.* The reserve stock level is 133.6 million pounds, based on 15 percent of 1989's national marketing quota of 755 million pounds.

(d) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is plus 20.1 million pounds, based on a reserve stock level of 133.6 million pounds and anticipated loan stocks of 113.5 million pounds.

(e) *National marketing quota.* The national marketing quota is 877.7 million pounds based on the total of the three components which comprise the quota.

(f) *National average yield goal.* The national average yield goal is determined to be 2,088 pounds.

(g) *National acreage allotment.* The national acreage allotment on an acreage-poundage basis is determined to be 420.354.41 acres. This allotment is determined by dividing the national marketing quota of 877.7 million pounds by the national average yield goal of 2,088 pounds.

(h) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to be 1,050 acres.

(i) *National acreage factor.* The national acreage factor is determined to be .985.

(j) *National yield factor.* The national yield factor is determined and announced to be .928.

(k) *Types of tobacco.* It has been determined that types 11, 12, 13, and 14 shall constitute one kind of tobacco for the 1989–90, 1990–91, and 1991–92 marketing years. It has been determined also that no substantial difference exists in the usage or market outlets for any one or more of the types of flue-cured tobacco.

(l) *Price support level.* The level of support for the 1990 crop of flue-cured tobacco is 148.8 cents per pound.

Authority: Secs. 7 U.S.C. 1301, 1313, 1314c, 1375, 1445, 1421.

Signed at Washington, DC on August 30, 1990.

Keith D. Bjerke,

Administrator, Agricultural, Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90–20953 Filed 9–5–90; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Elsmere Canyon Solid Waste Management Facility

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environment impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a non-significant amendment to the Angeles National Forest Land and Resources Management Plan. The amendment would add 1640 acres to the Land Adjustment plan. This is in response to a proposal to exchange land for the purpose of development of a solid waste management facility in the Elsmere Canyon area of the Tujunga Ranger District, Angeles National Forest, Los Angeles County, California. Los Angeles County, Department of Regional Planning will be a cooperating agency, and will prepare an Environmental Impact Report complying with the California Environmental Quality Act on the proposed solid waste management facility. A joint document will be prepared. The agency invites

written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by November 13, 1990.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Richard L. Borden, Special Projects Coordinator, Angeles National Forest, 701 N. Santa Anita Avenue, Arcadia, CA 91006–2799.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Mr. Borden at the above address or phone (818) 574–5255, FTS 799–0255.

SUPPLEMENTARY INFORMATION: The Angeles National Forest Land and Resources Management Plan, Final Environmental Impact Statement and Record of Decision have been issued. These documents permit, under certain conditions, the exchange of lands for landfill purposes.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives to the landfill. One of these will be no development at the site.

Michael J. Rogers, Forest Supervisor, Angeles National Forest, Arcadia, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the proponent and other individuals or organizations who may be interested in or affected by the proposed action. This input will be public record and used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Forest Service and the Department of Regional Planning will hold the following public scoping meetings:

Tuesday, September 18, 1990, 7 to 10 p.m., Hart High School, 24825 N. Newhall Avenue, Santa Clarita, California

Wednesday, September 19, 1990, 7 to 10 p.m., Granada Hills Womens Club, 10666 White Oak Avenue, Granada Hills, California.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in August, 1991. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the future use of Elsmere Canyon participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the drafts EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed in March, 1992. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: August 29, 1990.

Paul Johnson,

Deputy Forest Supervisor.

[FR Doc. 90–20868 Filed 9–5–90; 8:45 am]

BILLING CODE 3410–11–M

Environmental Statements for San Bernardino National Forest, San Bernardino County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of decision for the Santa Ana River Flood Control Project.

SUMMARY: On August 28, 1990, Associate Chief George Leonard issued a decision on the Santa Ana River Mainstem Flood Control Project, San Bernardino National Forest, San Bernardino County, California. The Record of Decision which includes the appeal procedures and date of implementation is attached.

FOR FURTHER INFORMATION CONTACT: Jerry Sutherland, Assistant Director, Lands Staff, Forest Service, Washington, DC, (202) 453–8248

Dated: August 31, 1990.

David E. Ketcham,

Director, Environmental Coordination.

USDA Forest Service, Bernardino National Forest, San Bernardino County, California

Santa Ana River Mainstem Flood Control Project

Decision

In conjunction with the selection by the U.S. Army Corps of Engineers of the Final Plan for the Santa Ana River Flood Control Project, it is my decision to recommend to the Secretary of Agriculture the transfer by interchange (Interchange With Department of Defense Act of July 26, 1956) of administrative accountability for approximately 70.15 acres of National Forest System Lands to the Corps of Engineers to accommodate the Seven Oaks damsite, outlet works and spillway.

In addition, it is my decision to:

(1) Authorize (36 CFR 228, subpart C) the Corps of Engineers to extract impervious borrow materials from approximately 170 acres of National Forest System Lands;

(2) Authorize (Federal Land Policy and Management Act of October 21, 1976) the Corps of Engineers to establish and access a reservoir containing approximately 890 acres and a flowage area subject to periodic flooding containing approximately 53 acres; and

(3) Authorize (Federal Land Policy and Management Act of October 21, 1976) the Corps of Engineers to reconstruct and use segments of the Forest Service transportation system for construction, operation, and maintenance of the Seven Oaks Dam.

Sufficient data and analysis to make an informed decision regarding the probable impacts on National Forest system lands has been documented by the lead agency, Department of the Army, U.S. Army Engineer District, Los Angeles, acting by and through the District Engineer. The Forest Service, acting by and through the Forest Supervisor, San Bernardino National Forest, San Bernardino, California, is a cooperating agency for the planning of the Santa Ana River Mainstem Flood Control Project (Memorandum of Agreement between the Secretaries of the Army and Agriculture dated 13 August, 1964). It is my decision to adopt:

(1) The 1977 Survey Report and Final Environmental Impact Statement on the Santa Ana River Project;

(2) The Phase I General Design Memorandum Main Report and Supplemental Environmental Impact Statement dated September, 1980;

(3) The 1985 Upstream Dam Alternatives Supplemental Environmental Impact Statement;

(4) The Phase II General Design Memorandum Main Report and Supplemental Environmental Impact Statement dated August, 1988; and

(5) The Final Supplemental Environmental Assessment Santa Ana Mainstem, dated April, 1990, addressing upland mitigation.

In addition, and in conjunction with the selection of the U.S. Army Corps of Engineers Final Plan for the Santa Ana River Flood Control Project, it is my decision to approve the Memorandum of Understanding between the San Bernardino National Forest, Forest Service, U.S.D.A., and the Department of the Army, U.S. Army Engineer District, Los Angeles for the construction, operation, and maintenance of the Seven Oaks Dam. Terms of the Memorandum of Understanding shall provide for the implementation of the decisions stated above and for the continued cooperation between the Forest Service and the Corps of Engineers.

Description of the Project

The Santa Ana River flows for over 60 miles through rapidly urbanizing San Bernardino and Riverside Counties, and through heavily urbanized Orange County. Prado Dam no longer provides adequate protection for Orange County. The Los Angeles District, U.S. Army Corps of Engineers evaluated numerous alternative solutions to provide increased flood protection in its 1977 Survey Report and Environmental Impact Statement (EIS), 1980 Phase I General Design Memorandum (GDM) Supplemental EIS (SEIS) and 1985 Upstream Dam Alternatives SEIS. These prior studies led to selection of the recommended plan covered by the current phase II GDM and by the related SEIS dated August, 1988. The Supplemental Environmental Assessment, Santa Ana Mainstem dated April, 1990 addressed modifications to the Wildlife Habitat Mitigation Plan. The Plan selected by the U.S. Army Corps of Engineers includes:

(1) Construction of a new dam, Seven Oaks, in the upper Santa Ana Canyon at the project's upper limits and within the boundary of the San Bernardino National Forest;

(2) Raising of Prado Dam and expansion of its reservoir area;

(3) Improvements to channelized river portions in Orange County;

(4) Management of the remaining project floodplains;

(5) Restoration of 92 acres of marsh at the river mouth; and

(6) Other lesser flood control and environmental features.

All features of the plan are outside the boundaries of the National Forest System except the Seven Oaks Dam.

Associated with the Seven Oaks Dam, some 1547 acres of land will be acquired to mitigate impacts. Two parcels, commonly known as Filaree Flat and section 5, will be acquired in fee for mitigation of impacts to fish and wildlife habitat on National Forest system lands. Administrative accountability for Filaree Flat and section 5 will be transferred to the Forest Service from the Corps of Engineers by interchange (Interchange With Department of Defense Act of July 26, 1956). In addition, acquisition of part of the land in the Upper Santa Ana River between Greensport Road and the Dam, and riparian replacement planting for this area, will be undertaken. Mitigation is practical only for a small portion of the loss of aquatic habitat at Seven Oaks Dam. Cultural resources mitigation will be undertaken. The post-project flood plain of the Santa Ana River between Seven Oaks Dam and Prado Basin will be managed by the local sponsors in accordance with Federal Emergency Management Agency regulations. Lands there will be purchased or otherwise set aside to offset impacts to the endangered Santa Ana River Woolly-star, the acreage and location of which have been determined in coordination with the Fish and Wildlife Service.

Alternatives Considered

The 1977 Survey Report and Final Environmental Impact Statement on the Santa Ana River Project considered no project elements within the boundary of National Forest system lands as viable. The selected plan consisted of nine elements:

(1) Construction of a reservoir upstream from Prado Dam, near the towns of Mentone and East Highlands, and enlargement of the Mill Creek Levee;

(2) Flood plain management of the reach between the Mentone reservoir and Prado reservoir;

(3) Improvement of Oak Street Drain in the City of Corona;

(4) Modification and expansion of the existing Prado reservoir;

(5) Improvement of the existing Santa Ana River channel downstream from the Prado Reservoir to the Pacific Ocean;

(6) Improvement of lower Santiago Creek;

(7) Development of water conservation, recreational and wildlife enhancement facilities in and along the above;

(8) Acquisition and protection of natural amenities in Santa Ana Canyon; and

(9) Acqusition and preservation of a 92-acre salt marsh area for impact mitigation and for protection of endangered species habitats.

The Phase I General Design Memorandum Main Report and Supplemental Environmental Impact Statement dated September, 1980, considered no project elements within the boundary of National Forest system lands. The 1977 All-River Plan was reaffirmed.

Under section 1304 of the 1984 Supplemental Appropriation Act, Congress directed the Corps to study alternatives to the Mentone Dam. The 1985 Upstream Dam Alternatives Supplemental Environmental Impact Statement considered the following alternatives:

(1) Mentone Dam;

(2) Channelization and Non-Structural Alternatives;

(3) Upstream Flood Storage Alternatives to Mentone Dam;

(a) City Creek Dam,

(b) Plunge Creek Dam,

(c) Mill Creek Dam,

(d) San Timoteo Creek Dam,

(e) Mill Creek Diversion,

(f) Upper Santa Ana River Dam,

(g) Lytle Creek Dam.

Mentone Dam was eliminated from further consideration due to lack of local support. Channelization and non-structural improvements were found to be economically unjustifiable and unable to meet planning objectives for flood control. Preliminary screening and public response eliminated City Creek dam, Plunge Creek Dam, Mill Creek Dam, San Timoteo Creek Dam, and The Mill Creek Diversion from further consideration. The major factors were cost, engineering and geotechnical constraints, and environmental concerns.

Three alternatives which remain in the study were:

(1) No action;

(2) A flood storage structure on the Upper Santa Ana River only; and

(3) Flood storage structures on the Upper Santa Ana River and Lytle Creek.

Detailed studies revealed that the Upper Santa Ana River alternative maximized benefits form flood damage reduction and best fulfilled National Economic Development (NED) objectives and other planing objectives. This alternative was designated the NED alternative and was selected. Upon selection, the Upper Santa Ana River flood structure came to be known as the Seven Oaks Dam.

The present plan, the Santa Ana River project, authorized by Congress under section 401(a) of the Water Resources Development Act of 1986, is assessed in the Phase II General Design Memorandum Main Report and Supplemental Environmental Impact Statement dated August, 1988. Insofar as the primary features of the All River Plan were Congressionally approved and since alternatives to each of the project's primary features were evaluated in previous NEPA documents, this SEIS need not reconsider the many alternatives to the project's primary

features. However, the document does evaluate various aspects of the project not previously addressed:

(1) The mitigation plan for Seven Oaks Dam;

(2) Prioritized use of sections of the previous borrow area for Seven Oaks Dam;

(3) The mitigation plan for impacts to oak woodlands in Prado Basin; and

(4) Methods of disposal of excess fill material in the lower reach.

The SEIS also evaluates impacts to newly listed endangered species and alternative methods of avoiding or compensating those impacts.

Throughout the planning process, the "no action" alternative has been the environmentally preferable plan. However, it is not a viable plan as it leaves a large population vulnerable to flood damages.

The Final Supplemental Environmental Assessment Santa Ana Mainstem, dated April, 1990, addressing upland mitigation amends the Phase II GDM and SEIS mitigation plan. The purpose of the amendment was to eliminate 53 acres from the purchase of the parcel commonly known as section 5. This portion was found to have been developed and thus unsuited for wildlife habitat. Alternatives considered were:

(1) Purchase 53 additional acres;

(2) Development of a Visitor Interpretive Center;

(3) Purchase of 237.7 acres of land commonly known as Keller Meadows;

(4) Purchase of 120 acres of land commonly known as Morton Canyon; and

(5) No action or do not amend the plan.

The Corps of Engineers made a finding of no significant impact for the proposed elimination of 53 acres from the purchase of section 5. All alternatives were more costly, not within the project area, or in the case of the proposed Visitor Center, outside the scope of the Flood Control Plan.

Rationale for Decision

This decision is consistent with the Corps of Engineers selection of the Santa Ana River Mainstem Flood Control Project, the selection of the Seven Oaks Dam as the Upstream alternative to the Mentone dam, and the selection of the alternative to eliminate 53 unsuitable acres from the acquisition of the parcel commonly known as section 5. The Corps of Engineers has found that the Seven Oaks Dam, alone, will provide effective flood damage reduction, meet local acceptability criteria, provide substantial net NED benefits, and adequately satisfy the need for a complete system as a part of the All River Plan. It is the NED plan.

The Seven Oaks Dam, combined with the Lytle Creek Dam, would be more effective in preventing flood damage, but at an unjustifiable cost and with increased adverse social and environmental effects. This combination results in fewer net NED benefits than the Seven Oaks Dam alone. In addition, adding the Lytle Creek Dam could affect local acceptability of the project. Local businesses and water users in the Lytle Creek area are opposed to the dam. Adding Lytle Creek would be a more complete flood control system than the Seven Oaks Dam alone.

I find that the plan selected by the Corps of Engineers is consistent with the San Bernardino National Forest Land & Resource Management Plan, 1988. The summary of Management Emphasis (chapter 4, page 50) for the location of the project states in part, "Coordination will continue between the Forest Service and the Army Corps of Engineers on implementation of decisions stemming from the All-River Plan."

This decision best protects the public interests for integrated flood control on the Santa Ana River, as identified in the 1985 Upstream Dam Alternatives SEIS.

Implementation & Mitigation

This decision will be implemented no sooner than 7 days after the Notice of this Record of Decision appears in the **Federal Register**. This decision is predicated on the Corps of Engineers Record of Decision dated June 2, 1989, and the Decision Notice dated April 6, 1990 to adopt the following mitigation:

(1) Plan, design, and construct the Project in compliance with the San Bernardino National Forest Land and Resource Management Plan.

(2) Transfer by interchange (Interchange With Department of Defense Act of July 26, 1956) administrative accountability for all property acquired for mitigation as stipulated in the Phase II General Design Memorandum and Supplemental Environmental Impact Statement, as amended, to the Forest Service. Said property shall include:

(a) Approximately 596 acres within section 5, T1S, R2W, SBB&M;

(b) Approximately 20 acres within section 4, T1S, R2W, SBB&M; and

(c) Approximately 137.52 acres within section 15, T1N, R1W, SBB&M.

The Forest Service will monitor the project to assure that construction practices and activities conform with the authorizing documents. It is my determination that implementation of the Project will not cause an unreasonable risk of significant irreparable harm. An adequate mitigation package and monitoring are described in the SEIS, as amended.

Planning, Records, Revisions, and Administrative Review

Planning records containing detailed legislation and document decisions used in developing this project are available for inspection during regular business hours from: Thomas D. Horner, San Gorgonio Ranger District, San Bernardino National Forest, 34701 Mill Creek Road, Mentone, CA 92359, (714) 794–1123.

Proposed changes to this project, subsequent tc this decision, will require appropriate analysis and documentation under the provisions of the National Environmental Policy Act.

My recommendation to the Secretary of Agriculture is not appealable. The remainder of this decision is subject to appeal pursuant to 36 CFR 217. A Notice of Appeal must be in writing and submitted to: Secretary, United States Department of Agriculture, 14th & Independence Ave., SW., Washington, DC 20250 and simultaneously to the Deciding Officer: Chief, USDA, Forest Service, Auditors Bldg., 14th & Independence Ave., SW., Washington, DC 20250.

The Notice of Appeal prepared pursuant to 36 CFR 217.9(b) must be submitted within 45 days from the date of this decision. Review by the Secretary is wholly discretionary. If the Secretary has not decided within 15 days of receiving the Notice of Appeal to review the Chief's decision, appellants will be notified that the Chief's decision is the final administrative decision of the U.S. Department of Agriculture (36 CFR 217.17(d)).

As a minimum, the Notice of Appeal must: Include the appellants name, address, and telephone number; identification of this decision being appealed, its date and the name and title of the Forest Officer who signed it; identification of the specific change(s) in the decision that are sought. The appeal can be dismissed if the notice of appeal fails to meet the minimum requirements of 36 CFR 217.9 to such an extent that the Reviewing Officer lacks adequate information on which to base a decision or if there is a failure to file simultaneous copies.

Dated: August 28, 1990.

George M. Leonard,

Associate Chief.

[FR Doc. 90–20989 Filed 9–5–90; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
NC–155, Turnersburg Horse Auction, Harmony, North Carolina.	February 26, 1985.
TX–154, Decatur Auction Sale, Decatur, Texas.	January 21 1959.
VA–155, Abingdon livestock Market, Inc., Abingdon, Virginia.	August 16, 1982.
VA–130, Phenix Livestock, Inc., Phenix, Virginia.	March 11, 1959.
VA–154, Mountain Empire Feeder Pig Association, Seven Mile Ford, Virginia.	September 24, 1981

Notice or other public procedure has not preceded promulgation of the foregoing notice. There is no legal justification for not promptly deposting a stockyard which is no longer within

the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the **Federal Register**. This notice shall become effective upon publication in the **Federal Register**.

(42 Stat 159, as amended and supplemented; 7 U.S C. 181 *et seq*).

Done at Washington, DC., this 30th day of August, 1990.

Harold W. Davis,

Director Livestock Marketing Division.

[FR Doc. 90–20905 Filed 9–5–90; 8:45 am]

BILLING CODE 3410-KD-M

BOARD FOR INTERNATIONAL BROADCASTING

SES Performance Review Board; Membership

Section 4314(c) (1) through (5) of title 5, U.S C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Because of the Board for International Broadcasting's small size, a Performance Review Board register is established in which SES members from other small agencies participate. This notice is to establish a PRB for the Board for International Broadcasting. The members whose names appear are:

Dated: August 30, 1990.

Gary Edles,

Legal Counsel, Administrative Conference of the U S.

Gerald J. Smith,

Executive Secretary, Barry Goldwater Foundation

Kenneth M. Pusateri,

Deputy Director, Federal Energy Regulatory Commission.

Mark G. Pomar,

Executive Director.

[FR Doc. 90–20939 Filed 9–5–90; 8:45 am]

BILLING CODE 6155-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–005]

Carbon Steel Bars and Structural Shapes From Canada; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on carbon steel bars and structural shapes from Canada Interested parties who object to this revocation must submit their comments in writing not later than September 30, 1990.

EFFECTIVE DATE: September 6, 1990.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5255

SUPPLEMENTARY INFORMATION:

Background

On September 25, 1964, the Department of Treasury published an antidumping finding on carbon steel bars and structural shapes from Canada (29 FR 13319). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent for consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by §353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)), we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than September 30, 1990, interested parties, as defined in § 353.2(k) of the Department's regulations (19 CFR 353.2(k)), may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by September 30, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by September 30, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: August 30, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90–20931 Filed 9–6–90; 8:45 am]

BILLING CODE 3510-DS-M

[A–401–040]

Stainless Steel Plate From Sweden; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce has determined not to revoke the antidumping finding on stainless steel plate from Sweden because it continues to be of interest to interested parties.

EFFECTIVE DATE: September 5, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2923/ 3601.

SUPPLEMENTARY INFORMATION:

Background

As of June 30, 1989, the Department of Commerce (the Department) has not received a request for an administrative review of the antidumping finding on stainless steel plate from Sweden (38 FR 15079, June 5, 1973) for four consecutive annual anniversary months. As specified by § 353.25(d)(4) of the Commerce Regulations, the Department published a notice of intent to revoke this finding in the **Federal Register** at the beginning of the fifth annual anniversary month, and served written notice of its intent on each interested party on its service list (55 FR 22365, June 1, 1990). This notice afforded interested parties the opportunity to submit written objections to the proposed revocation, and stated that the Department would proceed with revocation if no interested party filed written objections or a request for review by June 30, 1990.

Scope of Finding

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. The United States fully converted to the Harmonized Tariff Schedule (HTS) on January 1, 1989, 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 that date is classified solely according to the appropriate HTS item number(s).

Imports covered by this finding are shipments of stainless steel plate from Sweden. Such merchandise was classifiable under item number 607.9005 of the Tariff Schedules of the United States Annotated through 1988. This merchandise is currently classifiable under items numbers 7219.12.00, 7219.21.00, 7219.22.00, 7219.31.00, and 7219.11.00 of the HTS. The HTS item numbers are provided only for convenience and Customs purposes. The written description of the scope remains despositive.

Determination Not To Revoke

The Department may revoke a finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. According to § 353.25(d)(4)(iii) of the Commerce Regulations, the Secretary is authorized to reach this conclusion if, after publication of a notice of intent to revoke a finding or order in the **Federal Register**, the Department receives no written objections to the proposed revocation or request for review of the finding in question within the time limits specified in the notice.

We received a written objection from one interested party in response to our notice of intent to revoke the antidumping finding on stainless steel plate from Sweden. Based on this objection, the Department has concluded that the finding continues to be of interest to interested parties. Therefore, we have determined not to revoke the antidumping finding on stainless steel plate from Sweden.

Dated: August 27, 1890.

Joseph A. Spetrini

Deputy Assistant Secretary for Compliance.

[FR Doc. 90–20932 Filed 9–5–90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Northeast Multispecies Fishery; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold public hearings on two additional proposals to be included in Amendment 4 to the Northeast Multispecies Fishery Management Plan (FMP).

DATES: Written comments should be submitted on or before September 18, 1990, to the address below. The hearings will begin at 7:30 p.m., and are scheduled as follows:

1. September 17, 1990, Gloucester, Massachusetts.
2. September 17, 1990, Portland, Maine
3. September 18, 1990, Portsmouth, New Hampshire.
4. September 18, 1990, Hyannis, Massachusetts.

ADDRESSES: Written comments should be sent to Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906. Copies of the public hearings document may be obtained from this address. Clearly mark the outside of the envelope "Request for Amendment 4 public hearing document."

The hearings will be held at the following locations:

Gloucester—National Marine Fisheries Service Building, One Blackburn Drive, Gloucester, Massachusetts.

2. Portland—Holiday Inn West, 81 Riverside Avenue, Portland, Maine.

3. Portsmouth—New Hampshire Urban Forestry Center, 45 Elwyn Road (off Route 1, opposite Yokens Restaurant), Portsmouth, New Hampshire.

4. Hyannis—Sheraton Inn, Route 132 and Bearse's Way, Hyannis, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Christopher Kellogg, Fishery Analyst, (617) 231–0422.

SUPPLEMENTARY INFORMATION: The Council is considering additional proposals for inclusion in Amendment 4 to the FMP in order to enhance measures to protect Gulf of Maine groundfish. These additional proposals have been developed by the Council's Multispecies Committee and will be reviewed by the Council at its September 26–27, 1990, meeting. Public comment will be considered prior to a final decision on whether to include these two measures. The first proposal contains several measures. (a) The Director, Northeast Region (Regional Director), would take action consisting of a requirement that vessels using bottom tending mobile nets either use 6″ mesh hung on the square, or 6″ square mesh, or a closure of appropriate areas within the designated areas. The Regional Director would implement the aciton by publishing a notice in the **Federal Register.** (b) The action could take place in the period February through July. However, it would last only as long as concentrations of sublegal (less than 19″ in total length) codfish continued to be present as determined by the conditions described in the triggering mechanism. (c) The action would be triggered if 20 percent of the total catch of cod were below the minimum size (19″) in trawl nets using 5½″ diamond mesh and the catch rate of codfish exceeded 500 pounds/hour within the designated areas. (d) The Regional Director would have the discretion to determine the area of action within the designated areas. In addition to these requirements, (e) Vessels fishing in this area would be permitted to carry on board only mesh specified in (a) above. (f) The Regional Director is further authorized to close the affected area if he concludes that either substantial noncompliance is occurring or the discard rate continues to exceed the threshold despite compliance with the larger-mesh provision described above.

The areas of the proposed action are Stellwagen Bank, off the Massachusetts coast, and Jeffreys Ledge off the Massachusetts, New Hampshire, and Maine coasts. Boundaries of these areas will be provided at the public hearings or earlier upon request.

The second proposal would modify Section II–B of Amendment 4, "Measures to Reduce Bycatch in the Northern Shrimp Fishery", on the basis of the most recent scientific gear studies. The new language would specify that "Nets must contain a trapezoid-shaped panel of 12-inch diamond mesh in the belly panel, 20-feet wide, behind the footrope and extending back at least 7 feet."

Dated: August 31, 1990.

David S. Crestin,

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

[FR Doc. 90–20964 Filed 9–5–90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limit for Certain Cotton Textile Products Produced or Manufactured in Nigeria

August 30, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 7, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

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).

On February 28, 1990, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Nigeria regarding cotton printcloth in Category 315, produced or manufactured in Nigeria.

The United States Government has decided to establish a twelve-month limit on Category 315 for the period February 28, 1990 through February 27, 1991.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Nigeria, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 11242, published on March 27, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 30, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 7, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 315, produced or manufactured in Nigeria and exported during the twelve-month period which began on February 28, 1990 and extends through February 27, 1991, in excess of 5,622,689 square meters.[1]

Textile products in Category 315 which have been exported to the United States prior to February 28, 1990 shall not be subject to this directive.

Textile products in Category 315 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484)(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

You are directed to charge 1,160, 816 square meters to the limit established in this directive for Category 315. These charges are for goods imported during the period February 28, 1990 through June 30, 1990.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–20930 Filed 9–5–90; 8:45 am]

BILLING CODE 3510–DR–M

Amendment of Certification Requirements Under the Special Access Program for Certain Woven Apparel Products from Trinidad and Tobago

August 31, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa and certification requirements.

EFFECTIVE DATES: September 7, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

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 Governments of the United States and Trinidad and Tobago agreed to amend the existing agreement and visa arrangement to extend coverage of the Special Access Program to woven apparel products assembled in Trinidad and Tobago from fabric parts formed and cut in the United States which are subject to bleaching, acid-washing, stone-washing or permapressing after assembly.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 52 FR 28588, published on July 31, 1987; 54 FR 50425, published on December 6, 1989; and 54 FR 53172, published on December 27, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 31, 1990

Commissioner of Customs
Department of the Treasury
Washington, D.C. 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on July 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, establishing visa and certifiction requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Trinidad and Tobago.

Effective on September 7, 1990, you are directed to permit entry under the Special Access Program of woven apparel products assembled in Trinidad and Tobago from fabric parts formed and cut in the United States and then subjected to bleaching, acid-

[1] The limit has not been adjusted to account for any imports exported after February 27, 1990.

washing, stone-washing or permapressing in Trinidad and Tobago after assembly and exported to the United States on and after September 7, 1990.

These products shall be entered under the Special Access Program, even though they may not be classified under HTS number 9802.00.8010 of the Harmonized Tariff Schedule.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-20987 Filed 9-5-90; 8:45 am]

BILLING CODE 3510-DR-M

COUNCIL ON ENVIRONMENTAL QUALITY

Updated List, Federal Agencies; National Environmental Policy Act Liaisons

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information only. Notice of an updated list of Federal Agencies' National Environmental Policy Act (NEPA) Liaisons.

SUMMARY: Notice is hereby given that as of August 22, 1990 the following is the most recent list of NEPA Liaisons available. Many agencies have submitted their agency's corrections to the Council to update this list. Should any agency find their listing to be out of date, they should submit the new information to the Council. The information submitted should include the complete new listing as well as the listing it is replacing.

ADDRESSES: Requests to update the NEPA Liaison list should be submitted to the following person at the following location: Sara D. Nero, Confidential Assistant, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sara Nero, Confidential Assistant, Council on Environmental Quality at the address given above; telephone number 202/395-5754, [FTS] 395-5754.

SUPPLEMENTARY INFORMATION: The Council on Environmental Quality's regulations for implementing the procedural provisions of the National Environmental Policy Act, § 1507.2, states that each Federal agency shall have a contact to coordinate all NEPA compliance. A list of these contacts was published in the **Federal Register** (49 FR 49749), December 21, 1984. This listing updates the previously published listing of Federal NEPA Contracts. The following is the updated list.

Dated: August 22, 1990.

Dinah Bear,

General Counsel.

NEPA Liaison Contacts

Mr. Charles Terrell, Environmental Specialist, Soil Conservation Service, Department of Agriculture, Ecological Science Division, P.O. Box 2890, Washington, DC 20013, 202-447-4925.

Dr. William Tallent, Assistant Administrator for Cooperative Interactions, Room 358A, Department of Agriculture, Agriculture Administration Building, 14th and Independence Avenue, Washington, DC 20250, 202-447-3973.

G. Tim Denley, Chief, Planning and Evaluation Branch, Agriculture Stabilization and Conservation Service, Department of Agriculture, Room 4714, P.O. Box 2415, 14th and Independence Avenue, SW., Washington, DC 20013, 202-447-3264.

Terry Medley, Esquire, Animal and Plant Health Inspection Service, Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7602.

Michael T. Werner, Esquire, Animal and Plant Health, Inspection Service, Department of Agriculture, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8565.

Dr. John A. Miranowski, Director, Resources and Technology Division, Economic Research Service, Department of Agriculture, Room 524 NYA, 1301 New York Avenue, NW., Washington, DC 20005, 202-786-1455.

John A. Vance, Natural Resources and Rural Development Extension Service, Department of Agriculture, Room 3909 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250-0900, 202-447-7947.

John Hansel, Environmental Protection Specialist, Program Support Staff, Farmers Home Administration, Department of Agriculture, Room 6309 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, 202-382-9619.

Ralph Stafko, Director, Policy Office, Food Safety and Inspection Service, Department of Agriculture, Room 3812 South Agriculture Building, 12th and Independence Avenue, SW., Washington, DC 20250, 202-447-8168.

David Ketcham, Director, Environmental Coordination Staff, U.S. Forest Service, Department of Agriculture, Room 4204 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20013, 202-447-4708.

Kenneth Kumor, Environmental Policy Specialist, Engineering Standards Division, Rural Electrification Administration, Department of Agriculture, Room 1257 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, 202-382-0097.

James B. Newman, Director, Ecological Sciences Division, Soil Conservation Service, Department of Agriculture, Room 6151-S Agriculture Building, 14th and Independence Avenue, SW., P.O. Box 2890, Washington, DC 20013, 202-447-2587.

David Cottingham, Chief, Ecology and Conservation Division, Office of Policy and Planning, National Oceanic and Atmospheric Administration, Department of Commerce, Room HCHB 6222, 14th and Constitution Avenue, NW., Washington, DC 20230, 202-377-5181.

David S. Maney, Associate Director for Environment, Economic Development Administration, Department of Commerce, Room 7319 Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230, 202-377-5181.

David Cottingham, Chief, Ecology and Conservation Division, Office of Policy and Planning, National Oceanic and Atmospheric Administration, Department of Commerce, Room HCHB 6222, 14th and Constitution Avenue, NW., Washington, DC 20230, 202-377-5181.

Christina Ramsey, Director, Environmental and Planning, Department of Defense, 206 North Washington Street, Suite 100, Alexandria, Virginia 22314, 202-325-2215.

Jan B. Reitman, Chief, Defense Logistics Agency, Environmental Policy Office, Department of Defense, Room 4D470, ATTN: DLA-W, Cameron Station, Alexandria, Virginia 22304-6100, 202-274-6124.

Garry D. Vest, Deputy Assistant Secretary of the Air Force,

(Environment, Safety and Occupational Health), SAF/RQ, Department of Defense, The Pentagon, 4C916, Washington, DC 20330–1000, 202–697–9297.

Ray Clark, Assistant for Environmental Projects, Department of the Army, Room 2E577, Attn: OASA (I and L), The Pentagon, Washington, DC 20310, 202–695–7824.

Dick Makinen, Environmental Policy Analyst, Office of Environmental Policy, Corps of Engineers, Room 7119C Pulaski Building, 20 Massachusetts Avenue, NW., Washington, DC 20314, 202–272–0166.

Zell Steever, Operation and Readiness Division, HQUSACE (CE CW–OR), Corps of Engineers, 20 Massachusetts Avenue, NW., Pulaski Building, Room 6225, Washington, DC 20314–1000, 202–272–1780.

Tom Peeling, Chief of Naval Operations (OP–04E1), Department of the Navy, Room 10N67 Hoffman Building 2, 200 Stovall Street, Alexandria, Virginia 22332, 703–325–7360, 703–325–7364.

Robert L. Warren, Environmental Program Manager, Headquarters US Marine Corps, Code LFL, Washington, DC 20380–0001, 202–697–1890.

Carol Borgstrom, Director, Office of NEPA Project Assistance, Department of Energy, Room 3E–080, 1000 Independence Avenue, SW., Washington DC 20585, 202–586–4600.

James Johnson, Environmental Officer, Special Programs Coordination, Department of Health and Human Services, Cohen Building, Room 4700, 200 Independence Avenue, SW., Washington, DC 20201, 202–245–7426.

Thomas C. Cloutier, P.E., PHS Environmental Officer, National Institute of Health, Parklawn Building 17A–10, Rockville, Maryland 20857, 301–443–2265.

Richard H. Broun, Director, Office of Environment and Energy, Department of Housing and Urban Development, Room 7154 HUD Building, 451 Seventh Street, SW., Washington, DC 20410, 202–755–7894.

John Deason, Director, Office of Environmental Project Review, Department of the Interior, Room 4260 Interior Building, 18th and C Streets, NW., Washington, DC 20240, 202–343–3891.

Don Peterson, Environmental Coordinator, Division of Endangered Species and Habitat Conservation, US Fish and Wildlife Service, Department of the Interior, 464 Arlington Square, Washington, DC 20240, 703–358–2183, FTS–921–2183.

Cliford A. Haupt, Chief, Environmental Affairs Program, US Geological Survey, Department of Interior, Mail Stop 423, National Center, Reston, Virginia 22092, 703–648–6826.

George R. Farris, Chief, Environmental Services Staff, Office of Trust and Economic Development, Bureau of Indian Affairs, Department of the Interior, MIB 4529, 1951 Constitution Avenue, NW., Washington, DC 20240, 202–343–2952.

David Williams, Chief, Office of Planning and Environmental Coordination, Bureau of Land Management, Department of the Interior, Room 906, Premier Building, 1725 I Street, NW., Washington, DC 20240, 202–653–8830.

John T. Goll, Chief, Offshore Environmental Assessment Division, Minerals Management Service, Department of the Interior, 6A316 USGS Building, Mail Stop 644, 12203 Sunrise Valley Drive, Reston, Virginia 22091, 703–648–7739.

William L. Miller, Chief, Office of Regulatory Projects Coordination, Bureau of Mines, Department of the Interior, Mail Stop 1050, Room 1025, 2401 E Street, NW., Washington, DC 20241, 202–634–1117.

Jacob Hoogland, Chief, Environmental Compliance Division, National Park Service, Department of the Interior, Room 1210, Interior Building, 18th and C Streets, NW., Washington, DC 20240, 202–343–2163.

Dick Porter, Chief, Environment and Planning, Bureau of Reclamation, Department of the Interior, Room 7455, Interior Building, 18th and C Street, NW., Washington, DC 20240, 202–343–5104.

James Kress, Acting Branch Chief, Branch of Environmental and Economic Analysis, Office of Surface Mining, Department of the Interior, 1951 Constitution Avenue, NW., Room 5415–L, Washington, DC 20240, 202–343–5145.

William M. Cohen, Chief, General Litigation Section, Land and Natural Resources Division, Department of Justice, 601 Pennsylvania Avenue, 8th Floor, Room 870, Washington, DC 20530, 202–272–6851.

William J. Patrick, Chief, Office of Facilities Development and Operations, Bureau of Prisons, Department of Justice, 320 First Street, NW., Washington, DC 20534, 202–724–6535.

Office of Chief Counsel, ATTN: Dennis Hoffman, Drug Enforcement Administration, Department of Justice, 1405 Eye Street NW., Washington, DC 20537, 202–633–1211.

Victoria Kingslien, Director, Facilities and Engineering, Immigration and Natural Service, Department of Justice, 425 Eye Street, NW., Washington, DC 20536, 202–633–4448.

Charles P. Smith, Director, Bureau of Justice Assistance, Room 1042, Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531, 202–724–5933.

Joseph M. Bessette, Acting Director, Bureau of Justice Statistics, Room 1142, Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531, 202–724–7765.

Douglas W. Kmiec, Assistant Attorney General, Office of Legal Counsel, Department of Justice, Room 5214, Justice Building, 10th and Constitution Avenue, NW., Washington, DC 20530, 202–633–2041.

Robert E. Copeland, Director, Office of Regulatory Economics, Assistant Secretary for Policy, Department of Labor, S–2312 Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, 202–523–6197.

Jeffrey B. Doranz, Acting Director, Office of Standards, Mine Safety and Health Administration, Department of Labor, Room 627, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203, 703–235–1910.

Dr. Hugh Conway, Director, Office of Regulatory Analysis, Occupational Safety and Health Administration, Department of Labor, N–3627 Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, 202–523–9690.

Andrew Sens, Director, Office of Environmental and Health, Department of State, Room 4325 State Department Building, 21st and C Street, NW., Washington, DC 20520, 202–632–9266.

Joseph F. Canny, Director, Office of Transportation, Regulatory Affairs, Department of Transportation, Room 9222 Nassif Building, 400 Seventh Street SW., Washington, DC 20590, 202–336–4220.

James E. Densmore, Director, Office of Environment (AEE–1), Federal Aviation Administration,

Department of Transportation, Room 432C, 800 Independence Avenue SW., Washington, DC 20591, 202–267–3576.

Ali F. Sevin, Director, Office of Environmental Policy (HEV–1), Federal Highway Administration, Department of Transportation, Room 3232 Nassif Building, 400 Seventh Street SW., Washington, DC 20590, 202–336–2045.

Marilyn W. Klein, Senior Policy Analyst, Economic Studies Division, Federal Railroad administration, Department of Transportation, Room 8300 Nassif Building, 400 Seventh Street SW., Washington, DC 20590, 202–366–0358.

Daniel W. Leubecker, Office of Technology Assessment, Maritime Administration, Code 840, Room 7328, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, 202–366–1928.

Kathleen C. DeMeter, Assistant Chief Counsel/General Law, National Highway Traffic Safety Administration (NCC–30), Department of Transportation, Room 5219 Nassif Building, 400 Seventh Street SW., Washington, DC 20590, 202–366–1834.

Alfred E. Barrington, Chief, Environmental Technology Division, Research/Special Programs Administration, Department of Transportation, Transportation Systems Center, Room 355 Kendall Square, Cambridge, MA 02142, 617–494–2018, FTS–837–2018.

John B. Adams, Executive Assistant, St. Lawrence Seaway, 315–953–0233, Development Corporation, Seaway Administration Building, Department of Transportation, 180 Andrews Street, Box 520, Massena, New York 13662, 315–764–3233.

T.J. Granito, Chief, Environment Section (G–ECV–2B), Office of Engineering and Development, Civil Engineering Division, U.S. Coast Guard, Department of Transportation, 2100 2nd Street SW., Room 6503, Washington, DC 20593, 202–267–1120.

Samuel L. Zimmerman, Deputy Director, Office of Planning Assistance (UGM–20), Urban Mass Transportation Administration, Department of Transportation, Room 9311 Nassif Building, 400 Seventh Street SW., Washington, DC 20590, 202–366–2360.

Anthony V. DiSilvestre, Environmental Protection Specialist, Department of Treasury, 1730 K Street NW., Room 420, Washington, DC 20220, 202–634–2438.

Willard Hoing, Assistant Director, Planning, Budget and Management Division, Action, Room P401, 806 Connecticut Avenue NW., Washington, DC 20525, 202–634–9212.

Thomas F. King, Director, Cultural Resource Preservation, Advisory Council on Historic Preservation, Old Post Office Building, #803, 1100 Pennsylvania Avenue NW., Washington, DC 20004, 202–786–0505.

Garaldine Storm-Gevanthor Director, Division of Housing and Community Development, Appalachian Regional Commission, 1666 Connecticut Avenue NW., Washington, DC 20235, 202–673–7845.

Thomas Graham, Jr., General Counsel, Arms Control and Disarmament Agency, Room 5534, 320 21st Street NW., Washington, DC 20451, 202–647–3582.

John Weiss, Environmental Issues Branch, Office of Resources Trade and Technology, Central Intelligence Agency, Room 2G00, CIA Headquarters, Washington, DC 20505.

G. John Heyer, General Counsel, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, Room 1107, 1755 Jefferson Davis Highway, Arlington, VA 22202–3509,

Stephen Lemberg, Assistant General Counsel, Office of the General Counsel, Consumer Product Safety Commission Washington, DC 20207, 301–492–6980.

Gerald M. Hansler, Executive Director, Delaware River Basin Commission, 25 State Police Drive, P.O. Box 7360, West Trenton, New Jersey 08628, 609–883–9500, FTS–483–2077.

Dick Sanderson, Director, Office of Federal Activities (A–104), Environmental Protection Agency, Room 2119–I, 401 M Street, SW., Washington, DC 20460, 202–382–5053.

Hart Fessenden, General Counsel, Export-Import Bank of the United States, Room 947 Lafayette Building, 811 Vermont Avenue, NW., Washington, DC 20571, 202–566–8334.

Gary L. Bohlke, Associated General Counsel, Enforcement and Litigation Division, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, 703–883–4020.

Holly Berland, Staff Attorney, Legal Counsel Division, Office of General Counsel, Federal Communications Commission, Room 616, 1919 M Street NW., Washington, DC 20554, 202–632–6990.

Stanley J. Poling, Director, Division of Accounting and Corporate Services, Federal Deposit Insurance Corporation, Room 6124, 550 Seventeenth Street, NW., Washington, DC 20429, 202–898–6944.

Susan K. Bank, Associate General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472, 202–646–3973.

Michael Schopf, Enforcement, General Law and Rulemaking, Federal Energy and Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, 202–357–8002.

Richard R. Hoffmann, Chief, Environmental Analysis, Pipeline and Producer Regulation, Federal Energy Regulatory Commission, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426, 202–357–9066, fax 202–208–0147.

Dean L. Shumway, Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, HL–20, Room 204/RB, 825 North Capitol Street, NE., Washington, DC 20426, 202–376–9167.

V. Gerard Comizio, Director, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, East Wing, 1700 G Street, NW., Washington, DC 20552, 202–377–6411.

Edward R. Meyer, Office of Special Studies, Federal Maritime Commission, Suite 11305, 1100 L Street, NW., Washington, DC 20573, 202–523–5835.

Mrs. Kay Bondehagen, Senior Attorney, Legal Division, Federal Reserve Board, Room B–1016, 20th and Constitution Avenue, NW., Washington, DC 20551, 202–452–2067.

Jerold D. Cummins, Deputy Assistant General Counsel, Federal Trade Commission, Room 582, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580, 202–326–2471.

Anthony E. Costa, Environmental Protection Specialist, Office of Facility Planning, Policy and Analysis Division, General Services Administration, Mail Stop PLP, Room 6323, 18th and F Streets, NW., Washington, DC 20405, 202–523–5595.

Conrad G. Keyes, Jr., Principal Engineer, Planning, International Boundary and Water Commission, United

States Section, 4171 North Mesa, Suite C316, El Paso, Texas 79902, 915–534–6703, FTS–570–6703.

Harold Johnson, Staff Attorney, Section of Energy and Environment, Office of Transportation Analysis, Interstate Commerce Commission, Room 3115, 12th and Constitution Avenue, NW., Washington, DC 20423, 202–275–6874.

Michael L. Gosliner, General Counsel, Marine Mammal Commission, Room 307, 1625 Eye Street, NW., Washington, DC 20006, 202–653–6237.

Dr. James Reisa, Acting Director, Board of Environmental Studies and Technology, National Academy of Sciences, Mail Code MH354, 2101 Constitution Avenue, NW., Washington, DC 20418, 202–334–3060.

Lewis E. Andrews, Environmental Compliance Office, Facilities Engineer Division (NXG), Nat'l Aeronautics and Space Administration, Room 5031, 400 Maryland Avenue, SW., Washington, DC 20546, 202–453–1958.

Environmental/Energy Officer, Division of Planning Services, National Capital Planning Commission, Room 1024, 1325 G Street, NW., Washington, DC 20576, 202–724–0179.

Robert M. Fenner, General Counsel, Department of Legal, Services, National Credit Union Administration, Room 6261, 1776 G. Street, NW., Washington, DC 20456, 202–682–9630.

Dr. Julian Shedlovsky, Chairman and Staff Associate, Committee on Environmental Matters, Directorate for Geosciences, National Science, Foundation, Room 641, 1800 G Street, NW., Washington, DC 20550, 202–357–9752.

Thomas Murley, Director, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, 12D1, Washington, DC 20555, 301–492–1270.

Richard E. Cunningham, Director, Division of Industrial and Medical Nuclear Safety, Nuclear Regulatory Commission, Mail Stop 6H3, Washington, DC, 20555, 301–492–3426.

James Rich, Director of Development, Pennsylvania Avenue Development Corporation, Room 122ON, 1331 Pennsylvania Avenue, NW., Washington, DC 20004, 202–724–9068.

Sidney L. Cimmit, Senior Special Counsel, Public Utility Regulation, Securities and Exchange Commission, Room 7002, Stop 7–1, 450 Fifth Street, NW., Washington, DC 20549, 202–272–7340.

Everett Shell, Director, Office of Business Loans, Small Business Administration, Room 804–C, 1441 L Street, NW., Washington, DC 20416, 202–653–6470.

Robert J. Bielo, Executive Director, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102, 717–238–0422.

M. Paul Schmierbach, Manager, Environmental Quality, Tennessee Valley Authority, SPB 2S 201P, 201 Summer Place Building, 309 Walnut Street, Knoxville, TN 37902, 615–632–6578, FTS–856–6578.

Jacqueline P. Higgs, Assistant General Counsel, United States Information Agency, Room 700, 301 Fourth Street, SW., Washington, DC 20547, 202–485–7975.

Laurence R. Hausman, Environmental Coordinator, C/AID, US Agency for International Development, Department of State, 320 Twenty-First Street, NW., 5883 New State Building, Washington, DC 20523–0061, 202–647–9662.

Harvey A. Himberg, Director for Development Policy, and Environmental Affairs, Office of Development, Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527, 202–457–7139.

Edward Wandelt, Environmental Coordinator, Facilities Department, US Postal Service, Room 4130, 475 L'Enfant Plaza West, SW., Washington, DC 20260, 202–268–3135.

C. Dale Duvall, Director, Environmental Affairs, Department of Veterans Affairs, Code 005, 810 Vermont Avenue, NW., Washington, DC 20420, 202–233–2192.

Ann Anderson, Naval Facilities Engineering Command, Cide 20 Y AA, 200 Stovall Street, Alexandria, Virginia 22332.

[FR Doc. 90–20921 Filed 9–5–90; 8:45 am]

BILLING CODE 3115–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Closed Meeting; Army Science Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 20–21 September 1990.

Time: 0800–1730 hours.

Place: Redstone Arsenal, Alabama.

Agenda: The Army Science Board study on "Stinger Reprogrammable Microprocessor (RMP)," will meet to review the program. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically paragraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–20994 Filed 9–5–90; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Office of Educational Research and Improvement Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Technical Methodology/Analysis, Reporting, and Dissemination committees of the National Assessment Governing Board. Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 14, 1990.

TIME: 3:00 p.m. (e.s.t.) until adjournment.

PLACE: National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC. 20005–4013, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins-Robert T. Stafford

Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 USC 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board is also responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Technical Methodology/Analysis, Reporting, and Dissemination Committees of the National Assessment Governing Board will meet via teleconference on Friday, September 14, 1990, from 3 p.m. e.s.t. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The purpose of this meeting is to approve the plan to release the Summary Report for NAEP which is scheduled for September 26, 1990.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–21006 Filed 9–5–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF90–207–000]

US West Financial Services, Inc., Application for Commission Certification of Qualifying Status of Cogeneration Facility

August 28, 1990.

On August 14, 1990, US West Financial Services, Inc. (Applicant), of 210 Broad Street, One Canterbury Green, Stamford, Connecticut 06901, submitted for filing an application for certification of a faciality as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The bottoming-cycle cogeneration facility is located at 19409 National Trails Highway, Oro Grande, California. The facility consists of two steam turbine generators, seven waste heat recovery (WHR) boilers and two natural gas or oil fired auxiliary boilers. The primary energy source is waste heat generated from coal-fired cement kilns. The electric power production capacity of the facility is 24 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20897 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–2028–000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Gas Co.

[Docket No. CP90–2028–000]

August 28, 1990.

Take notice that on August 22, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90–2028–000 a request pursuant to §§ 157.205, 157.216, and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, and 284.223) for authorization to abandon a transportation service for Cabot Transmission Corporation (Cabot) authorized pursuant to an individual certificate and continue the service pursuant to El Paso's blanket transportation certificate, under El Paso's blanket certificates issued in Docket No. CP82–435–000 and CP88–433–000, respectively, pursuant to sections 7(b) and 7(c), respectively, of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso indicates that it has been performing a transportation service for Cabot pursuant to an order issued October 11, 1985, in Docket No. CP84–718–000 which, *inter alia*, permitted El Paso to transport up to 20,000 Mcf per day for Cabot on an interruptible basis from existing points of receipt located in San Juan County, New Mexico to El Paso's Plains Compressor Station in Yoakum County, Texas. El Paso states that subsequent to the issuance of that order, El Paso received a blanket transportation certificate issued in Docket No. CP88–433–000. El Paso states that the blanket certificate permits it to add receipt points without the regulatory delay associated with present section 7 procedures. El Paso requests authority to convert the certificated transportation service to a blanket transportation service. El Paso seeks authority to abandon the existing service pursuant to § 157.216(b) of the Commission's Regulations and initiate the new service under the blanket transportation certificate pursuant to Section 284.223 of the Commission's Regulations.

El Paso estimates peak day volumes, average day volumes, and annual volumes of 20,600 million Btu, 3,090 million Btu, and 1,127,850 million Btu, respectively. El Paso indicates that no new facilities need be constructed to permit the service to continue. El Paso also indicates that it has not initiated a 120-day transportation service pursuant to § 284.223(a) of the Commission's Regulations. In addition, El Paso states that the proposed conversion would not affect Cabot's place in El Paso's transportation queue.

Comment date: October 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

Transwestern Pipeline

[Docket No. CP90–2026–000]

August 28, 1990.

Take notice that on August 21, 1990, Transwestern Pipeline Company ("Applicant"), Post Office Box 1188, Houston, Texas 77251–1188, filed an abbreviated application pursuant to section 7(b) of the Natural Gas Act, as amended, and 18 CFR § 157.18 for an order permitting and approving the abandonment of any remaining certificate obligations imposed by the orders approving a Gas Supply Inventory Charge ("GIC") mechanism

(issued in Docket No. CP88–143–000 on May 11, 1988 and July 29, 1988) which would prevent Transwestern from utilizing the Order No. 500 "equitable sharing" mechanism for the recovery of certain take-or-pay buy-out, buy-down, and contract reformation costs, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern explains that, in its recent filing in Docket No. RP90–136–000, it proposed to recoup certain take-or-pay, buy-out, buy-down, and contract reformation costs. By order issued July 27, 1990, the Commission rejected the proposed tariff sheets stating that Transwestern was precluded, absent NGA section 7(b) authority, from collecting such costs by virtue of the certificate condition contained in such GIC orders, which condition was attached by the Commission in order to prevent double recovery of such costs. Although Transwestern was authorized to collect a GIC, since its customers nominated zero volumes for the GIC sales service, Transwestern can neither assess nor collect any GIC. Thus, Transwestern has no means, other than the Order No. 500 "equitable sharing" mechanism, for collecting the take-or-pay costs it has paid since the original "sunset date" of March 31, 1989, which has now been found unlawful.

The instant application, Transwestern explains, was filed in order to request removal of the condition preventing collection of such costs through an Order No. 500 "equitable sharing" mechanism. Transwestern advises that, by August 31, 1990, it will make another Order No. 500 "equitable sharing" filing (without prejudice to its request for rehearing of the July 27, 1990 order) in which it will propose to absorb 25% of the additional take-or-pay costs it has paid and to implement a volumetric surcharge on throughput for 75% of such costs. Transwestern further states that, if such filing is approved as filed, Transwestern will agree in all future filings, for costs paid after August 31, 1990 which are not covered by the "litigation exception", to forego its right to collect such costs through direct billing.

Comment date: September 5, 1990, in accordance with Standard Paragraph F at the end of this notice.

3. Trunkline Gas Co.

[Docket No. CP90–2013–000]

August 28, 1990.

Take notice that on August 17, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP90–2013–000, a request pursuant to Sections 157.205, 284.223 and 157.211 of the Commission's Regulations under the Natural Gas Act, to provide transportation service to Arcadian Corporation (Arcadian), an end-user, and to operate a delivery point which was installed under Section 311, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 100,000 Mcf per day on an interruptible basis on behalf of Arcadian from various receipt points and to redelivery such gas to Louisiana Resources Corporation, in Vermillion Parish, Louisiana, (LPC), which owns part of the delivery point. Trunkline owns the other part.

Trunkline states further that the estimated daily and estimated annual quantities of gas would be 100,000 Mcf and 36,500,000 Mcf, respectively. Trunkline also indicates that such transportation would commence upon authorization of this proposal.

Comment date: October 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Co.

[Docket No. CP90–2023–000]

August 28, 1990.

Take notice that on August 21, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90–2023–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, to reassign volumes of gas from one delivery point of EnergyNorth Natural Gas, Inc. (EnergyNorth), an existing customer, to another existing delivery point of EnergyNorth, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that authorization to provide firm sales service to EnergyNorth was granted under Docket No. CP87–358, and currently for a contract demand of 37,472 dth per day and annual quantities of 9,069,354 dth.

By letter dated August 1, 1990, EnergyNorth requested Tennessee to reassign to the Laconia delivery point all volumes of gas now delivered to the Concord delivery point. The requested deliveries would increase Laconia's quantities to 13,894 dth.

Comment date: October 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Williston Basin Interstate Pipeline Co.

[Docket No. CP82–487–032 (Phase II)]

August 28, 1990.

Take notice that on August 14, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to Original Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with an Office of Pipeline and Producer Regulation Letter Order dated August 1, 1990 directing Williston Basin to file revised tariff sheets for the period January 1, 1985 through May 1, 1986 as more fully described in the filing.

Comment date: September 5, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Colorado Interstate Gas Co.

[Docket No. CP90–2065–000]

August 28, 1990.

Take notice that on August 24, 1990, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90–2065–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to increase the General Daily Entitlement (GDE) for the City of Colorado Springs, Colorado (the City), and existing customer of CIG, all as more fully set forth in the application on file with the Commission and open to public inspection.

CIG proposes to increase the GDE for the City 2,000 Mcf from 37,000 Mcf per day to 39,000 Mcf per day, effective October 1, 1990, in accordance with a service agreement dated October 1, 1990. CIG states that the present GDE level of 37,000 Mcf, as filed in Docket No. CP90–1762–000 was for an interim period, during which time the City has now identified its long-term gas supply requirement from CIG. It is explained that the 39,000 Mcf level reflects the long-term need by the City for a term ending September 30, 1996. CIG states that there is no increase required in the Annual Entitlement Volume.

CIG states that it has sufficient gas supply to accommodate the increased sales to the City. Moreover, CIG avers that the reduction in GDE proposed in Docket No. CP90–1762–000 is in excess of the 2,000 Mcf increase proposed herein. CIG further states that, since January 1990, CIG has filed

abandonment applications in Docket Nos. CP90–495–000 and CP90–1167–000 for GDE reductions totaling more than 225,000 Mcf per day.

Comment date: September 18, 1990, in accordance with Standard Paragraph F at the end of this notice.

77. El Paso Natural Gas Co.

[Docket No. CP90–2029–000]

August 28, 1990.

Take notice that on August 22, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90–2029–000 a request pursuant to §§ 157.205, 157.216, and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, and 284.223) for authorization to abandon a transportation service for Westar Transmission Corporation (Westar) authorized pursuant to an individual certificate and continue the service pursuant to El Paso's blanket transportation certificate, under El Paso's blanket certificates issued in Docket No. CP82–435–000 and CP88–433–000, respectively, pursuant to sections 7(b) and 7(c), respectively, of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso indicates that it has been performing a transportation service for Westar pursuant to an order issued October 11, 1985, in Docket No. CP84–718–000 which, *inter alia,* permitted El Paso to transport up to 60,000 Mcf per day for Westar on an interruptible basis from existing points of receipt located in Winkler and Yoakum Counties, Texas to existing delivery points located in Texas. El Paso states that subsequent to the issuance of that order, El Paso received a blanket transportation certificate issued in Docket No, CP88–433–000. El Paso states that the blanket certificate permits it to add receipt points without the regulatory delay associated with present section 7 procedures. El Paso requests authority to convert the certificated transportation service to a blanket transportation service. El Paso seeks authority to abandon the existing service pursuant to § 157.216(b) of the Commission's Regulations and initiate new service under the blanket transportation certificate pursuant to § 284.223 of the Commission's Regulations.

El Paso estimates peak day volumes, average day volumes, and annual volumes of 61,800 million Btu, 41,200 million Btu, and 15,038,000 million Btu, respectively. El Paso indicates that no new facilities need be constructed to permit the service to continue. El Paso also indicates that it has not initiated a 120-day transportation service pursuant to § 284.223(a) of the Commission's Regulations. In addition, El Paso states that the proposed conversion would not affect Westar's place in El Paso's transportation queue.

Comment date: October 18, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Southern Natural Gas Company; Southern Natural Gas Co.; Southern Natural Gas Co.; Trunkline Gas Co.

[Docket No. CP90–2044–000, Docket No. CP90–2045–000, Docket No. CP90–2046–000, Docket No. CP90–2048–000]

August 28, 1990.

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: October 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper	Peak day [1] average, annual	Points of—		Start up date (rate schedule)	Related Dockets [2]
				Receipt	Delivery		
CP90–2044–000 (8–23–90)	Southern Natural Gas Company P.O. Box 2563 Birmingham, Alabama 35202–2563.	Centran Corporation.	15,000 1,200 438,000	TX, LA, MS, AL	GA	7–28–90 (IT)	CP88–316–000, ST90–3882–000.
CP90–2045–000 (8–23–90)	Southern Natural Gas Company P.O. Box 2563 Birmingham, Alabama 35202–2563.	SCANA Hydrocarbons Inc..	100,000 18,000 6,570,000	TX, LA, MS, AL	SC	7–26–90 (IT)	CP88–316–000, ST90–3883–000.
CP90–2046–000 (8–23–90)	Southern Natural Gas Company P.O. Box 2563 Birmingham, Alabama 35202–2563.	Dixie Clay Company.	500 250 91,250	TX, LA, MS, AL	SC	7–27–90 (IT)	CP88–316–000, ST90–3887–000.

Docket No. (date filed)	Applicant	Shipper	Peak day [1] average, annual	Points of—		Start up date (rate schedule)	Related Dockets [2]
				Receipt	Delivery		
CP90-2048-000 (8-23-90)	Trunkline Gas Company P.O. Box 1642 Houston, Texas 77251-1642.	Entrade Corporation.	100,000Mcf 55,000Mcf 36,500,000Mcf	IL, LA, TN, TX	IL	7-16-90 (PT)	CP86-586-000, ST90-4250-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

9. Mid Louisiana Gas Co.

[Docket No. CP90-2003-000]

August 28, 1990.

Take notice that on August 17, 1990, Mid Louisiana Gas Company (Mid Louisiana), Five Post Oak Park, Suite 800, Houston, Texas 77027, filed in Docket No. CP90-2003-000 a request as supplemented August 23, 1990, pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Tejas Power Corporation (Tejas), under the authorization issued in Docket No. CP86-214-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Mid Louisiana would perform the proposed interruptible transportation service for Tejas, pursuant to a transportation agreement dated June 22, 1990. The term of the transportation agreement is from July 1, 1990, and shall remain in full force and effect for one year and month-to-month thereafter. Mid Louisiana proposes to transport on a peak day up to 100,000 MMBtu; on an average day up to 100,000 MMBtu; and on an annual basis up to 36,500,000 MMBtu of natural gas for Tejas. Mid Louisiana states that it would receive the gas at existing receipt point of receipt located on Eugene Island Block 33, Offshore Louisiana, for delivery to a point of interconnection with ANR Pipeline Company, located on Eugene Island Block 18, Offshore Louisiana. It is alleged the rate to be charged Tejas for the proposed transportation shall be in accordance with Mid Louisiana's IT-1 rate schedule. Mid Louisiana avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of §§ 284.223(a)(1) of the Commission's regulations. Mid Louisiana commenced such self-implementing service on July 1, 1990, as reported in Docket No. ST90-4109-000.

Comment date: October 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

United Gas Pipe Line Co.

[Docket Nos. CP90-2057-000, CP90-2058-000, CP90-2059-000]

August 28, 1990.

Take notice that on August 23, 1990, United Gas Pipe Line Company (Applicant) P.O. Box 1478, Houston, Texas 77251-1478, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: October 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (dated filed)	Shipper name	Peak day [2] [2] average annual	Points of [3]—		Start up date, rate schedule, service type	Related [1] docket, contract date
			Receipt	Delivery		
CP90-2057-000 (8-23-90)	NERCO Oil & Gas, Inc.	77,250 77,250 28,196,250	LA, MS	LA	7-26-90, ITS, Interruptible.	ST90-4240-000; 5-5-88.[4]
CP90-2058-000 (8-23-90)	NERCO Oil & Gas, Inc.	77,250 77,250 28,196,250	AL, LA, MS	WI	7-26-90, ITS, Interruptible.	ST90-4240-000; 5-5-88.[4]
CP90-2059-000 (8-23-90)	Entrade Corporation	103,000 103,000 37,595,000	AL, LA, MS, TX	AL, FL, LA, MS, OK	7-20-90, ITS, Interruptible.	ST90-4189-000; 10-1-88.[5]

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in MMBtu.
[3] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[4] Amended 6-12-90.
[5] Amended 7-10-90

11. Natural Gas Pipeline Co. of America

[Docket Nos. CP90–2034–000, CP90–2035–000, CP90–2036–000]

August 28, 1990.

Take notice that on August 23, 1990, Natural Gas Pipeline Company of America (Applicant) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transaction under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: October 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] average, annual	Points of—		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP90–2034–000 (8–23–90)	Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, IL 60148.	Seagull Marketing Services, Inc.	50,000 30,000 10,950,000	AR, CO, IA, IL, KS, LA, Off LA, MO, NE, NM, OK, TX, Off TX.	LA, Off LA, IA, OK, CO, NM, IL, TX, Off TX.	7–1–90, ITS	CP86–582–000, ST90–4030–000.
CP90–2035–000 (8–23–90)	Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, IL 60148.	Shell Gas Trading Company.	25,000 25,000 9,125,000	TX	LA	7–1–90, FTS	CP86–582–000, ST90–4119–000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certified. If an ST docket is shown, 120-day transportation service was reported in it.

Docket No. (date filed)	Applicant Shipper Name	Peak day [3] average annual	Points of—		Start up date, rate schedule	Related [4] Dockets	
			Receipt	Delivery			
CP90–2036–000 (8–23–90)	Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, IL 60148.	Texaco Gas Marketing Inc..	100,000 40,000 14,600,000	AR, CO, IA, IL, KS, LA, Off LA, MO, NE, NM, OK, TX, Off TX.	LA, Off LA, IA, OK, CO, NM, IL, TX, Off TX.	7–1–90, ITS	CP86–582–000, ST90–4118–000.

[3] Quantities are shown in MMBTu unless otherwise indicated.
[4] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

12. Arkla Energy Resources, Division of Arkla, Inc.

[Docket No. CP90–2049–000]

August 29, 1990.

Take notice that on August 23, 1990, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), 525 Milam Street Shreveport, Louisiana 71151, filed in Docket No. CP90–2049–000, an application pursuant to section 7(c) of the Commission's Regulations, to amend the order issued November 26, 1979, in Docket No. CP79–47, 9 FERC ¶61,239, in order to increase the maximum allowable operating pressure (MAOP) for a portion of its Chiles Dome Storage Field withdrawal system, all as more fully set forth in the request, which is on file with the Commission.

Arkla contends that it constructed its Chiles Dome storage facility under authorization granted in Docket No. CP79–47. In the application and the order issued in that docket, the MAOP are stated separately for piping upstream and downstream of the compressor station, all of which comprise the storage withdrawal. Arkla alleges that the MAOP for the upstream piping is 1600 psig, and for the downstream piping is 1000 psig. It is stated that the downstream piping is the subject of this proposal and consists mainly of Line 2–AD, which is the trunkline discharging all storage volumes in Line AD.

Arkla proposes to increase the MAOP for the downstream piping, including Line 2–AD, from 1000 psig to 1114 psig. The increased pressure would be provided by existing compression facilities. Due to increasing transmission volumes above historical levels, Line AD must now be operated during peak periods at higher pressures, i.e., nearer to its maximum allowable which is also 1000 psig. Arkla alleges that Line AD is it's primary west-to-east mainline and is the only means of moving Chiles Dome storage volumes to the eastern part of Arkla's system, where the major portion of its peak day deliveries are required. It is stated that the following table shows the steady increase in the peak day

pressures on Lines AD and 2–AD for the past three winter periods:

ACTUAL PEAK PRESSURES

[pressures in psig]

Day	Line AD at 2–AD intersect	Line 2–AD at point of origin
1/12/88	840	923
2/02/89	866	969
12/20/89	883	986

Arkla expects to operate Line AD at pressures even higher in the future because of increased firm commitments for the transportation of gas across its system. Arkla contends that in order to meet the increasing demand, it expects to operate Line AD at approximately 950 to 960 psig at the connection with Line 2–AD during the next winter peak, which could reasonable be expected to occur as early as December 1990.

The expected increase in pressure on Line AD requires the higher pressure on Line 2–AD in order to maintain storage withdrawals at historical levels. Arkla is not proposing to construct additional facilities or to replace Line 2–AD in order to operate at the proposed higher pressure of 1114 psig. It is stated that because Line 2–AD was designed and constructed to meet the Department of Transportation's (DOT) Class 3 specifications, but is actually located in a Class 1 area, the piping may be operated at a up to 1400 psig under DOT safety standards without retesting.

Arkla does not propose to increase its daily withdrawal level or its authorized working gas balance of 12 Bcf for the storage field, both of which are sufficient for anticipated peak deliveries. The proposed MAOP increase on Line 2-AD would not affect the capacity or throughput on any downstream facilities.

Comment date: September 19, 1990, in accordance with Standard Paragraph F at the end of the notice

13. Panhandle Eastern Pipe Line

[Docket Nos. CP90–2082–000, et al.]

August 29, 1990.

Take notice that Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251–1642, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86–585–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: October 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Points of—		Contract date, rate schedule, service type	Related docket, start up date
			Receipt	Delivery		
CP90–2082–000 (8–28–90)	OXY USA Inc. (producer).	60,000 60,000 21,900,000	Oklahoma, Kansas	Kansas	7–1–90, PT, Firm [1]	ST90–4156–000, 7–1–90.
CP90–2083–000 (8–28–90)	Consolidated Fuel Corporation (marketer).	15,000 15,000 5,475,000	Sweetwater County, Wyoming.	Sweetwater County, Wyoming.	12–7–89, PT, Interruptible.	ST90–4213–000, 7–20–90.
CP90–2084–000 (8–28–90)	National Steel Corporation [2] (end user).	500 500 180,000	Various	Wayne County, Michigan	11–20–89, PT, Interruptible.	ST90–4249–000, 7–28–90.
CP90–2085–000 (8–28–90)	Bethlehem Steel Corporation (end user).	2,209 2,209 806,285	Douglas County, Illinois	Ohio	7–1–90, PT, Firm [1]	ST90–4157–000, 7–1–90.

[1] Furthermore, Panhandle states that pursuant to Section 6.13 of Rate Schedule PT Firm, gas would be transported on an interruptible basis from points listed in Exhibit A of the Master Receipt Point List.
[2] American Steel Division.

14. Transcontinental Gas Pipe Line Corp. et al.

[Docket Nos. CP90–2066–000 *et al.*]

August 29, 1990.

Take notice that on August 24, 1990, the above listed companies filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are no file with the Commission and open to public inspection.[5]

A summary of each transportation service which includes the shippers identity, the peak day, average day and

[5] These prior notice requests are not consolidated.

annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: October 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper Name	Peak day [1] average annual—	Points of—		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP90-2066-000 (8-24-90)	Transcontinental Pipe Line Corporation.	TXG Gas Marketing Company.	500,000Dt 300,000Dt. 182,500,000Dt.	Offshore LA, LA TX	LA, MS, PA	7-10-90, FTS	CP88-328-000, ST90-4155-000.
CP90-2067-000 (8-24-90)	Transcontinental Pipe Line Corporation.	FMI Hydrocarbon Company.	20,000Dt. 20,000Dt. 7,300,000Dt.	Offshore TX	Offshore TX	7-25-90, IT	CP90-328-000, ST90-3717-000.
CP90-2068-000 (8-24-90)	El Paso Natural Gas Company.	Desert Palace, Inc.	1,030 1,030 375,950	Various	NV, AZ	7-21-90, T-1	CP88-433-000, ST90-4245-000.
CP90-2069-000 (8-24-90)	United Gas Pipe Line Company.	Enemark Gas Gathering Corporation.	103,000 103,000 37,595,000	Offshore LA, LA TX, MS.	LA, TX, AL, MS, FL	7-31-90, ITS	CP88-6-000, ST90-4237-000.
CP90-2070-000 (8-24-90)	United Gas Pipe Line Company.	Laser Marketing Company.	5,150 5,150 1,879,750	TX	TX	7-30-90, ITS	CP88-6-000, ST90-4239-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

15. Tennessee Gas Pipeline Co.

[Docket No. CP90-2071-000]

August 29, 1990.

Take notice that Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicant), filed in the above-referenced docket a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: October 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper Name	Peak Day, Average Day, Annual Dth	Points of [1]—		Contract date, rate schedule, service type	Related docket, start up date
			Receipt	Delivery		
CP90-2071-000 (8-27-90)	LaSER Marketing Company (Marketer).	6,000 6,000 2,190,000	OLA, LA	LA	 IT, Interruptible	ST90-433-000; 7-28-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

16. Chattanooga Gas Co.

[Docket No. CP90-2060-000]

August 29, 1990.

Take notice that on August 23, 1990, Chattanooga Gas Company (Chattanooga), 811 Broad Street, Chattanooga, Tennessee 37402, filed an application in Docket No. CP90-2060-000 pursuant to section 7(c) of the Natural Gas Act for a permanent certificate of public convenience and necessity to operate its liquified natural gas facilities in interstate commerce to provide firm and interruptible liquified natural gas (LNG) service to East Tennessee Natural Company (East Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Chattanooga states that the total volume for the proposed winter season 1990-91 firm LNG service is 200,000 Mcf at 14.73 psia with maximum daily withdrawal quantities of 13,000 Mcf at 14.73 psia. It is indicated that the total volume for the proposed winter season 1990-91 interruptible service is 300,000 Mcf at 14.73 psia with daily maximum withdrawal quantities of up to 10,000 Mcf per day at 14.73 psia.

Chattanooga further states that the proposed LNG service would enable East Tennessee to provide increased contract demand service to certain of East Tennessee's customers other than Chattanooga. Also, Chattanooga asserts that its application is an integral component of the interim services that East Tennessee has requested authority to provide in Docket No. CP90-1922-000.

Chattanooga proposes to construct no few facilities to implement the sales service. Chattanooga proposes a firm winter service volume rate of $5.65 per dt equivalent of natural gas and an interruptible rate of $5.085 per dt equivalent of natural gas (90 percent of the firm rate). Chattanooga indicates that these rates are negotiated rates but recover less than the fully-allocated costs of the service. Chattanooga indicates that the Commission's order issued October 26, 1989, in Docket No. CP89-1314-000, *et al*, approved, *Inter alia*, interim firm and interruptible LNG service for East Tennessee, and approved a similar negotiated rate recovering less than the full cost of service. It was indicated that the Commission approved the requested rate because East Tennessee was the

only jurisdictional customer of Chattanooga and accordingly, no jurisdictional customer would be adversely affected by the negotiated rate.

Comment date: September 19, 1990, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-20886 Filed 9-6-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI90-153-000, et al.]

Selkirk Cogen Partners, L.P., et al.; Natural Gas Certificate Filings

August 27, 1990.

Take notice that the following filings have been made with the Commission.

1. Selkirk Cogen Partners, L.P.

[Docket No. CI90-153-000]

Take notice that on August 16, 1990, Selkirk Cogen Partners, L.P. (Selkirk) c/o J. Makowski Associates, Inc., One Bowdoin Square, Boston, Massachusetts 02114, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing the sale for resale of natural gas subject to the Commission's NGA jurisdiction including gas imported from Canada, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: September 14, 1990, in accordance with Standard Paragraph J at the end of this notice.

2. Florida Gas Transmission Co.

[Docket Nos. CP90-1178-001 and CP90-1179-001]

Take notice that on August 22, 1990, Florida Gas Transmission Company ("FGT"), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 3, the following tariff sheets:

1st Revised Sheet No. 114
1st Revised Sheet No. 276

FGT states that the tariff sheets are in compliance with the above referenced dockets to reflect the cancellation of Rate Schedules X-6 and X-12 by FGT for transportation of natural gas for Southern Natural Gas Company. The effective dates of the tariff sheets being filed are July 24, 1990 and July 20, 1990, respectively, which are the dates of the Commission's Orders approving such action.

FGT states that copies of filing were sent to all customers served under these rate schedules affected by this filing and the interested State Commissions.

Comment date: September 4, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Citrus Marketing, Inc.

[Docket No. CI90-149-000]

Take notice that on August 2, 1990, Citrus Marketing, Inc. (Citrus) of P.O. Box 1188, Houston, Texas 77251-1188, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale of all NGPA categories of NGA gas subject to the Commission's jurisdiction including imported gas and gas sold by suppliers other than producers (e.g., interstate pipeline system supply gas), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: September 14, 1990, in accordance with Standard Paragraph J at the end of this notice.

4. Indeck Energy Services, Inc., et al.

[Docket No. CI90-151-000]

Take notice that on August 14, 1990, Indeck Energy Services, Inc., Indeck Gas Supply Corporation, Indeck-Oswego Limited Partnership, Indeck-Yerkes Limited Partnership, Indeck Energy Services of Corinth, Inc., Indeck Energy Services of Ilion, Inc., Indeck Energy Services of Kirkwood, Inc., Indeck Energy Services of Niagara, Inc., Indeck Energy Services of Olean, Inc., Indeck Energy Services of Yonkers, Inc., and Indeck Energy Services of Silver Springs, Inc., (Indeck, *et al.*) of 1111 South Willis Avenue, Wheeling, Illinois 60090, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing the sale for resale of natural gas subject to the Commission's NGA jurisdiction including imported gas and gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales for resale of surplus system supply gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: September 14, 1990, in accordance with Standard Paragraph J at the end of the notice.

5. Louis Dreyfus Energy Corp.

[Docket No. CI89–422–001]

Take notice that on July 31, 1990, Louis Dreyfus Marketing Corporation (Louis Dreyfus) of 10 Westport Road, P.O. Box 810, Wilton, Connecticut 06879–0810, filed an amendment to its pending application filed June 12, 1989, in Docket No. CI89–422–000 pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited term blanket certificate with pregranted abandonment. Louis Dreyfus is amending is application to include a request for blanket authorization to make sales for resale of imported natural gas and gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales for resale of surplus system supply gas, all as more fully set forth in the amendment to the application which is on file with the Commission and open for public inspection.

Comment date: September 14, 1990, in accordance with Standard Paragraph J at the end of this notice.

6. Neste Trading (USA) Inc.

[Docket No. CI90–154–000]

Take notice that on August 20, 1990, Neste Trading (USA) Inc., as agent for Neste Oy, (Neste) of Five Post Oak Park, Suite 1340, Houston, Texas 77027, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing the sale in interstate commerce for resale of (1) Gas subject to the jurisdiction of the Commission under the NGA, (2) gas purchased from non-first sellers, including interstate pipeline selling gas off-system under authorization such as interruptible sales service and (3) imported natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: September 14, 1990, in accordance with Standard Paragraph J at the end of this notice.

7. Tennessee Gas Pipeline Co.

[Docket No. CP90–2030–000]

Take notice that on August 22, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90–2030–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas on an interruptible basis for Golden Gas Energies, Inc. (Golden), under Tennessee's blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a gas transportation agreement dated July 13, 1990, it proposes to transport up to 20,000 dt equivalent of natural gas per day for Golden. Tennessee states that it would receive the gas at specified points located in Texas and onshore and offshore Louisiana and redeliver the gas at specified points located in Tennessee. Tennessee estimates that the maximum day and average day volumes would be 20,000 dt equivalent of natural gas and that the annual volumes would be 7,300,000 dt equivalent of natural gas. It is stated that on July 27, 1990, Tennessee initiated a 120-day transportation service for Golden under Section 284.223(a), as reported in Docket No. ST90–4217–000.

Tennessee further states that no facilities need be constructed to implement the service. Tennessee indicates that the transportation agreement provides for a primary term expiring two years from the date of execution of the agreement but that the service would continue on a month-to-month basis thereafter. It is also indicated that either Tennessee or Golden may terminate the agreement at any time upon at least thirty days written notice to the other party. Tennessee proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT.

Comment Date: October 11, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gas Transmission Corp. and Texas Gas Transmission Corp.

[Docket No. CP89–1680–001]

Take notice that on August 10, 1990, Columbia Gas Transmission Corporation (Columbia), 1900 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, had filed to amend its portion of the original application made jointly with Texas Gas Transmission Corporation (Texas Gas). Specifically, Columbia has filed seeking to modify its previous request for abandonment authority made pursuant to section 7(b) of the Natural Gas Act (NGA), all as more fully set forth in their amendment which is on file with the Commission and open to public inspection.

In the original application, Columbia sought *inter alia,* to abandon 119,000 Dekatherms per day (Dt/d) of contract demand to Dayton Power and Light Company (Dayton) made pursuant to Columbia's Rate Schedule CDS. If approved, the proposed abandoned would have reduced Dayton's firm sales entitlement to 125,000 Dt/d. However, the *Global Settlement* approved by the Commission in Docket No. RP86–168 *et al.,* provides for a further reduction in Dayton's entitlement to a level of 110,165 Dt/d, effective November 1, 1990. Columbia now seeks Commission authority to abandon an additional 3,260 Dt/d from the November 1, 1990 entitlement to a level of 106,905 Dt/d.

Columbia also sought in its original application Commission authority to abandon by sale to Dayton, 339 miles of pipeline and to subsequently transfer to Dayton, service to various historic customers of Columbia located upon the facilities proposed for abandonment. One sales customer, the Village of Verona, Ohio (now known as Verona Natural Gas Company and herein after referred to as Verona) was not involved in the transfer of service to Dayton. Columbia had proposed to lease capacity on a section of pipeline to be sold to Dayton in order to continue to provide such sales service to Verona. Columbia now proposes to retract such leasing arrangement and instead cause Dayton to tranpsort on behalf of Columbia, up to 50,000 Dt of natural gas per year for sale to Verona, pursuant to an agreement between Columbia and Dayton. Texas Gas is not seeking to amend its portion of the original application.

Comment Date: September 17, 1990, in accordance with first subparagraph of Standard Paragraph F at the end of this notice.

9. Transcontinental Gas Pipe Line Corp., et al.

[Docket Nos. CP90–2054–000, et al.]

Take notice that Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, and United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas, 77251–1478, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§157.205, and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88–328–000 and Docket No. CP88–6–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with

the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment Date: October 11, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual	Points of [1]—		Contract date, rate schedule, service type	Related docket, start up date
			Receipt	Delivery		
CP90-2054-000 (8-23-90)	Florida Steel Corporation (marketer).	[2] 3,000 3,000 1,095,000	LA, OLA, MS	NC	5-16-90, IT, Interruptible.	ST90-4143, 7-1-90.
CP90-2055-000 (8-23-90)	Tejas Power Corporation (producer).	[3] 51,500 51,500 18,797,500	LA	MS	6-13-90, ITS, Interruptible.	ST90-4179, 7-11-90.
CP90-2056-000 (8-23-90)	Exxon Corporation	[4] 103,000 103,000 37,595,000	LA, TX, OTX, MS	LA, TX, MS	6-25-90, ITS, Interruptible.	ST90-4241, 7-31-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Measured in dt equivalent.
[3] Measured in MMBtu equivalent.
[4] Measured in MMBtu equivalent.

10. Meridian Oil Production Inc. (Successor-in-interest to Unicon Producing Co.)

[Docket No. CI61-1265-003, *et al.*]

Take notice that on August 10, 1990, Meridian Oil Production Inc. (Meridian) of P. O. Box 4239, Houston, Texas 77210, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest to Unicon Producing Company (Unicon) requesting that the Commission amend the certificates issued to Unicon by substituting Meridian as the certificate holder and requesting redesignation of the related rate schedules as those of Meridian, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By assignment executed June 19, 1990, effective January 1, 1990, Unicon assigned its interests in certain properties in Colorado, New Mexico and Oklahoma to Meridian. The certificates and rate schedules proposed to be redesignated are listed in the Appendix hereto.

Comment date: September 14, 1990, in accordance with Standard Paragraph J at the end of this notice.

APPENDIX

Unicon Producing Co., FERC gas rate schedule No.	Certificate docket No.	Purchaser and location
1	CI61-1265	El Paso Natural Gas Company, San Juan Basin Area, Rio Arriba and San Juan Counties, New Mexico.
2	CI61-1265	El Paso Natural Gas Company, San Juan Basin Area, San Juan County, New Mexico.
5	CI61-1267	El Paso Natural Gas Company, San Juan Basin Area (Dakota Formation), San Juan County, New Mexico.
7	CI61-1268	El Paso Natural Gas Company, Bisti Field, San Juan County, New Mexico.
8	CI61-1266	El Paso Natural Gas Company, San Juan Basin Area (Pictured Cliffs Formation), San Juan County, New Mexico.
10	CI64-282	El Paso Natural Gas Company, San Juan Basin Area, Rio Arriba and San Juan Counties, New Mexico.
11	CI64-935	ANR Pipeline Company, Woodward Area, Major County, Oklahoma.

APPENDIX—Continued

Unicon Producing Co., FERC gas rate schedule No.	Certificate docket No.	Purchaser and location
14	CI65-472	ANR Pipeline Company, La Verne Field, Beaver County, Oklahoma.
15	CI65-767	El Paso Natural Gas Company, San Juan Basin Area (Mesa Verde Formation), San Juan County, New Mexico.
16	CI65-846	El Paso Natural Gas Company, San Juan Basin Area (Mesa Verde Formation), LaPlata County, Colorado.
19	CI66-1003	ANR Pipeline Company, La Verne Field, Harper and Beaver Counties, Oklahoma.
24	CI68-679	El Paso Natural Gas Company, S. Jicarilla Area, Rio Arriba County, New Mexico.
33	CI65-767	Northwest Pipeline Corporation, San Juan Basin Area (Mesa Verde and Dakota Formations), Rio Arriba and San Juan Counties, New Mexico.

11. United Gas Pipe Line Co.

[Docket No. CP90-2009-000]

Take notice that on August 17, 1990, United Gas Pipe Line Company (United),

P.O. Box 1478, Houston, Texas 77027–1478, filed in Docket No. CP90–2009–000 a request as supplemented August 23, 1990, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Equitable Resources Marketing Company (Equitable), under the authorization issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Equitable, a marketer of natural gas, pursuant to an interruptible gas transportation service agreement dated August 17, 1989, as amended (Ref. #5530). The term of the transportation agreement is for a primary term of one month from the date of first delivery of gas and shall continue for successive one month terms thereafter until terminated. United proposes to transport on a peak day up to 257,500 MMBtu; on an average day up to 257,500 MMBtu; and on an annual basis up to 93,987,500 MMBtu of natural gas for Equitable. United states that it would receive the gas at various existing receipt points for transportation and delivery to various existing delivery points. It is alleged the rate to be charged Equitable for the proposed transportation shall be accordance with United's ITS rate schedule. United avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's regulations. United commenced such self-implementing service on July 26, 1990, as reported in Docket No. ST90–4063–000.

Comment date: October 11, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believe that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20901 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–167–000]

ANR Pipeline Co.; Request for Interim Waiver of Tariff and Regulations

August 29, 1990.

Take notice that on Augsut 22, 1990, pursuant to rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, ANR Pipeline Company (ANR) requests a limited waiver of section 15 of its FERC Gas Tariff, Original Volume No. 1, and the applicable provisions of the Commission's Regulations.

ANR requests an interim waiver of its Tariff, and the related Commission's Regulations, to permit ANR to continue treating, as purchased gas costs, the demand and commodity transportation charges that it has and will incur from its three current interstate pipeline suppliers upon conversion from sales to transportation service. ANR requests that such waiver remain effective until the effective date of the rates filed in its next Natural Gas Act (NGA) section 4(e) rate case.

ANR states that copies of the filing have been served upon the jurisidictional sales customers of ANR, and their respective State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 19, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20981 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–83–000]

Blue Dolphin Pipe Line Co.; Tariff Change

August 29, 1990.

Take notice that on August 27, 1990 Blue Dolphin Pipe Line Company ("Blue Dolphin"), tendered for filing with the Commission, to be effective October 1, 1990, the following tariff sheet to be included in Blue Dolphin's FERC Gas Tariff:

Original Volume No. 1

Fourth Revised Sheet No. 40

This revised Sheet No. 40 replaces Third Revised Sheet No. 40 submitted as part of a compliance filing to be effective September 4, 1990.

Blue Dolphin states that the purpose of the revised tariff sheet is to revise its annual ACA changes as provided by 18 C.F.R. Part 382 and pursuant to charges made by FERC in its billing of July 18, 1990. The rate authorized by FERC to be effective October 1, 1990 is $.0019 per Mcf. This converts to $.00182 per MMBtu using Blue Dolphin's average Btu content at 14.65 psia.

Blue Dolphin states that a copy of this filing is being mailed to Blue Dolphin's customers and interested state regulatory agencies.

Blue Dolphin asks for whatever waivers are necessary for the Commission to approve the proposed tariff sheet, and for the tariff sheet to go into effect on October 1, 1990.

Any persons desiring to be heard or to make protest with reference to said filing should, on or before September 7, 1990, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20887 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–23–000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 29, 1990.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on August 27, 1990 certain revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff. The proposed effective date of the tariff sheets is October 1, 1990.

ESNG states that the purpose of the instant filing is to reflect an increase of $0.0002 per dt in the Annual Charge Adjustment (ACA) Charge in the commodity portion of ESNG's sales and transportation rates. Pursuant to Order 472, the Commission has assessed ESNG its annual charges based on $0.0019/Mcf for the annual period commencing October 1, 1990. In accordance with section 25 of the General Terms and Conditions of ESNG's Original Volume No. 1 Tariff, ESNG's proposed tariff sheets track the Commission approved ACA unit rate of $0.0019/Mcf ($0.0018/dt on ESNG's system) commencing October 1, 1990.

ESNG states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission. 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 and rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20888 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–259–033 and RP88–136–017]

Northern Natural Gas Division of Enron Corp.; Supplemental Report of Distribution of Refunds Paid and Surcharges Billed

August 28, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern) on August 22, 1990 tendered for filing its Supplemental Report of Distribution of Refunds in the above proceedings.

Northern states that on August 20, 1990 it remitted net refunds and surcharges to its jurisdictional transportation customers of $2,734,016.68.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before September 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20893 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–170–000]

Natural Gas Pipeline Co. of America; Petition for Declaratory Order

August 29, 1990.

Take notice that on August 27, 1990, pursuant to rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Natural Gas Pipeline Company of America (Natural) petitions for a declaratory order ruling that Natural does not owe Colorado Interstate Gas Company (CIG) amounts improperly claimed by CIG under CIG's minimum bill.

Natural states that Natural was billed by CIG for a minimum bill obligation in CIG's fiscal years (ending September 30) 1983, 1984, and 1985. Natural also states that it promptly paid each CIG invoice which was calculated in accord with CIG's tariff. In 1986 Natural states that CIG refused to submit a minimum bill

even though Natural's purchases were below the minimum bill level.

Natural states that in the absence of an invoice, on October 27, 1986 Natural timely tendered to CIG a 1986 minimum bill payment of $14,466,687, representing F–1 fixed costs, calculated in accord with CIG's then effective tariff. CIG refused to accept the tender, and elected to try to collect more than the FERC approved rate—in CIG's words "to allow the injury [not FERC] to decide how much money will be paid." Natural reviewed CIG's minimum bill invoices and informed CIG that the minimum bills were not properly calculated under CIG's tariff.

Natural also states that CIG submitted a minimum bill for fiscal year 1989, ending September 30, 1989, even though the Commission eliminated the minimum bill as of March 1, 1989.

Natural seeks a declaratory ruling confirming that, pursuant to the provisions of CIG's tariff, (1) CIG is not entitled to interest because CIG failed to present a bill to Natural and therefore extended the time that payment was due, and (2) CIG has no right to submit a minimum bill for the fiscal year ended September 30, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 19, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20892 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–259–000, CP89–1227–000 and RP90–124–000]

Northern Natural Gas Co., Informal Settlement Conference

August 28, 1990.

Take notice that an informal settlement conference has been scheduled in the above proceeding to begin on September 10 at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c) (1989), and any participant as defined by 18 CFR 385.102(b) (1989), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214 (1989)).

For additional information, contact Donald Williams at (202) 208–0473 or Sandra Delude at (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20898 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–17–M

[Docket No. TM91–1–37–000]

Northwest Pipeline Corp., Proposed Change In FERC Gas Tariff

August 28, 1990.

Take notice that on August 22, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Seventieth Revised Sheet No. 10
Third Revised Sheet No. 10.1
Thirty-Ninth Revised Sheet No. 10-A

Original Volume No. 1-A

Twenty-Eighth Revised Sheet No. 201

Original Volume No. 2

Sixteen Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Charge effective October 1, 1990, to reflect 1) interest applicable to July, August and September 1990, and 2) the amortization of principal and interest. The proposed revised Commodity SSP Charge is 4.17 cents per MMBtu. Northwest has not tendered a revised sheet no. 12 in this instant filing since there have been no SSP settlements subsequent to Northwest's last quarterly filing.

Northwest states that a copy of this filing has been sent to all parties of record in Docket No. RP89–137 and to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20896 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–139–002]

Southern Natural Gas Co.; Revised Tariff Filing

August 28, 1990.

Take notice that on August 20, 1990, pursuant to Ordering Paragraph (D) of the Federal Energy Regulatory Commission's order of July 27, 1990 on the above-captioned proceedings and certain informal discussions with the Commission's Staff, Southern Natural Gas Company (Southern) resubmitted for filing First Revised Sheet No. 30Z.07 and First Revised Sheet No. 30Z.29 to Volume No. 1 of its FERC Gas Tariff and a diskette containing a copy of such tariff sheets. Southern asks an effective date of August 1, 1990.

Southern states that the tariff sheets and diskette are being resubmitted solely in order to reflect the pagination required by the Commission's July 27 order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before September 5, 1990. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20899 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90-169-000]

Tennessee Gas Pipeline Co.; Petition for Waiver of Tariff Provision

August 28, 1990.

Take notice that on August 24, 1990, Tennessee Gas Pipeline Company (Tennessee) filed a petition for waiver of certain tariff provisions.

Tennessee seeks waiver of the Commodity Charge provision of its R Rate Schedule to allow Tennessee to charge its CD commodity rate plus the Purchased Gas Demand component of the R rate for rates under the R Rate Schedule during September 1990. Tennessee further seeks waiver of its SS-E and SS-NE Rate Schedules which require that quantities for injection be designated by customers from purchases under their contracted demand gas sales contract with Tennessee. Tennessee states that the waivers are required to allow customers to purchase and inject quantities of gas into storage. Tennessee states that the waiver of the R rate will apply to all customers purchasing under Rate Schedule R, and will benefit all of its customers by increasing Tennessee's sales and permitting Tennessee to reduce its unit cost of gas. Tennessee further requests that its petition be treated on an expedited basis so that its customers can make necessary purchasing decisions.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-20900 Filed 9-5-90; 8:45 am]

BILLING CODE 6717-17-M

[Docket No. RP90-168-000]

Trailblazer Pipeline Co.; Proposed Change in FERC Gas Tariff

August 28, 1990.

Take notice that on August 23, 1990, Trailblazer Pipeline Company (Trailblazer) tendered for filing Second Revised Sheet No. 101 and First Revised Sheet No. 119 to be a part of its FERC Gas Tariff, Original Volume No. 1, to be effective September 27, 1990.

Trailblazer states that the tariff sheets were filed to reflect minor changes in the General Terms and Conditions of Trailblazer's FERC Gas Tariff, Original Volume No. 1. Specifically, the tariff sheets were revised to: (1) Change the definition of "Day" to eliminate the word "Standard" from the phrase "Mountain Standard Time," (2) provide for nominations to be submitted at least four business days prior to the first day of each month, and (3) provide that nominations that are to be effective on any day other than the first day of the month and revisions to previously submitted nominations must be received by Transporter by 9 a.m. Central Time of the day prior to the day such nominations or change in nominations is to be effective.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective September 27, 1990.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-20894 Filed 9-5-90; 8:45 am]

BILLING CODE 6717-01-M

Williams Natural Gas Co., Proposed Changes In FERC Gas Tariff

[Docket No. RP89-183-019]

August 29, 1990.

Take notice that August 28, 1990, Williams Natural Gas Company (WNG) submitted the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 30
Original Sheet No. 30A
Substitute Fourth Revised Sheet No. 31

WNG states that these tariff sheets are being filed in compliance with the Commission's Order Denying Rehearing issued August 2, 1990 in Docket No. RP89-183-010. Ordering Paragraph (B) of the order directed WNG to refile tariff sheets clarifying that firm shippers may bump interruptible customers at additional interruptible receipt points.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rule of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before September 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Lois D. Cashell,

Secretary.

[FR Doc. 90-20889 Filed 9-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-148-003]

Williston Basin Interstate Pipeline Co.; Change in FERC Gas Tariffs

August 29, 1990.

Take notice that on August 27, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to Original Volume No. 1-B of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being submitted in compliance with the Commission's August 17, 1990 Order regarding the Company's priority of service list for sales and transportation services, and are to be effective August 20, 1990.

Williston Basin states that copies of the filing were served on Williston Basin's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before September 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20890 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–137–001]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs

August 28, 1990.

Take notice that on August 22, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1–A, Original Volume No. 1–B and Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being filed, under protest, in compliance with the Commission's "Order Accepting and Suspending Tariff Sheets Subject to Conditions and Rejecting Other Tariff Sheets" issued July 27, 1990. Pursuant to the provisions of the July 27, 1990 Order, the tariff sheets reflect rates which utilize the purchase deficiency method for the directly billed portion of the Take-or-Pay Recovery Mechanism surcharge. The throughput surcharge was calculated based on total throughput.

Williston Basin has requested that the Commission accept the revised tariff sheets to become effective July 1, 1990 (reflecting rates in effect pursuant to Orders dated May 23, 1990 and June 1, 1990 in Docket Nos. RP90–2–002 and TQ90–4–000) and July 12, 1990 (reflecting rates in effect pursuant to an Order dated July 11, 1990 in Docket No. RP90–133–000), pending Commission action on Williston Basin's request for rehearing filed August 10, 1990 in Docket Nos. RP90–2–003 and RP90–133–000 and its request for rehearing in the instant proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before September 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–20895 Filed 9–5–90; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Comments Invited on Albany Area Regional Public Safety Plan

August 29, 1990.

The Commission has received the public safety radio communications plan for the Albany Area (Region 30).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of **Federal Register** publication of this public notice to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's memorandum Opinion and Order in General Docket No. 87–112, Region 30 consists of: St. Lawrence, Franklin, Clinton, Jefferson, Lewis, Essex, Oswego, Cayuga, Onondaga, Madison, Oneida, Herkimer, Montgomery, Fulton, Hamilton, Warren, Saratoga, Washington, Schenectady, Rensselaer, Columbia, Greene, Albany, Schoharie, Delaware, Otsego, Chenango, Broome, Cortland, Tompkins and Tioga Counties. (See General Docket No. 87–112, 3 FCC Red 2113 (1988).)

Comments should be clearly identified as submissions to General Docket No. 90–394, Albany Area-Region 30, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Maureen Cesaitis, Private Radio Bureau, (202) 632–6497 or Fred Thomas, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–20876 Filed 9–5–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207–011298.

Title: FMG/CSAV Joint Service Agreement.

Parties:

Flota Mercante Grancolombiana (FMG)

Compania Sud Americana De Vapores (CSAV)

Synopsis: The proposed Agreement would permit CSAV and FMG to operate a joint service with up to four sailings per month in the trade between ports of the West Coast of South America and Central America and the United States Pacific Coast.

Agreement No.: 203–011299.

Title: Maersk/P&O Containers/Sea-Land Agreement.

Parties:

A.P. Moller-Maersk Line

P&O Containers Limited

Sea-Land Services, Inc.

Synopsis: The proposed Agreement would authorize the parties to charter and cross-charter space to each other, rationalize schedules and sailings, lease

and interchange equipment, share terminals and engage in additional related activities. Further each party would maintain its own marketing and sales activities and would issue its own bills of lading and handle its own claims. The agreement would cover the trade between ports in North Europe and United States Pacific Coast ports. The Agreement authorizes the parties to discuss and agree on a common position as to their conference/nonconference status in the trade.

By order of the Federal Maritime Commission.

Dated: August 30, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–20918 Filed 9–5–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

J. Edward Mahoney; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice 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 indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 20, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *J. Edward Mahoney*; to acquire an additional 10.84 percent of the voting shares of Beverly Bancorporation, Chicago, Illinois, for a total of 18.74 percent, and thereby indirectly acquire Beverly Bank, Chicago, Illinois; Beverly Bank of Lockport, Lockport, Illinois; Beverly Bank-Matteson, Matteson, Illinois; and First National Bank of Wilmington, Wilmington, Illinois.

Board of Governors of the Federal Reserve System, August 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–20924 Filed 9–5–90; 8:45 am]

BILLING CODE 6210–01–M

U.S.B. Holding Co., Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 26, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *U.S.B. Holding Co., Inc.*, Nanuet, New York; to acquire 9.9 percent of the voting shares of The New Milford Bank and Trust Co., New Milford, Connecticut.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Piper Bankshares, Inc.*, Piper City, Illinois; to acquire 100 percent of the voting shares of First National Bancorp of Cullom, Inc., Cullom, Illinois, and thereby indirectly acquire First National Bank of Cullom, Cullom, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street. St. Louis, Missouri 63166:

1. *Freedom Financial Corporation*, Louisville, Kentucky; to become a bank holding company by acquiring at least 50.01 percent of the voting shares of The New Washington State Bank, New Washington, Indiana.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198.

1. *Bruning Bancshares, Inc.*, Bruning, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Bruning State Bank, Bruning, Nebraska. Bank engages in the sale of general insurance in Bruning, Nebraska, a town of less than 5,000.

Board of Governors of the Federal Reserve System, August 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–20923 Filed 9–5–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Cesarean Section Patient Outcomes Research Advisory Committee; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following advisory committee scheduled to meet during the month of September 1990:

Name: Cesarean Section Patient Outcomes Research Advisory Committee.

Date and Place: September 11, 1990, 9 a.m.

Place: Parklawn Building, Conference Room L, 5600 Fishers Lane, Rockville, Maryland.

Meeting will be closed to the public.

Purpose: The Committee's charge is to provide technical review and evaluation of contract proposals concerned with cesarean section patient outcomes research.

Agenda: The session will be devoted to the technical review and evaluation of contracts submitted in response to the Request for Proposals entitled "Cesarean Section Patient Outcomes Research." Because the Committee's meetings deal with proposed research contracts involving confidential proprietary information and personal information concerning individual research staff members, information exempt from mandatory disclosure, and in order to protect the free exchange of views and avoid undue interference with Committee and Department operations, these meetings will not be

open to the public. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, 45 CFR 11.5(a)(6), and 41 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Mr. Barry N. Flaer, Contract Liaison Officer, Agency for Health Care Policy and Research, Room 18-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-5690.

The agenda is subject to change as priorities dictate.

Dated: August 30, 1990.

J. Jarrett Clinton,

Acting Administrator, Assistant Surgeon General.

[FR Doc. 90-20883 Filed 9-5-90; 8:45 am]

BILLING CODE 4160-90-M

Gastroenteritis Patient Outcomes Research Advisory Committee; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following advisory committee scheduled to meet during the month of September 1990:

Name: Gastroenteritis Patient Outcomes Research Advisory Committee.

Date and Time: September 14, 1990, 9 a.m.

Place: Parklawn Building, Potomac Conference Room, 5600 Fishers Lane, Rockville, Maryland.

Meeting will be closed to the public.

Purpose: The Committee's charge is to provide technical review and evaluation of contract proposals concerned with pediatric gastroenteritis patient outcomes research.

Agenda: The session will be devoted to the technical review and evaluation of contracts submitted in response to the Request for Proposals entitled "Gastroenteritis Patient Outcomes Research." Because the Committee's meetings deal with proposed research contracts involving confidential proprietary information and personal information concerning individual research staff members, information exempt from mandatory disclosure, and in order to protect the free exchange of views and avoid undue interference with Committee and Department operations, these meetings will not be open to the public. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, 45 CFR Section 11.5(a)(6), and 41 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Mr. Barry N. Flaer, Contract Liaison Officer, Agency for Health Care Policy and Research, Room 18-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-5690.

The agenda is subject to change as priorities dictate.

Dated: August 30, 1990.

J. Jarrett Clinton,

Acting Administrator, Assistant Surgeon General.

[FR Doc. 90-20884 Filed 9-5-90; 8:45 am]

BILLING CODE 4160-90-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: MINNEAPOLIS DISTRICT OFFICE, chaired by Donald Aird, Consumer Affairs Officer. The topic to be discussed is food labeling proposals.

DATES: Monday, September 24, 1990, 7 p.m. to 9 p.m.

ADDRESSES: International Diabetes Center, 5000 West 39th St., St. Louis Park, MN 55416.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Jr., Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: August 30, 1990

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-20922 Filed 9-5-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-90-3142]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 29, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Request Voucher for Grant Payment, Request Voucher for Homeless

Grant Payment, LOCCS Voice Response Access Authorization.

Office: Administration.

Description of the Need for the Information and its Proposed Use: These forms will be used by recipients to request payments of grant funds or to designate the appropriate officials who can have access to the Department's voice activated payment system. The information on these forms, will be used as an internal control mechanism to safeguard Federal funds and to improve the payment process for recipients.

Form Number: HUD–27053, 27053–A, 27054.

Respondents: State or local governments and non-profit institutions.

Frequency of Submission: Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Forms							
HUD–27053	1,200		180		.16		36,000
HUD–27053–A	800		24		.25		4,800
HUD–27054	2,000		1		.16		333

Total Estimated Burden Hours: 41,133.

Status: New.

Contact: Mary Ellen Firor, HUD, (202) 708–1200, Scott Jacobs, OMB, (202) 395–6880.

[FR Doc. 90–20878 Filed 9–5–90; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–09–4333–11: NV5–90–28]

Nevada; Temporary Closure of Certain Public Lands in the Las Vegas and Battle Mountain Districts for Management of the Pahrump Station Nevada 500 Off-Highway Vehicle (OHV) Race

ACTION: Temporary closure of certain Public Lands in the Clark, Nye, and Esmeralda Counties, Nevada, on and adjacent to the Nevada 500 race course, from September 1, 1990 through September 8, 1990. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittees and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas and Battle Mountain Districts, Clark, Nye, and Esmeralda Counties, Nevada will be temporarily closed to public access from 0001 hours, September 1, 1990, to 0600 hours, September 9, 1990, to protect persons, property, and public land resources on and adjacent to the 1990 Nevada 500 OHV race course. The Las Vegas District Manager is the authorized officer for the Nevada 500 OHV race and permit number (NV5–90–28). These temporary closures and restrictions are made pursuant to 43 CFR part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1990 Nevada 500 OHV race course.

The following public lands restricted or closed are described as: The Pahrump area; T. 20 S., R. 53 E., all of sections 13, and 14; T. 20 S., R. 54 E., all of sections 3, 4, 7, 8, 9, and 18; T. 19 S., R. 54 E., all of sections 18, 19, 20, 25, 26, 27, 28, 29, 30, 34, and 35; T. 19 S., R. 53 E., all of sections 1, 2, 3, 4, 5, 11, 12, 13, 14, 23, and 24; T. 18 S., R. 53 E., all of sections 6, 7, 18, 19, 29, 30, 32, 33, 34, and 35; T. 18 S., R. 52 E., all of sections 1, and 12; T. 17 S., R. 52 E., all of sections 4, 9, 16, 21, 26, 27, 28, 34, 35, and 36; The Amargosa Valley area, T. 16 S., R. 52 E., all of sections 16, 19, 20, 21, 28, and 33; T. 16 S., R. 51 E., all of sections 7, 16, 17, 18, 21, 22, 23, and 24; T. 16, R. 50 E., all of sections 6, 7, 8, 9, 10, 11, 12, and 13; T. 16 S., R. 49 E., all of sections 1, 2, 3, 4, 5, 9, 10, 11, and 12; T. 15 S., R. 49 E., all of sections 30, 31, and 32; T. 15 S., R. 48 E., all of sections 3, 4, 9, 10, 14, 15, 23, 24, and 25; T. 14 S., R. 48 E., all of sections 19, 29, 30, and 32; T. 14 S., R. 47 E., all of sections 11, 13, 14, 15, 19, 21, 22, 24, 28, 29, 30, 32, and 33; T. 14 S., R. 46 E., all of sections 11, 12, 13, and 24; T. 13 S., R. 47 E., all of sections 19, 30, and 32; T. 13 S., R. 46 E., all of sections 1, 2, 12, 13, and 24; T. 12 S., R. 46 E., all of sections 2, 3, 11, 12, 13, 23, 24, 26, and 35; T. 11 S., R. 46 E., all of sections 7, 12, 13, 18, 19, 20, 24, 26, 28, 29, 30, 33, 34, and 35; T. 11 S., R. 47 E., all of sections 1, 6, 7, and 18; The Sarcobatus Flats area, T. 10 S., R. 46 E., all of sections 7, 18, 19, 26, 27, 28, 30, 31, 32, 35, and 36; T. 10 S., R. 45 E., all of sections 1, 2, 12, 30, 31, 32, 33, 34, 35, and 36; T. 10 S., R. 44 E., all of sections 2, 3, 11, 13, 14, 24, and 25; T. 9 S., R. 45 E., all of sections 19, 20, 27, 28, 29, 30, 34, and 35; T. 9 S., R. 44 E., all of sections 5, 6, 7, 8, 9, 10, 14, 15, 17, 20, 21, 23, 24, 27, 28, and 34; T. 8 S., R. 44 E., all of sections 19, 30, and 31; T. 8 S., R. 43 E., all of sections 1, 2, 12, 13, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 36; T. 8 S., R. 42 E., all of sections 3, 4, 10, 11, 13, 14, and 24; T. 7 S., R. 42 E., all of sections 31, and 32; T. 7 S., R. 41½ E., all of sections 33, 34, 35, and 36; The Lida Valley area, T. 7 S., R. 41 E., all of sections 2, 11, 14, 23, 24, 25, 26, 35, and 36; T. 6 S., R. 41 E., all of sections 2, 3, 4, 7, 8, 9, 16, 17, 18, 21, 27, 34, and 35; T. 5 S., R. 41 E., all of sections 23, 24, 25, 26, and 35; T. 7 S., R. 43 E., all of sections 4, 5, 6, 8, 9, 17, 20, 21, 27, 28, 34, and 35; T. 6 S., R. 43 E., all of sections 6, and 31; T. 6 S., R. 42 E., all of sections 1, 12, 13, 24, 25, and 36; The Goldfield area, T. 5 S., R. 43 E., all of sections 5, 6, 7, 8, 17, 18, 19, 20, 30, and 31; T. 4 S., R. 43 E., all of sections 6, 7, 8, 17, 18, 19, 20, 30, and 31; T. 3 S., R. 43 E., all of sections 6, 7, 18, 19, 30, and 31; T. 3 S., R. 42 E., all of sections 1, and 2; T. 2 S., R. 42 E., all of sections 2, 11, 14, 23, 26, and 35; The Alkaei Lake area, T. 1 S., R. 42 E., all of sections 1, 2, 11, 14, 23, 26, and 35; The Weepah Hills area, T. 1 S., R. 39 E., all of sections 36; T. 1 S., R. 40 E., all of sections 4, 5, 8, 9, 17, 19, 20, 30, and 31; T. 1 N., R. 39 E., all of sections 1, 12, 13, 23, 24, 26, 27, and 35; T. 1 N., R. 40 E., all of sections 1, 3, 4, 5, 7, 10, 11, 12, 18, and 19; T. 2 N., R. 40 E., all of sections 32, and 33; T. 1 N., R. 41 E., all of sections 4, 5, and 6; T. 1 N., R. 42 E., all of sections 25, and 36; T. 1 N., R. 43., all of sections 5, 8, 17, 19, 20, and 30; T. 2 N., R. 43 E., all of sections 30, 31, and 32; T. 2 N., R. 42 E., all of sections 1, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 24, 25, and 36; T. 2 N., R. 41 E., all of sections 13, 23, 24, 26, 27, 33, and 34; The Palmetto Mountains area, T. 5 S., R. 41 E., all of sections 2, 6, 10, 11, 14, and 15; T. 4 S., R. 41 E., all of sections 29, 31, 32, and 33; T. 4 S., R. 40½ E., all of sections 31, 32, and 33; T. 4 S., R. 40 E., all of sections 24, 25, and 36; The Clayton area, T. 3 S., R. 40 E., all of sections 19, 29, 30, and 32; T. 3 S., R. 39 E., all of sections 2, 4, 8, 9, 11, 12, 13, 17, 19, 20, 24, and 30; The Silver Peak Range area, T. 2 S., R. 39 S., all of sections 2, 10, 11, 15, 19, 20, 21, 22, 27, 28, 29, 33, 34, and 35; T. 2 S., R. 38 E., all of sections 4, 5, 6, 9, 10, 13, 14, 15, and 24; T. 2 S., R. 37 E., all of sections 1, and 2; T. 1 S., R. 37 E., all of sections 19, 27, 28, 29, 30, 34, and 35; T. 2 S., R. 36 E., all of sections 5, 7, 8, and 18; T. 2 S., R. 35 E., all of sections 13, 24, 25, 35, and 36; T. 3 S., R. 35 E., all of sections 2, 11, 14, 15, 22, 23, 26, 35, and 36; T. 4 S., R. 35 E., all of sections 1; T. 4 S., R. 36 E., all of sections 4, 5, 6, 7, 8, 9, 10, 15, 16, 22, 23, 24, 26, and 27; T. 4 S., R. 37 E., all of sections 4, 5, 8, 9, 16, 19, 20, and 21; T. 3 S., R. 37 E., all of sections 15, 16, 17, 20, 21, 22, 23, 24, 25, 28, 32, and 33; T. 3 S., R. 38 E., all of sections 25, 30, 32, 35, and 36; T. 4 S., R. 38 E., all of sections 2, 4, 5, 9, 10, and 11.

The above legal land descriptions are for public lands within Clark, Nye and Esmeralda Counties, Nevada. A map showing specific areas closed to public access is available from the following BLM offices: the Las Vegas District Office, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 647–5000, and the Battle Mountain District, Tonopah Resource Area Office, Bldg., 102 Old Radar Base, P.O. Box 911, Tonopah, Nevada 89049, (702) 482–6214.

Any person who fails to comply with this closure order issued under 43 CFR part 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Dated: August 27, 1990.

Ben F. Collins,

District Manager, Las Vegas District.

[FR Doc. 90–20929 Filed 9–5–90; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972 as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR 18).

File No. PRT–751849

Applicant

Name: Chicago Zoological Society, Brookfield Zoo

Address: 3300 Golf Road, Brookfield, IL 60513

Type of Permit: Scientific Research/ Display

Name and Number of Animals: Walrus *Odobenus rosmarus* 8 animals

Summary of Activity to be Authorized: The applicant proposes to import these animals on loan from the Moscow Zoo as part of a cooperative effort between the two zoos. The salvaged, orphaned juveniles will be loaned to Brookfield Zoo for public display, captive-breeding, and research. Brookfield Zoo in return will aid the Moscow Zoo with renovation of their mammal facility.

Source of Marine Mammals for Research/Public Display: the Moscow Zoo, Moscow, USSR

Period of Activity: September 1990 to September 1991

Concurrent with the publication of this notice in the **Federal Register**, the Office of Mangement Authority is fowarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Drive, Room 432, Arlington, VA 22203, within 30 days of the publication of this notice.

Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 am to 4:15 pm) at 4401 N. Fairfax Drive, Room 432, Arlington, VA 22203.

Dated: August 31, 1990.

Karen Willson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90–20973 Filed 9–5–90; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PST) on Thursday, October 4, 1990, at the Tamalpais High School, Mill Valley, California. The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R.H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda item at this public meeting will be public response to the Environmental Assessment of the proposed Mill Valley Long Range Radar on Mount Tamalpais prepared by the Federal Aviation Administration. As required under the National Environment Protection Act (NEPA), a Notice of Availability of Environmental Assessment and a Finding of No Significant Impact have been issued in the **Federal Register** by the Department of Transportation, Federal Aviation Administration.

The Federal Aviation Administration proposes to modify an existing site on Mount Tamalpais, within the boundaries of the Golden Gate National Recreation Area, by elimination of one of two existing radomes with a new single radome. The single radome will be the same size, but may be painted with a more environmentally suitable color than the color of the two existing domes.

As part of the project, the overall development footprint of the site will be reduced by two-thirds and re-fenced so that areas of the existing site that are no longer needed can be revegetated with native plant species.

The proposed action will consolidate existing equipment and structures on-site. Radar equipment currently located on Middle Peak will also be removed and consolidated into the modified facility.

Under Public Law 95–625, Sec. 317 (b) for the Golden Gate National Recreation Area, a public hearing is required for this project. The meeting is a joint meeting with the Marin Municipal Water District.

Also included at this meeting will be Superintendent's Report.

This meeting is open to the public. Persons wishing to receive a copy of the Environmental Assessment of the Mill Valley Long Range Radar on Mount Tamalpais should write to FAA—Western Pacific Region, P.O. Box 92007, WWPC, Los Angeles, California 90009.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after October 26, 1990. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: August 29, 1990.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 90–20917 Filed 9–5–90; 8:45 am]

BILLING CODE 4310–70–M

Delaware and Lehigh Navigation Canal National Heritage Corridor

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: September 21, 1990.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Bethlehem City Library, Second floor Conference room, 10 East Church Street, Bethlehem, PA.

FOR FURTHER INFORMATION CONTACT: Deirdre Gibson, Division of Park and Resource Planning, Mid-Atlantic Regional Office, National Park Service, 260 Custom House, 200 Chestnut Street, Philadelphia, PA 19106, 215–597–6486.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100–692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting involves discussion of goals for the Commission and election of officers.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Anthony M. Corbisiero,

Associate Director for Planning and Development.

[FR Doc. 90–20925 Filed 9–5–90; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–312]

Certain Dynamic Random Access Memories, Static Random Access Memories, Components Thereof, and Products Containing Same; Commission Determination Not To Review an Initial Determination Terminating Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1095.

SUPPLEMENTARY INFORMATION: On July 18, 1990, the parties in the investigation filed a renewed joint motion to terminate the investigation on the basis of a settlement agreement. On July 31, 1990, the presiding ALJ issued an ID (Order No. 5) terminating the investigation on the basis of the settlement agreement. No petitions for review, or agency or public comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: August 29, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–20914 Filed 9–5–90; 8:45 am]

BILLING CODE 7020–02–M

STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–228 (Advisory Opinion Proceeding)]

Certain Fans With Brushless DC Motors; Division Not To Review Initial Advisory Opinion, To Affirm Recommended Determination, and To Deny Motion To Amend a Petition for Advisory Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined (1) not to review an initial advisory opinion (Order No. 8) issued in the above-captioned proceeding by the presiding administrative law judge (ALJ) on July 19, 1990, (2) to affirm a recommended determination (RD) (Order No. 9), issued by the ALJ on the same day, suspending the remainder of the advisory opinion proceeding pending the outcome of a trial in federal district court, and (3) to deny, without prejudice, a motion to amend the petition for an advisory opinion proceeding to add a forth type of fan.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1103.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of sections 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 211.54(b) (19 CFR 211.54(b)).

In the original investigation, the presiding ALJ issued an initial determination (ID) finding that certain claims of the patent in controversy (U.S. Letters Patent 4,494,028) were invalid as anticipated or obvious, but that if those claims had been valid, then complainant Rotron, Inc. (now Comair Rotron) would have established a violation of section 337 by respondents Matsushita Electric Industrial Co., Ltd. and Matsushita Electric Corp. of America (collectively Matsushita). The Commission reviewed and affirmed the ID's findings that clams 2–4, 7, and 9–12 of the patent in controversy were invalid as obvious, and determined not to review the remaining findings of the ID.

In *Rotron, Inc.* v. *U.S.I.T.C.*, 845 F.2d 1034 (Fed. Cir. 1988), the U.S. Court of Appeals for the Federal Circuit reversed the Commission's finding of patent invalidity respecting claims 3 and 9–12 of the patent in controversy and, in light of the Commission's other findings, found a violation of section 337 of the Tariff Act of 1930 as a matter of law. The Federal Circuit remanded the investigation to the Commission for appropriate further proceedings.

On August 30, 1988, the Commission issued a limited exclusion order prohibiting the importation into the United States of infringing brushless DC motors and fans with infringing brushless DC motors manufactured abroad by or on behalf of Matsushita Electric Industrial Company, Ltd., or any related entity, except under license from the patent owner.

On February 15, 1990, a petition for institution of an advisory opinion proceeding or, in the alternative, for modification of the limited exclusion order was filed with the Commission on

behalf of Matsushita. The petition requested advice as to whether three types of fans with brushless DC motors—Two-Piece MEI Fans, Axially Magnetized MEI Fans, and Reluctance Type MEI Fans—infringe the patent in controversy. On May 15, 1990, the Commission ordered institution of an advisory opinion proceeding.

On July 19, 1990, the presiding ALJ issued Order No. 8, based on the agreement of all the parties, that one of the three types of fans in issue, the reluctance type MEI fan, does not infringe the '028 patent and may be imported into the United States without violating the Commission's limited exclusion order issued at the conclusion of the orignal investigation. On the same day, pursuant to a motion by complainant Comair Rotron, the ALJ issued an RD (Order No 9) suspending the advisory opinion proceeding with respect to the remaining two types of fans, axially-magnetized and two-piece MEI fans, pending the outcome of a trial in the U.S. District Court for the District of New Jersery scheduled to begin on November 13, 1990.

On July 31, 1990, Matsushita filed a petition requesting the Commission to review the RD. On August 6, 1990, Rotron filed an opposition to that petition. The last remaining party to the advisory opinion proceeding, the Commission's Office of Unfair Import Investigations, filed its response to Matsushita's petition on August 7. In the past, to assist it in final disposition of RDs the Commission has requested that the parties file exceptions to the RD as well as alternative findings of fact and conclusions of law. While there is no provision in the Commission's rules for filing a petition for review of an RD, in light of the fact that a petition has been filed, and the other parties have responded to it, the Commission has decided not to request that the parties file exceptions and alternative findings and conclusions, and instead has considered the petition and responses thereto.

Also on July 31, 1990, Matsushita filed a motion to amend its February 15, 1990 petition to add a fourth type of fan, the separately magentized MEI fan. On August 9, 1990, complainant Comair Rotron filed its opposition to the motion. On August 10, 1990, the Office of Unfair Import Investigations filed an opposition to the motion.

Copies of the Commission's order and all other nonconfidential documents filed in connection with this proceeding are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information regarding this proceeding can be obtained by contacting the Commission's TDD terminal at 202–252–1810.

By order of the Commission.

Issued: August 27, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–20916 Filed 9–5–90; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. TA–503(a)–21 and 332–295]

President's List of Articles Which May Be Designated Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On August 22, 1990, the Commission received a request from the U.S. Trade Representative (USTR) requesting certain Commission advice under sections 131, 503, and 504 of the Trade Act of 1974 and section 332(g) of the Tariff Act of 1930. Following receipt of that request, the Commission instituted investigation Nos. TA–503(a)–21 and 332–295 in order to:

(1) Provide advice, pursuant to sections 131(b) and 503(a) of the Trade Act of 1974 (19 U.S.C. 2151(b) and 2463(a)), with respect to each article listed in Part A of the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the Generalized System of Preferences (GSP);

(2) Provide advice pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g))—

(a) As to the probable economic effect on domestic industries producing like or directly competitive articles and on consumers of the removal of the articles listed in Part B of the attached Annex from eligibility for duty-free treatment under the GSP;

(b) In accordance with section 504(c)(3)(A)(i) of the Trade Act of 1974 as to the probable economic effect on domestic industries producing like or directly competitive articles and on consumers of waiving the competitive need limits for countries specified with respect to the articles listed in Part C of the attached Annex;

(c) As to the probable economic effect on domestic industries producing like or directly competitive articles and on consumers of restoring the competitive need limits specified in section 504(c)(1) of the 1974 Act for Mexico with respect to articles included under HTS subheadings 8414.59.80 and 8507.90.40, all of the foregoing articles for which Mexico currently is subject to the reduced competitive need limits specified in section 504(c)(2)(B) of the 1974 Act; and

(d) In accordance with section 504(d) of the Trade act of 1974, which exempts from one of the competitive need limits in section 504(c) of the Trade Act of 1974 articles for which no like or directly competitive article was being produced in the United States on January 3, 1985, with respect to whether products like or directly competitive with the articles in Part A of the attached Annex were being produced in the United States on January 3, 1985.

In providing its advice under (1), the Commission will assume, as requested by USTR, that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 504(c)(1) of the Trade Act of 1974 (except as noted for Mexico with respect to articles included under HTS subheadings 0710.80.95 (pt.), 0710.80.9530, 2917.37.00, and 7901.11.00 and for Poland with respect to articles included under HTS subheading 1602.41.20).

EFFECTIVE DATE: As requested by USTR, the Commission will seek to provide its advice not later than November 30, 1990.

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. C.B. Stahmer (202–252–1321),

(2) Textiles and apparel, Ms. Linda Shelton (202–252–1467),

(3) Chemical products, Ms. Cynthia Trainor (202–252–1354),

(4) Minerals and metals, Mr. James Luke (202–252–1426),

(5) Machinery and equipment, Mr. John Cutchin (202–252–1396),

(6) General manufactures, Mr. Ruben Moller (202–252–1495),

(7) Services and electronic technology, Mr. Thomas Sherman (202–252–1389).

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–252–1091.

BACKGROUND: The letter from the USTR provided the following by way of background:

The Trade Policy Staff Committee (TPSC) announced in the **Federal Register** on August 24, 1990, the acceptance of product petitions for modification of the Generalized System of Preferences (GSP) received as part of the 1990 annual review. Modifications to the GSP which may result from this

review will be announced in early 1991, and become effective July 1, 1991.

PUBLIC HEARING: A public hearing in connection with the investigation will be held in the Commission Hearing room, 500 E Street SW., Washington, DC 20436, beginning at 9:30 a.m. on October 2, 1990, and continuing as required on October 3 and 4. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E St. SW., Washington, DC 20436, not later than the close of business on September 21, 1990. Posthearing briefs must be filed by October 11, 1990.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearance at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 11, 1990. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202–252–1810).

By order of the Commission.

Issued: August 29, 1990.

Kenneth R. Mason,

Secretary.

Annex I (HTS Subheadings)[1]

A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

0202.30.20	0710.80.95(pt)
0203.22.10	0710.80.9530
0203.29.20	0710.80.9540
0403.90.80(pt)	0807.10.60
0406.90.3040	1602.41.20
0701.90.00(pt)	1602.42.20
0710.30.00	1602.49.20
1702.30.40	2924.29.45(pt)
2003.10.00	2929.10.15
2007.99.05	2929.10.50(pt)
2007.99.10	2934.20.40(pt)
2007.99.20	3205.00.10(pt)
2007.99.25	3606.90.60
2204.21.4030	3823.90.29(pt)
2204.21.4045	3906.90.50
2204.21.8060	5608.90.2010
2208.90.50	6204.39.40(pt)
2901.10.20(pt)	6204.49.00(pt)
2903.61.10	6911.10.41
2903.61.30	6911.10.45
2903.69.50(pt)	6912.00.41
2904.90.10(pt)	7013.21.50
2904.90.45(pt)	7013.31.50
2907.29.50(pt)	7013.91.50
2907.29.50(pt)	7202.11.50
2908.10.30(pt)	7202.92.00
2908.90.10(pt)	7318.15.80(pt)
2916.39.10(pt)	7601.10.00
2916.39.30(pt)	7801.99.90
2916.39.50(pt)	7901.11.00
2917.37.00	7901.12.50
2921.42.50(pt)	8111.00.45
2921.42.50(pt)	8533.10.00
2921.43.50(pt)	8703.10.00(pt)
2922.42.10	8714.92.50
2924.29.45(pt)	9608.10.00

B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.

2005.90.5510	8481.80.90(pt)
2843.21.00	8481.90.10(pt)
2916.39.15	8481.90.90(pt)
3817.10.00(pt)	8516.90.60(pt)
8481.80.10(pt)	

C. Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preference.

0710.80.95(pt) (Mexico)
0710.80.9530 (Mexico)
0802.90.15 (Mexico)
0804.50.40 (Mexico)
1602.41.20 (Poland)
2005.20.0020 (Mexico)
2529.22.00 (Mexico)
2836.92.00 (Mexico)
2917.37.00 (Mexico)
2935.00.31 (Yugoslavia)
3907.60.00 (Mexico)
4015.11.00 (Malaysia)
4409.10.40 (Mexico)
4818.40.40 (Mexico)
7202.11.10 (Mexico)
7202.19.50 (Mexico)
7901.11.00 (Mexico)
8414.59.80[2] (Mexico)
8418.10.00 (Mexico)
8418.21.00 (Mexico)
8418.22.00 (Mexico)
8418.29.00 (Mexico)
8418.30.00 (Mexico)
8418.40.00 (Mexico)
8475.20.00 (Mexico)
8504.10.00 (Mexico)
8504.32.00 (Mexico)
8505.19.00 (Mexico)
8507.90.40[3] (Mexico)
8511.10.00 (Mexico)
8517.10.00 (Malaysia)
8520.20.00 (Malaysia)
8527.11.11 (Malaysia)
8536.69.00 (Mexico)
8536.90.00 (Mexico)
8544.30.00 (Mexico, Philippines)
8544.51.40 (Mexico)
8708.70.80 (Mexico)
8708.99.50 (Mexico)
9401.90.10 (Mexico)
9503.70.80 (Mexico)
9503.90.60 (Mexico)

[FR Doc. 90–20915 Filed 9–5–90; 8:45 am]

BILLING CODE 7020–02–M

[1] See USTR Federal Register notice of August 24, 1990 (55 FR 34878) for article descriptions.

[2] Advice is also requested on restoring the competitive-need-limit, specified in section 504(c)(1) of the Trade Act of 1974, for Mexico with respect to HTS subheading 8414.59.80.

[3] Advice is also requested on restoring the competitive-need-limit, specified in section 504(c)(1) of the Trade Act of 1974, for Mexico with respect to HTS subheading 8507.90.40.

[Investigation No. 337–TA–317]

Certain Internal Mixing Devices and Components Thereof; Designation of Additional Commission Investigative Attorney

Notice is hereby given that, as of this date, Kent R. Stevens, Esq. of the Office of Unfair Import Investigations will be a Commission Investigative Attorney in the above-cited investigation in addition to Linda C. Odom, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: August 30, 1990.

Office of Unfair Import Investigations, 500 E Street, SW., Room 401 Washington, D.C. 20436, (202) 252–1560.

Respectfully submitted,

Lynn I. Levine,

Director, U.S. International Trade Commission.

[FR Doc. 90–20911 Filed 9–5–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigative No. 337–TA–315]

In the Matter of Certain Plastic Encapsulated Integrated Circuits; Designation of Additional Commission Investigative Attorney

Notice is hereby given that, as of this day, Thomas L. Jarvis, Esq., of the Office of Unfair Import Investigation is designated as the Commission investigative attorney in the above-cited investigation in addition to Deborah J. Kline, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: August 30, 1990.

Office of Unfair Import Investigations, 500 E Street, SW., Room 401, Washington, DC 20436, (202) 252–1560.

Respectfully submitted,

Lynn L. Levine,

Director, U.S. International Trade Commission.

[FR Doc. 90-20912 Filed 9-5-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-302]

Certain Self-Inflating Mattresses; Designation of Commission Investigative Attorney

Notice is hereby given that, as of this day, Thomas L. Jarvis, Esq., of the Office of Unfair Import Investigation is designated as the Commission investigative attorney in the ancillary proceeding in the above-cited investigation.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: August 29, 1990.

Office of Unfair Import Investigations, 500 E Street, SW., Room 401, Washington, DC 20436, (202) 252-1560.

Respectfully submitted,

Lynn I. Levine,

Director, U.S. International Trade Commission.

[FR Doc. 90-20913 Filed 9-5-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31687]

The Belt Railway of Chicago; Exchange of Tracks Exemption in Wabash Railroad Co./Norfolk & Western Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343-11345 the exchange of certain tracks and property of The Belt Railway Company of Chicago and Wabash Railroad Company/Norfolk & Western Railway Company between Ada Street, Union Avenue, and CWI Junction, a distance of approximately 1.0 mile, between 77th and Ada Streets, a distance of approximately 1.1 miles, and, in addition, 179 feet West of Ada Street, all in the City of Chicago, IL, subject to standard labor protective conditions.

DATES: This exemption will be effective on October 6, 1990. Petitions to stay must be filed by September 21, 1990, and petitions for reconsideration must be filed by October 1, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31687 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,

and

(2) Petitioners' representatives:

R. Allan Wimbish, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

Woodrow M. Cunningham, The Belt Railway Company of Chicago, 6900 South Central Avenue, Chicago, IL 60638.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-1721. [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 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: August 29, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-20970 Filed 9-5-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31642]

Florida Central Railroad Co.; Lease and Operation Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Florida Central Railroad Company and CSX Transportation, Inc., from the requirements of 49 U.S.C. 11343, *et seq.*, for the former to lease from the latter and to operate 8.35 miles of rail line between milepost 806.30 at Toronto, FL and milepost 814.65 at Orlando, FL, subject to employee protective conditions imposed in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C. 2d 799 (1990).

DATES: This exemption will be effective on September 13, 1990. Petitions for reconsideration must be filed by October 1, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31642 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representatives:

Robert L. Calhoun, suite 806, 1025 Connecticut Avenue, NW., Washington, DC 20036.
Lawrence H. Richmond, 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 Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4957/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.].

Decided: August 27, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Commissioner Lamboley dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-20968 Filed 9-5-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Resource Conservation and Recovery Act

In accordance with Departmental policy, notice is hereby given that on August 27, 1990, a proposed Consent Decree in *United States* v. *Eljer Industries, Inc.*, Civil Action No. C87-2693Y, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree requires close certain areas containing hazardous wastes at its Salem, Ohio manufacturing facility, and to pay a civil penalty of $235,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Eljer Industries, Inc.*, D.J. reference 90-7-1-389.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, suite 500, Cleveland, Ohio 44114–1748, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202–347–7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–20927 Filed 9–5–90; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Morton Thiokol, Inc.*, Civil Action No. 86–4800, has been lodged with the United States District Court for the District of New Jersey on August 20, 1990. The proposed consent decree concerns the cleanup of two hazardous waste sites known as the Spence Farm Site and the Pijak Farm Site, which are located in Plumstead Township, Ocean County, New Jersey. The proposed consent decree requires defendant to perform on-going monitoring program at the sites, implement a Habitat Restoration Plan, and pay certain United States Environmental Protection Agency costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Morton Thiokol, Inc.*, D.J. Ref. 90–11–3–114.

The proposed consent decree may be examined at the office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, room 502, Newark, New Jersey, 07102; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004. A copy of the proposed consent decree and attachments can be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $19.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–20928 Filed 9–5–90; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Notice; Industry Cooperative for Ozone Layer Protection, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Industry Cooperative for Ozone Layer Protection, Inc. ("ICOLP"), on August 7, 1990, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional party has become a member of ICOLP: British Aerospace Dynamics, Precision Products, PB 181, Six Hills Way, Stevenage, Hetfordshire SG1 2DA, United Kingdom. Martin Marietta has been deleted from ICOLP's membership.

In addition, the address for obtaining information concerning ICOLP has been changed to: ICOLP, 1440 New York Avenue, NW., Suite 300, Washington, DC 20005, Telephone: (202) 737–1419, Fax: (202) 638–8565.

No other changes have been made in either the membership or the planned activities of ICOLP.

On March 13, 1990, ICOLP filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to 6(b) of the Act on April 18, 1990 (55 FR 14493).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 20871 Filed 9–5–90; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notice; International Pharmaceutical Aerosol Consortium for Toxicology Testing

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the International Pharmaceutical Aerosol Consortium for Toxicology Testing ("IPACT"), on August 7, 1990, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to IPACT, and its general area of planned activity, are given below.

The parties to the joint venture are: Boehringer Ingelheim GmbH; CIBA–GEIGY Limited; Fisons plc, Pharmaceutical Division; Merck & Co., Inc.; Minnesota Mining & Manufacturing Company; Rorer Group, Inc.; and Schering Corporation.

The nature of the planned joint activity is to engage a laboratory or laboratories to conduct inhalation toxicology testing of, and otherwise gather toxicology data on, hydrofluoroalkane 134a ("HFA–134a") in connection with seeking U.S. and foreign governmental approval of HFA–134a for use as a propellant in pocket size, metered dose inhalers also containing therapeutically active ingredients useful in treating asthma and other lung afflictions.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90–20874 Filed 9–5–90; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Michigan Materials and Processing Institute

Notice is hereby given that, on August 7, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Michigan Materials and Processing Institute ("MMPI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identity of the parties to the venture and (2) the nature and objectives of the venture.

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identity of the parties to the venture and its general areas of planned activity are given below:

The parties to the venture are MMPI and its members. MMPI is a Michigan non-profit membership corporation, with full Members, Associate Members, and University Members. Full Members: Allied-Signal Corporation; A.O. Smith Corporation; BASF Corporation; Chrysler Corporation; Dow Chemical Company USA: E.I. DuPont de Nemours & Co., Inc.; Ford Motor Company; General Motors Corporation; Mobay Corporation; Owens-Corning Fiberglas Corporation; and Shell Development Company. University Members: The University of Detroit; Michigan State University; Michigan Molecular Institute; Michigan Technological University; Wayne State University; and The University of Michigan. There are currently no Associate Members.

The general purpose of the venture is to conduct, sponsor, fund, direct and otherwise promote the research and development of cost-effective advanced uses and disposal of polymer-based composites to promote improved precision, superior appearance, increased strength-to-weight ratios, and reduced weight for use in durable goods. The venture will undertake: (1) The theoretical analysis, experimentation, and systematic study of phenomena and observable facts connected with polymer-based composities; (2) the development and testing of basic engineering techniques relating to the application of polymer-based composites; (3) the scientific investigation into practical applications of polymer-base composites including the experimental production and testing of models, prototypes, equipment, materials, and processes; (4) the collection, exchange, and analysis of research information; (5) the protection of intellectual property through the prosecution of patents and other intangibles; (6) the transfer of intellectual property for commercial use; and (7) the publishing or sponsoring of articles, newsletters and other publications related to polymer-based composites.

Membership in this venture remains open, and MMPI intends to file additional written notification disclosing all changes in membership of this venture.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-20870 Filed 9-5-90; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notice; Smart House, L.P.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Smart House, L.P. has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on August 7, 1990 disclosing the identities of the additional parties to the Smart House Project ("the Project"), and changes in the status of certain participants in the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the additional parties to the Project, those which have ceased to be involved in the Project, and those whose relationship to the Project have changed, are given below.

The following additional party is participating in the venture under a research and licensing agreement:

Broadband Networks, Inc.

The following parties previously were participating in the venture under initial negotiation and confidentiality agreements and now have executed, and are participating under, research and licensing agreements:

C-COR Electronics, Inc.
Robertshaw Controls Company

The following entities, which formerly were participating under research and licensing agreements, no longer are involved in the venture:

Honeywell Corporation
Square D Company

The following additional parties are participating in the venture under initial negotiation and confidentiality agreements and are in the process of negotiating research and licensing agreements:

Aleph International Corporation
Astec America
Chung-Hsin Electric & Machinery Mfg. Corporation
Custom Command Systems, Inc.
Double Energy Systems
Eagle Electric Manufacturing Co., Inc.
Exide Electronics
Genlyte Group Inc.
Gilbert Engineering Company, Inc.
Goodman Manufacturing Company
Heat-N-Glo Fireplace Products, Inc.
Innovative Technology, Inc.
Leviton Manufacturing Co., Inc.
M & S Systems, Inc.
Nexus Engineering Corporation
Pittway Corporation
Radionics, Inc.
Raychem Corporation
Staubli Corporation
Transcience

The following entities, which formerly were participating under initial negotiation and confidentiality agreements, no longer are involved in the venture:

Amphenol Spectra-Strip Company
Apple Computer, Inc.
Belden Wire & Cable Company
Bell Northern Research Ltd.
Blonder-Tongue Laboratories, Inc.
BRIntec Corporation
Burndy Corporation
Computest, Inc.
Domestic Automation Company
Emerson Electric Company
Federal Pioneer, Ltd.
Morse Security Group.
Northern Telecom, Inc.
Schlage Lock Company
Slater Electric, Inc.
TRS International, Inc.

The following additional party is participating in the venture under an affiliate agreement:

Hubbell Incorporated

The following additional parties are participating as advisors to the venture:

The Garlinghouse Company
Independent Electrical Contractors, Inc.
Oglethorpe Power Corporation

The following entities, which formerly were participating as advisors, no longer are involved in the venture:

Pacific Power & Light Company
Paragon Design Resources SW., Ltd.
Southern Connecticut Gas Co.
Southwest Gas Corporation

No other changes have been made in either the membership or the planned activities of the Smart House Project.

On June 14, 1985, the predecessor in interest to Smart House, L.P., the NAHB Research Foundation, Inc., filed the original notification pursuant to Section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 28, 1986, July 30, 1986, December 16, 1986, April 8, 1987, June 30, 1987, August 25, 1987, December 4, 1987, February 22, 1988, April 5, 1988, October 27, 1988, June 27, 1989, and February 26, 1990, Smart House, L.P. or its predecessor in interest filed additional written notifications. The Department of Justice published notice

in the Federal Register in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), on May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490), on July 30, 1987 (52 FR 28494), on September 22, 1987 (52 FR 35596), on January 5, 1988 (53 FR 186), on March 21, 1988 (53 FR 9154), on May 3, 1988 (53 FR 15750), on December 8, 1988 (53 FR 49614), on August 23, 1989 (54 FR 35091), and on April 9, 1990 (55 FR 13199), respectively.

The sprincipal business address of the Smart House Project is 400 Prince Georges Center Boulevard, Upper Marlboro, Maryland 20772–8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90–20873 Filed 9–5–90; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Investigation of the Effects of Mechanical Aids on the Annular Flow Characteristics in Full Scale Horizontal Wellbores Southwest Research Institute

Notice is hereby given that, on July 24, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the extension of the period of performance of its cooperative research project entitled "Investigation of the Effects of Mechanical Aids on the Annular Flow Characteristics of Full Scale Horizontal Wellbores." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that the parties to the project have agreed to extend the period of performance, which originally was to be approximately 24 months; and that the revised projected completion date for the project is now August 31, 1991.

No other changes have been made in either the membership or the planned activities of the group research project.

On February 9, 1989, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 1989, 54 FR 11579–11580. On April 12, 1989, SwRi filed an additional written notification. The Department published a notice in the **Federal Register** in response to this additional notification on May 19, 1989, 54 FR 21681.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 90–20872 Filed 9–5–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Commission on Achieving Necessary Skills; Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Secretary's Commission on Achieving Necessary Skills (SCANS) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) on February 20, 1990. The SCANS is to advise the Secretary on national competency guidelines for the skills required of high school graduates for entry into employment. The Commission has the practical task of specifying and quantifying levels of skills' attainment to perform different types of jobs adequately.

TIME AND PLACE: The second meeting will be held September 21, 1990 from 1 p.m. until 4 p.m. at the Grand Hyatt Washington, 1000 H Street NW. Level–3B, Constitution Rooms C/D/E, Washington, DC 20001.

AGENDA: The agenda for the meeting follows:

1. Task Force meetings reports (five):
   a. comments on skills/scenarios (Pelavin report),
   b. ten jobs selected,
2. Commission action:
   a. functional skills/scenario approach and tentative skills list
   b. validity approach and fifty jobs
3. Staff—sector report outline and sector associations, and "strategy" for validating and disseminating list of skills
4. Commission discussions of next steps
5. Public comment

PUBLIC PARTICIPATION: The meeting will be open to the public. Time will be set aside for public comments. Seating will be available for the public on a first-come, first-serve basis. Five seats will be reserved for the media. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 10 copies to Dr. Arnold Packer, Executive Director, SCANS—Room C–2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Papers received on or before September 10, 1990 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Packer, Exec. Dir., SCANS—Room C–2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–4840.

Signed at Washington, DC this 31st day of August, 1990.

Elizabeth Dole,

Secretary.

[FR Doc. 90–20950 Filed 9–5–90; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application No. D–8317 et al.]

Proposed Exemptions; Dennis Calvert & Associates, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507,

200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Dennis Calvert & Associates, Inc. Amended Plan and Trust (the Plan) Located in Memphis, TN [Exemption Application No. D–8317]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (B) of the Code, shall not apply to the proposed cash sale to Dennis Calvert and Patricia Calvert (the Calverts), disqualified persons with respect to the Plan, of certain unimproved real property (the Property); provided that the sales price is the greater of (i) The fair market value of the Property as determined by a qualified independent appraiser at the time of the sale or (ii) the Plan's aggregate cost of the acquisition and holding of the Property through the date of the sale.[1]

Summary of Facts and Representations

1. The Plan is a defined benefit plan with $568,978 in assets as of December 31, 1989. Dennis Calvert is the sole participant and co-trustee of the Plan. Patricia Calvert also serves as co-trustee of the Plan.

2. The Property is a 1.6 acre parcel of undeveloped real estate located in Farmington Boulevard in Germantown, Tennessee. The Plan purchased the Property on October 28, 1986, for a total cost to the Plan of $119,693.20. The applicant represents that no additional Plan funds have been expended due to the holding of the Property. All taxes and assessments have been paid by Dennis Calvert. The applicant further represents that the Property has not been used by or on behalf of any disqualified person.

3. The applicant represents that the Plan originally purchased the Property as an investment when the Property was being considered for rezoning classification from "RT" (Multi-Family Residential) to "O" (Office District). At the time of the purchase, the Germantown Planning Commission recommended such rezoning of the Property to the Board of Mayor and Aldermen of the City of Germantown, Tennessee (the Board). The Board refused such request for rezoning. The applicant represents that the use of the Property was severely restricted as a result of the Board's refusal of the request to rezone.

4. The Plan proposes to sell the Property to the Calverts for cash in an amount equal to the greater of the fair market value at the time of the sale or the Plan's aggregate cost of the acquisition and holding of the Property through the date of the sale. Since the Board's refusal to rezone the Property to Office Property for a school. The Calverts intend to construct a school on the Property after the sale is consumated.

5. The Property was appraised by J.B. Barnett, a qualified independent appraiser of Statewide Appraisal Service located in Memphis Tennessee (the Barnett Appraisal). The Barnett Appraisal indicates that the appropriate fair market value of the Property as of March 27, 1989, is $131,000. The Barnett Appraisal states that the valuation of the Property was determined using a comparative market method.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The purchase price to be paid to the Plan will be the greater of the fair market value at the time of the sale, or the aggregate cost of the acquisition and holding of the Property through the date of the sale; (2) the fair market value of the Property has been determined by a qualified independent appraiser; and (3) the Plan will receive all cash for the sale of the Property.

NOTICE TO INTERESTED PERSONS: Since Dennis Calvert is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523–8881. (This is not a toll-free number).

Donaldson, Lufkin & Jenrette Securities Corp. (DLJ) Located in New York, NY [Application No. D–8346]

Proposed Exemption

I. Transactions

A. Effective March 13, 1990, 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

[1] Pursuant to 29 CFR 2510.3–3(b), there is no jurisdiction under Title I of the Act for the proposed sale because Dennis Calvert is the sole participant of the Plan. However, there is jurisdiction under Title II of the Act pursuant to section 4975(c)(2) of the Code.

Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[2]

B. Effective March 13, 1990, 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.[3] 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 March 13, 1990, 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.[4]

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 March 13, 1990, 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 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 service 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

[2] 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 2520.3–21(c).

[3] 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.

[4] 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.

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 disclosd 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) above for which DLJ 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 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) DLJ;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, contolled by or under common control with DLJ; or

(3) Any member of an underwriting syndicate or selling group of which DLJ or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes as 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 affilitate of a person described on (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 affilitate 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 delievery 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 or 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.

Effective date: This exemption, if granted, will be effective for transactions occurring on or after March 13, 1990.

Summary of facts and representations

1. DLJ is an international investment banking firm which engages in securities transactions as both a principal and agent and which provides a broad range of underwriting, research and financial services to domestic and foreign financial institutions, corporations, governments, foundations, endowment trusts, insurance companies, investment companies, trust funds, securities dealers, pension funds and individuals. DLJ's Mortgage Finance and Real Estate Departments underwrite and trade a broad range of mortgage-backed securities and mortgage loans, and provide related investment banking services with respect to real estate and housing. Since 1985, DLJ has been a wholly owned indirect subsidiary of the Equitable Life Assurance Society of the United States, one of the world's largest insurance companies.

Trust Assets

2. DLJ seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following catagories of trusts: (1) single and multi-family residential or commercial mortgage investment trusts;[5] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[6]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by

[5] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. DLJ requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, DLJ has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[6] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts are plan assets.

an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. DLJ, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates made to date and all of the public offerings of certificates presently contemplated have been or are to be underwritten on a firm commitment basis. In addition, DLJ has privately placed certificates on both a firm commitment and an agency basis. DLJ may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annually installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

5. Some of the certificates will be multi-class certificates. DLJ requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[7]

Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In certain transactions of this type, interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates have been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to such certificateholders is less than the amount required to be so distributed, all such certificateholders will share in the amount distributed on a pro rata basis.[8]

6. For tax reasons, the trust must be maintained as an essentially passive entity. 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 agreement provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except with respect to 30-year obligations, in which case the period may be as long as two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The originator of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entitles that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The sponsor will be one of three entities: (i) A special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The trustee of a trust is the legal owner of the obligations in the trust. The turstee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore, will be unrelated to DLJ, the trust sponsor or the servicer. DLJ represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, sponsor or the trust as specified in the pooling and services agreement. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The servicer of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable

[7] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[8] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables, is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (through they themselves may be related) will be unrelated to DLJ. In some cases, however, affiliates of DLJ may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. Where the sponsor of a trust is not the originator of receivables, included in a trust, the sponsor generally purchases the receivables in the secondary market, either directly from the originator or from another secondary market participant. The price the sponsor pays for a receivable is determined by competitive market forces, taking into account payment terms, interest rate, quality, and forecasts as to future interest rates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters. In some transactions, the sponsor or an affiliate may retain a portion of the certificates for its own account. The transfer of the receivables to the trust by the sponsor, the sale of certificates to investors, and the receipt of the cash proceeds by the sponsor generally take place simultaneously.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[9] This rate is generally determinated by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premiun yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicor (who may also be the sponsor, and receive fees for acting in that capacity) will retain the difference between paymens received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including, in some cases, the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, unsually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceeding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. DLJ will receive a fee in connection with the securities underwriting or private placement of certificates. In a securities underwriting, this fee would normally consist of the difference between what DLJ receives for the certificates that it distributes and what it pays the sponsor for those ceritifcates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

Purchase of Receivables by the Servicer

17. 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. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or the creation of a class of

[9] The pass-though rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

certificates with subordinated cash flow) will be utilized by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). Typically, in these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) Out of late payments by the obligors, (b) from the credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. In some transactions, the master servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectable. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(b) In cases where the master servicer and the insurer are affiliated or are the same entity, the credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax

consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. It is DLJ's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is DLJ's intention to attempt to make a market for any certificates for which DLJ is lead or co-managing underwriter.

Retroactive Relief

25. DLJ represents that it has engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would not be granted. However, it is possible that some transactions may have occurred that would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(f)). These problems are compounded as transactions occur in the secondary market. In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3–101(b)), it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Therefore, DLJ requests relief retroactive for transactions which have occurred on or after March 13, 1990, the date DLJ originally filed its exemption application with the Department.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which DLJ seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) DLJ has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned

upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[10]

[10] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

III. Limited Section 406(b) and Section 407(a) Relief for Sales

DLJ represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[11] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[12] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, DLJ represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. DLJ represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, DLJ represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

[11] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which DLJ or any of its affiliates is either (a) The sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[12] The applicant represents that where a trust sponsor is an affiliate of DLJ, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if DLJ is not a fiduciary with respect to plan assets to be invested in certificates.

For further information contact: Paul Kelty of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Baton Rouge Clinic Retirement Plan and Trust, (the Plan),

Located in Baton Rouge, LA,

[Application No. D–8349].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471 April 28, 1975). If the exemption is granted the restrictions of 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 purchase by the self-directed account (the Account) in the Plan of Herbert Dyer M.D. (Dr. Dyer) of certain parcels of real property (collectively, the Properties) from Dyer Development Corporation (DDC), a party in interest with respect to the Plan, provided that the Account pays the lesser of $88,500 or the aggregate fair market value of the Properties at the time of the purchase.

Summary of Facts and Representations

1. The Plan, established on January 1, 1968, is a money purchase plan which provides for self-directed accounts. The Plan has approximately 170 participants, but only Dr. Dyer's Account will be affected by the proposed transaction. As of December 31, 1989, the total Plan assets were $15,086,617 and the total assets of the Account were $591,344. The sponsor of the Plan is the Baton Rouge Clinic (the Employer), which is a professional medical corporation incorporated in the State of Louisiana. In May of 1990, the trusteeship of the Plan was transferred to Baton Rouge Bank and Trust Company. DDC, a Louisiana corporation more than 50 percent owned by Dr. Dyer, is in the business of building and selling residential housing.

2. The Properties consist of two parcels of improved real property and two parcels of unimproved real property (individually, House 1, House 2, Property 1 and Property 2). The applicant represents that the Properties are not adjacent to any property owned by parties in interest. The Properties, at the time all undeveloped, were purchased on September 5, 1984, by DDC from Kay-Lynn Developers, an independent third party for the total price of $60,000, which was financed in

full by a mortgage loan (the Purchase Loan) from the City National Bank of Baton Rouge, Louisiana (the Bank), which is an independent third party with regard to the Plan and to the Employer. Subsequently, House 1 and House 2 were constructed by DDC with mortgage loans of $69,000 for each House (the Housing Loans), also provided by the Bank. The Purchase Loan and the Housing Loans were then consolidated into one mortgage loan (the Consolidated Loan) from the Bank to DDC. Dr. Dyer represents that the Properties were used as security for the Purchase Loan, the Housing Loans and the Consolidated Loan. Dr. Dyer, using his personal residence as security, also personally borrowed $70,000 from the Bank (Dr. Dyer Loan), the proceeds from which he used to make a $70,000 loan to DDC in September of 1989. DDC subsequently used the proceeds from the Dr. Dyer Loan to reduce the amount of the Consolidated Loan with the Bank. Accordingly, James R. Smith, the senior vice president of the Bank, represented that as of June 29, 1990, the balance on the Consolidated Loan was $89,404.21.

3. However, because on the date of the sale DDC will pay off the Consolidated Loan in full, the Account will own the Properties free and clear of any and all encumbrances. Dr. Dyer represents that if the amount received by DDC as a result of this transaction is less than the amount of the Consolidated Loan, Dr. Dyer will pay the difference to the Bank from his personal finances. Dr. Dyer has submitted a statement of his net worth dated April 16, 1990, which indicates that his personal assets are sufficient to fulfill this representation. Accordingly, neither the Account nor the Plan will assume any debt on the Properties.

4. The aggregate fair market value of the Properties was determined by John D. Dunaway, RM (Mr. Dunaway) to be $88,500 as of January 18, 1990. Mr. Dunaway is an independent qualified real estate broker licensed in the State of Louisiana and a member of the American Institute of Real Estate Appraisers. In preparing the appraisal of the Properties, Mr. Dunaway relied primarily on the comparable sales appraisal method. Mr. Dunaway represents that House 1 and House 2, located respectively at 3357 and 3359 Myrtle Grove Drive, Baton Rouge, Louisiana, each have a fair market value of $38,000. Mr. Dunaway states that the currently unimproved Property 1 and Property 2 are also located on Myrtle Grove Drive and have a fair market value of $5,500 and $7,000, respectively. In a letter of April 5, 1990, Mr. Dunaway stated that the Baton Rouge real estate market already begun to stabilize and accordingly the Properties are expected to appreciate in value.

5. The applicant proposes to sell the Properties to the Account in a one-time cash transaction with no expenses related to the purchase to be paid by the Plan or the Account. The applicant represents that the proposed transaction would involve approximately 15% of the Account's assets. Since 1987, the Houses have been rented to unrelated third parties and the aggregate rent received was $9,791 in 1987, $11,058 in 1988 and $10,350 in 1989. It is also represented that neither of the unimproved Properties have ever been used by any parties in interest. The applicant believes the transaction to be desirable for the Account because the Houses are currently yielding rental income and the aggregate Properties are expected to appreciate in value.

6. The applicant represents that the Plan will continue renting the Houses to independent third parties and will possibly develop Property 1 and Property 2. Further any development work on Property 1 and Property 2 will be done by unrelated third parties. Because the Properties will be held solely by the Account, the purchase will not affect any other participants in the Plan. The applicant maintains that economic hardship will be sustained if the transaction is denied as the addition of the Properties would diversify the Account's investment portfolio in the Plan.

7. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed purchase price will be the lesser of $88,500 or the aggregate fair market value of the Properties at the time of the purchase;

(b) The aggregate fair market value of the Properties has been determined by a qualified independent appraiser;

(c) The purchase will be a one-time cash transaction and no commissions or other expenses will be paid by the Plan or the Account;

(d) The proposed purchase will not exceed 25% of the Account's total assets;

(e) On the date of the transaction, the Account will acquire the Properties clear of any and all encumbrances; and

(f) The only Plan participant affected by the proposed purchase will be Dr. Dyer, and he desires the purchase to be consummated.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in Dr. Dyer's Account and he is the only participant affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8104. (This is not a toll-free number.)

Gordon Food Service, Inc. Profit Sharing Plan (the Profit Sharing Plan) and the Gordon Food Service, Inc. Security Plan (the Security Plan; Collectively, the Plans) Located in Grand Rapids, MI

[Application No. D–8367]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale by a group trust (the Group Trust) in which the Plans invest, of an unsecured promissory note (the Note) to Gordon Food Service, Inc. (the Employer), provided the Group Trust receives an amount representing the greater of the fair market value of the Note as of the date of the sale or the outstanding principal balance of the Note plus accrued interest at the time the transaction is consummated.

Summary of Facts and Representations

1. The Employer is a Michgan corporation and a wholesale distributor of a wide variety of food and nonfood grocery products to the food service industry and institutional clients including restaurants, hotels, colleges and schools, hospitals and prisons. The Employer has been in business for approximately 48 years. It has 1,300 employees and a distribution network covering much of the Midwest including the States of Michigan, Ohio, Indiana and Illinois. The Employer maintains its principal place of business in Grand Rapids, Michigan.

2. The Plans, which have common participants, consist of the Profit Sharing Plan and the Security Plan. The Profit Sharing Plan is a 401(k) plan with 985 participants and net assets of $36,513,619 as of September 30, 1989. On that same date, the Security Plan, a money purchase defined contribution plan, had 985 participants and net assets of $8,830,906. The trustees (the Trustees) of the Plans are Messrs. Paul B. Gordon, John M. Gordon and Daniel A. Gordon. The Trustees, who are the majority shareholders, officers and directors of the Employer, make investment decisions for the Plan.

3. On August 10, 1978, the Profit Sharing Plan, lent $500,000 to Square Real Estate, Inc. (Square), a Michigan-based real estate promoter and developer that has offered financial opportunities and investments to the Employer, members of the Gordon Family (the Gordons), the Plans, and the public at large. Mr. Robert Steed (Mr. Steed), the owner and president of Square, is a business associate and professional representative of the Gordons and the Employer. Both Mr. Steed and Square are also licensed real estate agents and brokers.

4. To evidence the $500,000 loan, Square gave the Profit Sharing Plan a promissory note which as secured by the first mortgage (the Mortgage) on certain commercial property (the Property). The Note carried interest at the rate of 9½ percent per annum and provided for monthly payments of principle and interest of $4,461 from June 10, 1978 through April 10, 1993. The Property securing the Note consisted of a parcel of undeveloped land and a stip mall, known as the Wyoming Industrial Square, which was located at 890 47st Street, SW., Wyoming, Michigan. The Mortgage was recorded on August 14, 1978 with the Kent County, Michigan Register of Deeds.[13]

5. To centralize investment decisions and minimize administrative costs, on November 1, 1983, the Employer created the Group Trust in which certain assets of the Profit Sharing Plan and all of the assets of the Security Plan have been commingled. As of September 30, 1989, the Group Trust had net assets of $33,589,627. Of the total assets, approximately 78 percent is attributed to the Profit Sharing Plan and 22 percent is attributed to the Security Plan. The Note is held by the Group Trust and is allocated between the Plans in the stated proportions.

6. In August 1985, Mr. Steed approached the Trustees to inform them that the Property securing the Note was in the process of being sold and that the Group Trust would be paid off on the Note and the Mortgage. To facilitate the sale, Trustee John M. Gordon executed a Discharge of Mortgage (the Discharge of Mortgage) dated August 28, 1985 and delivered the Discharge of Mortgage to Mr. Steed to be held in escrow pending the closing. Subsequently, Mr. Steed telephoned the Employer and its principles to explain that the sale had fallen through and would not be completed. The Employer and its principles also presumed that the Discharge of Mortgage would be destroyed.[14] The Property was subsequently sold without the knowledge of the Employer. Square however, continued to make monthly payments under the Note until March 5, 1990 and it was never delinquent in making such payments. According to the applicant, the Plans paid no servicing or administration fees in connection with their holding of the Note.

7. On March 2, 1990, Square filed a petition in bankruptcy for protection from its creditors under chapter 11 of the U.S. Bankruptcy Code. Other than the March 1990 payment, Square has made no further payments on the Note. As of March 5, 1990, the Note had an outstanding principal balance of $318,934. Upon Square's filing for bankruptcy, the Employer and the Trustees learned that the Discharge of Mortgage had been recorded by Square on September 30, 1985.

8. The Employer believes that Square is insolvent, unable to continue making payments under the Note and unable to discharge or pay a judgment on the Note. Although Square has filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code, the Employer is also of the belief that a liquidating bankruptcy will occur. Therefore, in order to preserve the investments of money and confidence which participants have in the Plans, the Employer proposes to purchase the Note from the Group Trust for cash. Thus, the Croup Trust will sell the Note to the Employer for the greater of its fair market value as determined by an independent appraiser for $318,934, representing the outstanding principal balance of the Note plus accrued interest as of the date the transaction is consummated. The independent appraiser will update the fair market value of the Note prior to the sale to ensure that the Group Trust will not receive an amount that is less than fair market value. Further, the Group Trust will not be required to pay any fees or commission in connection with the proposed sale.

9. The Note has been appraised by Sigurd R. Wendin and Associates, Inc. of Birmingham, Michigan, an independent appraisal firm specializing in the evaluation of securities of closely-held corporations including debt obligations such as the Note. In particular, Mr. Richard H. Wendin (Mr. Wendin), the president of the company, has valued the Note at $191,360 as of July 11, 1990. Mr. Wendin states that based on Square's financial position, an unsecured creditor such as the Group Trust would probably recoup less than 75 percent of its investment with Square. Morover, in view of uncertainties regarding the timing and actual amount of payment, Mr. Wendin believes that a willing buyer and a willing seller would further discount the value of the Note to reflect the risks involved and to provide the buyer with a potential return commensurate with these risks. Because there is no public market for the Note, Mr. Wendin believes that a discount of 20 percent from a pro forma value of $239,201 (representing 75 percent of $318,934 which is the outstanding principal balance of the Note) would produce a fair market value for the Note of $191,360.

The Employer represents that the amount by which the sales price for the Note exceeds its fair market value, if treated as an Employer contribution to the Plans, when added to the balance of the annual additions to such plans, will not exceed the limitations prescribed by section 415 of the Code.

10. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale of the Note by the Plans to the Employer will represent a one-time transaction for cash; (b) the Plans will sell the Note to the Employer for an amount representing the greater of the fair market value of the Note as of the date of the sale or the outstanding principal balance of the Note plus accrued interest at the time the sale is consummated; (c) the Note has been appraised by Mr. Wendin, a qualified, independent appraiser; (d) the Plans will not be required to pay any fees or commissions in connection therewith; and (e) the sale of the Note will allow

[13] In this proposed exemption, the Department expresses no opinion as to whether the circumstances surrounding the making of the loan violated any provision of Part 4 of Title I of the Act.

[14] The Department expresses on opinion herein on whether Mr. Gordon's delivery of the Discharge of Mortgage to Mr. Steed, or any subsequent actions following the failure of the sale to be completed, was inconsistent with any of the fiduciary responsibility provisions of section 404 of the Act.

the Plans to reinvest the sale proceeds in income-producing assets.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4) 404 and 415.

For further information contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of August, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–20972 Filed 9–5–90; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 90–59; Exemption Application No. D-8374 et al.]

Grant of Individual Exemptions; Greenwich Capital Markets, Inc.

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 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Exemption

I. Transactions

A. Effective June 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.[1]

B. Effective June 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

[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).

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 June 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.[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 June 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;

(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

[2] 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] 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.

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) above for which in either such case, Greenwich 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 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 acquistion 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) Greenwich;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Greenwich; or

(3) any member of an underwriting syndicate or selling group of which Greenwich 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 dispositing obligations therein in exchange for certificates.

E. *Master Services* means the entity tht 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 that 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 of 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 1550.408c–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 to 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. *Qualifed 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 cerificates which are denominated at 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 July 5, 1990 at 55 FR 27720.

WRITTEN COMMENTS. The Department received one written comment to the notice of proposed exemption and no requests for a public hearing. The written comment, which was submitted by Greenwich, concerned corrections to certain technical language contained in the notice of proposed exemption. The comment also concerned clarification of the definition of the term "trust" as set forth in section III.B. of the proposed exemption. The specific details of the comment are presented below.

1. *Location of Greenwich.* Greenwich asserts that it is located in Greenwich, Connecticut and not in New York, New York. Therefore, the applicant recommends that the title of the proposed exemption be amended to reflect this change.

2. *Definition of "Trust".* To correct a typographical error in the fourth line of subsection III.B.(3) of the proposed exemption, Greenwich suggests that the words "to be" should be inserted before the words "made to certificateholders."

3. *Item 4—Trust Structure.* Greenwich notes that 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. Therefore, Greenwich explains that the words "On or" should be inserted before the phrase "prior to the closing date" at the beginning of the first sentence of the second paragraph of Item 4 of the Summary of Facts and Representations.

4. *Item 26—Summary.* Greenwich states that subparagraph (e) of Item 26 of the Summary of Facts and Representations should read as follows: "Greenwich has made, or will make, a secondary market in certificates."

5. *Residential Leasehold Mortgages (the Residential Leasehold Mortgages).* In response to a comment that was submitted in Prohibited Transaction Exemption 90–32, an exemption involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990), Greenwich notes that the Department confirmed that the definition of the term "trust" contained in section III.B. of the exemption would include trusts containing obligations that are secured by leasehold interests on residential real property. Therefore, Greenwich requests similar confirmation from the Department in the present exemption.

Accordingly, after consideration of the entire record, including the comment submitted by Greenwich, the Department has determined to grant the exemption subject to the technical amendments discussed above. The Department also confirms that the definition of "trust" includes Residential Leasehold Mortgages.

EFFECTIVE DATE: This exemption is effective for transactions occurring on or after June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in 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 adminstrative or stautory 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 describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 31st day of August, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-20971 Filed 9-5-90; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee; Meeting

In accordance with the requirements of the Federal Advisory Committee Act (FACA), the Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on September 25 and 26, 1990. The meeting will be held at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland. The meeting will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The purpose of this meeting is to consider what the strategy and content should be for a research program designed to meet NRC's essential regulatory requirements.

Tuesday, September 25, 1990

8 a.m.–10 a.m.: The Director of RES will review current research programs and the RES view of NRC needs for the research programs.

10 a.m.–12 noon: The NSRRC chairperson will lead discussions on the scope of the NSRRC review, the review approach, and the type of final report to be prepared.

Wednesday, September 26, 1990

8 a.m.–10 a.m.: Discussions between Committee members, the NRC Executive Director for Operations, the program Office Directors, and other NRC staff on the need for research to meet NRC's essential regulatory requirements.

1 p.m.–3 p.m.: Comments by the Subcommittee Chairpersons will be presented on specific research programs in relation to perceived agency needs.

3 p.m.–4:30 p.m.: The NSRRC Chairperson will lead discussions on current research programs in relation to agency needs, and will discuss any further information needed to prepare a report containing the Committee's advice on this subject.

4:30 p.m.: Adjourn

It is noted that several subcommittees will meet currently at times when the full committee is not meeting. These subcommittees do not constitute advisory committees as they are being convened solely to gather information for the NSRRC and will present that information for discussion in an open meeting (1 p.m.–3 p.m. on Wednesday). The subcommittee meetings are thus not open to public attendance.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the committee chairperson in accordance with procedures established by the committee. A verbatim transcription will be made of the NSRCC full committee meeting, and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Inquiries regarding this notice, any subsequent changes in the status of the meeting, the filing of written statements, requests to speak at the meeting, or the transcription, may be made to the Designated Federal Officer, Dr. Ralph O. Meyer (telephone: 301/492–3904), between 8:15 a.m. and 5 p.m.

Dated at Rockville, Maryland, this 30th day of August, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-20959 Filed 9-5-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Pressurized Water Reactors; Meeting

The Subcommittee on Advanced Pressurized Water Reactors will hold a meeting on September 21, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, September 21, 1990—8:30 a.m. until the conclusion of business

The Subcommittee will meet with ABB Combustion Engineering, Inc. to discuss design feedback for System 80 Plus from operational experience at C–E plants, in particular Palo Verde.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the ABB Combustion Engineering, Inc., NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, 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 therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat M. El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 29, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90-20960 Filed 9-5-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Pressurized Water Reactors; Meeting

The Subcommittee on Advanced Pressurized Water Reactors will hold a

meeting on September 20, 1990, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, September 20, 1990–8:30 a.m. until the conclusion of business

The Subcommittee will review the draft SER for the Westinghouse RESAR (SP/90) design.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of Westinghouse, the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, 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 therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat M. El–Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 29, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90–20961 Filed 9–5–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–12145, License No. 29–14150–01, EA 89–79]

Certified Testing Laboratories, Inc., Bordentown, NJ; Order Imposing A Civil Monetary Penalty

I

Certified Testing Laboratories, Inc., Bordentown, New Jersey (the "licensee") is the holder of License No. 030–12145 (the "license") issued by the Nuclear Regulatory Commission (the "Commissioner" or "NRC") pursuant to 10 CFR parts 30 and 34. The license authorizes the use of by-product material for the conduct of industrial radiography and related activities. The license was originally issued on January 10, 1973, was last renewed on February 5, 1987, and was due to expire on April 30, 1990. However, the licensee requested renewal of the license in an application dated March 20, 1990. On April 10, 1990, NRC Region I issued a letter notifying the licensee that the license remains in effect under a timely renewal application pursuant to 10 CFR 30.37(b), pending Commission action on the renewal application.

II

The NRC conducted a safety inspection of the licensee's activities at the licensee's facility on April 22, 1988. Subsequently, the NRC Office of Investigations performed an investigation. Based on the inspection and investigation, the NRC found that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated March 9, 1990. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, the severity level of the violations, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice by letter dated March 27, 1990. In its response, the licensee admits Violation I.A.2, does not admit Violations I.A.1 and I.B. requests a lower severity level classification, and requests mitigation of the penalty.

III

After consideration of the licensee's response and the statement of facts, explanation, and arguments contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that (1) the violations occurred as stated in the Notice, (2) the violations in Section I of the Notice were appropriately classified in the aggregate at Severity Level II, (3) and the $8,000 penalty proposed for the violations set forth in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is Hereby ordered* That:

The licensee pay a civil penalty in the amount of $8,000 within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within thirty days of the date of this order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555. A copy of the hearing request should also be sent to the Assistant General Counsel for Hearings and Enforcement, at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within thirty days of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at the hearing shall be:

(a) Whether the licensee committed Violations I.A.1 and I.B., as set forth in the Notice of Violation referred to in Section II above, and

(b) Whether, on the basis of those violations and Violation I.A.2 set forth in the Notice of Violation that the licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 29th day of August 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluation and Conclusion

On March 9, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty was issued to Certified Testing Laboratories, Inc., Bordentown, New Jersey, for violations identified during an NRC inspection and subsequent investigation by the NRC Office of Investigations. The licensee responded to the Notice on March 27, 1990. In its response, the licensee: (1) Does not admit certain parts of the two violations for which a penalty was proposed; (2) claims that the Severity Level for the violations assessed a civil penalty is more appropriately a Severity Level V rather than a Level II as cited; and (3) requests mitigation of the civil penalty for a number of stated reasons, including its corrective actions, past performance, and ability to pay. The NRC evaluation and conclusion concerning the licensee's response are as follows:

1. Restatement of Violations Assessed a Civil Penalty

I. Violations Assessed a Civil Penalty

A. Condition 16 of License No. 29–14150–01 requires, in part, that licensed material be possessed and used in accordance with statements, representations and procedures contained in a letter dated January 7, 1985. Item No. 5 of this letter requires the Radiation Safety Officer or his designated representative to perform unannounced field audit inspections of each radiographer at intervals not to exceed three months.

Contrary to the above,

1. Field audit inspection reports, dated July 20, 1987 and July 21, 1987, documenting quarterly field audits of two radiographers, were created by the Vice President/Radiation Safety Offier (VP/RSO); however, field audits of the indicated radiographers were not performed on the recorded dates, as admitted by the VP/RSO in an interview with an NRC investigator on February 8, 1989.

2. Between July 1987 and January 6, 1988, no field audits for one specific radiographer were performed.

B. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, information provided by the VP/RSO during a telephone conversation with three NRC representatives on April 25, 1988, was inaccurate in that the Vice President/Radiation Safety Officer (VP/RSO), in response to questions regarding the field audit inspection report dated July 21, 1987, stated that he personally performed the field audit inspection. This statement by the VP/RSO was not accurate in all material respect in that the VP/RSO subsequently admitted to an NRC investigator on February 8, 1989 that he had not audited the radiographer on July 21, 1987, but had "made up" the audit report to give the appearance of compliance with the quarterly audit requirement. The statement was material because it had the potential to affect an ongoing NRC review of the matter.

These violations have been categorized in the aggregate as a Severity Level II problem. (Supplement VII)

Civil Penatly-$8,000 (assessed equally between the two violations).

2. Summary of Licensee Response

The licensee admits, in part, one of the two violations in Section I of the Notice for which the civil penalty was proposed. Specifically, the licensee admits part I.A.2 of Violation I.A., noting that the failure to perform the audits between July 1987 and January 1988 was caused by the VP/RSO's inattention to the requirements of his position, as well as the low level of activity during the period. However, the licensee does not admit part I.A.1 of the violation, claiming that the audits more likely than not were done and simply documented after the fact (although in one case, a wrong date was selected.) While the licensee does not specifically admit or deny Violation I.B. concering the accuracy of statements made to three NRC representatives by the VP/RSO on April 25, 1988, the answer appears to deny the violation by noting the lack of information to suggest a motive for the VP/RSO to "attempt to mislead the NRC about whether he had performed the audits."

The licensee states that, if any audits were done in July 1987, the associated audit reports were prepared a significant number of months after these audits. The licensee further states that the failure to prepare audit reports at the same time as the audit, or immediately afterwards, was a violation of company policy. The licensee indicates that submittal of these reports to the NRC without a clear label (such as "Conformed Copy; Initial Reports Probably Lost; Audit Performed July, 1987; Report Prepared April, 1988") made these reports incomplete and created a false impression of accuracy.

In support of its contention that it is far more likely than not that the audits were done but documented afterwards, the licensee states that records reflect that the radiography that the VP/RSO asserts he audited was performed at the Bordentown offices of Certified during the entire day on each of three days in July (specifically, on July 20, 1987 by one radiographer, and on July 14 and 27, 1989 by another radiographer); the work area is one closed door and less than 75 feet from the VP/RSO's office; and the VP/RSO's practice is to frequently visit the work area during the day. Thus, he had ample opportunity to observe the radiographer's work. Furthermore, the licensee states that there is no information which would suggest any motive for the VP/RSO to either prepare willfully false reports or to attempt to mislead the NRC about whether he had performed the audits, since the VP/RSO had at all times conceded that he had not performed any audits between August 1987 and January 1988. If the VP/RSO simply asserted that he could not recall whether he had performed the July audits (given that the reports were not in his files at the time of the inspection), the missed audits for July would hardly have been more serious than the missed audits over the following six months. The licensee notes that the VP/RSO did not attempt to "make up" audit reports for the period between August 1987 and January 1988.

The licensee requests that if the NRC continues to maintain its conclusion that the July 1987 audit reports were willfully falsified by the VP/RSO, then the licensee requests a copy of the OI report of interview with the RSO on February 8, 1989, since the finding of willfulness was based primarily on that report of interview. (As noted in the cover letter, the OI report can be made available subject to certain conditions.)

The licensee also maintains that under the standards contained in the Enforcement Policy, Supplement VII, the severity level of the violations in Section I is more appropriately a Severity Level V rather than a Severity Level II, and therefore the penalty should be at most $500, based on a Severity Level V classification. In support of this contention, the licensee claims that if the audits had been performed in July, as it beleives, but the reports were either never prepared or lost, then the late reports with an incorrect date for the one audit seem to be "incomplete or inaccurate information which [was] provided to the Commission and the incompleteness or inaccuracy is of minor significance."

The licensee also contends that, based upon application of the escalation/mitigation factors set forth in the policy, the civil penalty should be either cancelled or mitigated. Specifically, the licensee claims that, in light of the extensive oversight now being provided by the corporate radiation sasfety director, a decrease in the penalty by approximately 50% is appropriate under the Corrective Action factor. In addition, the licensee maintains, that the prior good performance of the VP/RSO should cause a reduction of the penalty, perhaps by as much as 100%.

The licensee also requests that the NRC give consideration to their ability to pay the civil penalty. The licensee claims that "gross revenues (SALES) from all licensed activities at the Bordentown location were only about $48,000 in 1987 (and $37,000 last year). After direct labor and other costs, net revenues were probably less than $8,000 for both years combined." The licensee also notes its intent to charge the VP/RSO for any penalty ultimately imposed by the NRC, claiming that such penalty would be the direct result of his carelessness, and the VP/RSO still faces the possibility of discharge if the evidence discloses willfulness on his part. The licensee claims that it seriously doubts that the mistakes by the VP/RSO meet the "more than mere negligence" standard required for such a serious penalty. The licensee also notes that the VP/RSO's errors have already caused him a $2,500 fee personally and the threat of a federal prosecution for a number of months. In light of the sanctions he has already suffered, the licensee maintains that a letter or reprimand to the individual would constitute an adequate sanction.

The licensee also requests a hearing unless the fine is dropped or reduced to $500 or below.

3. NRC Evaluation of Licensee Response

The NRC concludes that the reports were falsified since the VP/RSO (notwithstanding any subsequent contentions) did admit in his interview with the OI investigator in February 1989, that he made up both documents after reviewing files and discovering that no other radiographer had been audited within three months of the previous audit. Further, when enforcement action was apparent, the VP/RSO changed his story as to whether he personnally made changes to the audit documents. Moreover, there may have been other instances of falsification of records that were not cited, e.g., on the records of the 1/6/87 and 1/6/88 audits for the same individual, the only difference is the year, with all other factors, being the same, including the time of observation, the location, the size of the pipe, and the slant of a typed entry.

With respect to the licensee's contention that the violation should be classified at Severity Level V, the NRC maintains that the violations in Section I are of more than "minor safety significance" because the NRC relies on such records, as well as statements concerning such records, to ensure that the radiographers are being audited so as to verify that they perform their tasks safely and in accordance with requirements. Completion of these records by the VP/RSO without actually performing the audits, and then providing inaccurate information to the NRC, represents, at a minimum, careless disregard for NRC requirements. Therefore, the violations were appropriately classified in the aggregate at Severity Level II.

With respect to the licensee's requests to cancel or mitigate the civil penalty based on its corrective actions, prior enforcement history and its ability to pay, the NRC concludes that (1) the licensee's corrective actions were not sufficiently prompt to provide basis for mitigation of the penalty; (2) the licensee's past enforcement history consists of eight violations in 1986 and 1987 and, accordingly, provides no basis for mitigation of the penalty; and (3) the licensee provides insufficient basis for concluding that the payment of the proposed penalty would either put the licensee out of business or adversely affect its ability to safely conduct licensed activities, since the licensee did, in fact, acknowledge a profit at its facility.

With respect to the licensee's statement that it intends to change any penalty imposed by the NRC to the VP/RSO, the NRC notes that such an action is a licensee decision that is not considered by the NRC when determining whether to escalate or mitigate a civil penalty, as the NRC considers the circumstances of the licensee, not individuals within the licensee.

4. NRC Conclusion

The licensee has not provided sufficient basis for the NRC to: (1) Reclassify the Severity Level of the violations in section I of the Notice, or (2) reduce the associated $8,000 penalty for the violations. Therefore, the NRC concludes that a civil penalty in the amount of $8,000 should be imposed by Order.

[FR Doc. 90–20958 Filed 9–5–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–352]

Philadelphia Electric Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has approved the request of Philadelphia Electric Company (the licensee) to withdraw its May 16, 1990 application for proposed amendment to Faciality Operating License No. NPF–39 for the Limerick Generating Station, Unit No. 1, located in Montgomery and Chester Counties, Pennsylvania.

the proposed amendment would have revised the Technical Specifications to allow a one-time extension of the visual inspection period for three small inaccessible snubbers in the drywell.

The Commission has previously issued a Notice of Consideration of issuance of Amendment published in the **Federal Register** on May 30, 1990 (55 FR 21974). However, by letter dated June 8, 1990, the licensee withdrew the proposed change, since it was no longer needed.

For further details with respect to this action, see the application for amendment dated May 16, 1990, and the licensee's letter dated June 8, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC., and at the local Public Document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania, 19464.

Dated at Rockville, Maryland this 29th day of August 1990.

Richard J. Clark,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–20957 Filed 9–5–90; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Areas Nos. 7110 & 7111]

Alabama (And Contiguous Counties in the State of Mississippi); Declaration of Disaster Loan Area

Mobile County and the contiguous counties of Baldwin and Washington in the State of Alabama, and George, Greene, and Jackson Counties in the State of Mississippi constitute an Economic Injury Disaster Loan Area due to severe economic impact on the seafood industry caused by flooding which occurred between December 1989 and March 1990. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on May 23, 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 rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The numbers assigned to this declaration for economic injury are 711000 for the State of Alabama and 711100 for the State of Mississippi.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: August 23, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 20980 Filed 9–5–90; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2436; Amdt. 3]

Nebraska; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated August 7, 1990, to the President's major disaster declaration of July 4, to include Hamilton County as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning June 10 and continuing through July 30, 1990.

Any counties contiguous to the above-named primary county and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The termination date for filing applications for physical damage for victims located in the above-named county will be September 20, 1990, 30 days from the date of this notice. For all other designated counties the physical deadline will remain September 4, 1990. For economic injury the termination date is April 4, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 17, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 20981 Filed 9–5–90; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Areas #2443 & #2444]

New York (And a Contiguous County In Connecticut); Declaration of Disaster Loan Area

Putnam County and the contiguous counties of Dutchess, Orange, Rockland, and Westchester in the State of New York and Fairfield County in the State of Connecticut constitute a disaster area as a result of damages from a fire which destroyed the Barns Office Medical Center on Stoneleigh Avenue in the Town of Carmel on July 21, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on Oct. 26, 1990 and for economic injury until the close of business on May 28, 1991 at the address listed below:

Disaster Area 1 Office, Small Business Administration, 360 Rainbow Blvd., South, 3rd Fl., Occidental Chemical Center, Niagara Falls, NY 14302,
or other locally announced locations.

The interest rates are:

	Percent
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 numbers assigned to this disaster for physical damage are 244305 for the State of New York and 244405 for the State of Connecticut. For economic injury the numbers are 711200 for New York and 711300 for Connecticut.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 27, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-20982 Filed 9-5-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas No. 7083]

South Carolina; Declaration of Disaster Loan Area

Beaufort and Colleton Counties and the contiguous counties of Allendale, Bamberg, Charleston, Dorchester, Hampton, Jasper, and Orangeburg in the State of South Carolina; and Chatham and Effingham in the State of Georgia constitute an Economic Injury Disaster Loan Area due to damages caused by extremely cold weather which occurred in December 1989. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury asistance until the close of business on May 23, 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 rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The numbers assigned to this declaration for economic injury are 708300 for the State of South Carolina and 708400 for the State of Georgia.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: August 23, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-20983 Filed 9-5-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1256]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: The Nonimmigrant Visa Application is furnished to all aliens who express a desire to travel to the United States in nonimmigrant status. The information provided on the form assists in identifying the applicant and in determining the applicant's eligibility for a nonimmigrant visa. This is a resubmission based on comments to Public Notice 1181 (55 FR 11713). The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.
Originating office—Bureau of Consular Affairs.
Title of information collection—Nonimmigrant Visa Application.
Frequency—On occasion.
Form No.—OF-156 and supplements.
Respondents—Aliens applying for nonimmigrant visas.
Estimated number of respondents—8,000,000.
Average hours per response—1 hour.
Total estimated burden hours—8,000,000.

Section 3504(h) of Pub. L. 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340.

Dated: August 24, 1990.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 90-20875 Filed 9-5-90; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-53]

Nalco Chemical Co.; Application for Inconsistency Ruling Concerning the State of California Statute and Regulations on Cargo Tanks Transporting Flammable and Combustible Liquids

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Nalco Chemical Company (Nalco) of Naperville, Illinois, has applied for an administrative ruling determining whether 14.7 Cal. Veh. Code sections 34000-34102 (West 1985 & Supp. 1990) and Cal. Admin. Code tit. 13, sections 1160.1-1165 and 1190-1197, governing cargo tanks transporting flammable and combustible liquids, are inconsistent with the Hazardous Materials Transportation Act (HMTA or Act) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA.

DATES: Comments received on or before October 22, 1990, and rebuttal comments received on or before December 10, 1990, will be considered before an administrative ruling is issued by the

Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Docket Unit, Research and Special Programs Administration (RSPA), room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA–53. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Lawrence W. Bierlein, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037; Ms. Carla L. Minardi, Materials Control Supervisor, Nalco Chemical Company, 211 East Dominguez, Carson, CA 90745; and Mr. Paul Horgan, Engineer, Department of California Highway Patrol, Hazardous Materials Section, 2555 First Avenue, Sacramento, CA 95818, and that fact certified to at the time comment is submitted to the Dockets Unit. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Bierlein and Horgan and Ms. Minardi at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 U.S.C. App. secs. 1801–1813), at section 112(a), 49 U.S.C. App. section 1811(a), expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause of the United States Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685 (Oct. 30, 1987)). Section 4(a) of that Executive Order states that Executive agencies shall construe a Federal statute to preempt State law only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

The HMTA contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

On June 26, 1990, Nalco applied for an inconsistency ruling regarding 14.7 Cal. Veh. Code sections 34000–34102 (West 1985 & Supp. 1990) and Cal. Admin. Code tit. 13, sections 1160.1–1165 and 1190–1197, governing cargo tanks transporting flammable and combustible liquids. A copy of this statute and these regulations can be obtained from RSPA's Dockets Unit (see "Addresses").

Nalco states that 14.7 Cal. Veh. Code section 34000 *et seq.* establishes a cargo tank inspection and identification system that is implemented by the California Highway Patrol for tanks containing flammable or combustible liquids. Nalco contends that, although California in its promulgation of section 34002 recognized the value of uniformity of controls within the State, it failed to consider the greater benefit—national uniformity.

Nalco states that section 34003 of the California Code defines "cargo tank" as "any container having a volumetric capacity in excess of 120 gallons that is used for the transportation of flammable liquids or combustible liquids. This term includes pumps, meters, valves, fittings, piping, and other appurtenances attached to a tank vehicle and used in connection with the flammable liquids or combustible liquids being transported in the cargo tank."

Nalco states that section 34019 of the Code purports to vest authority in the State Fire Commissioner to "adopt reasonable regulations with respect to the design and construction of cargo tanks and fire auxiliary equipment."

Nalco alleges that, although DOT regulations are mentioned in section 34022 as "evidence of generally accepted safety standards," the State Fire Commissioner's discretion in section 34019 concerning cargo tank design clearly goes beyond the DOT tank specification requirements in the HMR.

Nalco states that section 34010 requires that the application for registration of cargo tanks contain the name and address of the applicant and "such other information as the commissioner shall require." Nalco states that, pursuant to sections 34042 and 34061, the State may refuse, suspend or revoke registration for four reasons: (1) Failure to pay the registration fee, (2) misrepresentation on the application, (3) failure of the cargo tank to comply with California regulations, or (4) failure or refusal by the applicant to make the cargo tank available for inspection by a duly authorized employee upon reasonable notice. Renewal applications must be filed at least 60 days prior to expiration of the annual registration.

Nalco contends that section 34044—certificate of compliance—highlights the inconsistency of the California Code with the HMTA. That section states:

> At the time of original or renewal registration is issued, the department shall issue a sticker, label, or other suitable device constituting a certificate of compliance to identify cargo tanks which are currently registered. The certificate of compliance shall be plainly affixed to the cargo tank. The size, shape, color, and design of the certificate of compliance and the positioning of such on the cargo tank shall be determined by the commissioner by regulation.

Nalco also states that, pursuant to section 34060 of the Code, the State Fire Commissioner shall provide for the establishment, operation, and enforcement of an inspection service for cargo tanks, and shall designate employees to inspect cargo tanks to determine whether the cargo tanks are designed, constructed, and maintained in accordance with the regulations adopted by the Commissioner.

Nalco further states that sections 34062 and 34063 authorize the immediate revocation or suspension of a certificate of compliance if a cargo tank is found to be in noncompliance with the

regulations of the State Fire Commissioner, U.S DOT, or any provision of title 14.7 of California's Highway Code.

Nalco states that section 34100 prohibits driving, moving or leaving standing an unregistered cargo tank that requires registration and that section 34101 prohibits operation of a tank vehicle in California unless the cargo tank is affixed with a valid certificate of compliance label. Nalco states that Cal. Admin. Code tit. 13, section 1193 requires that this label be placed in a weatherproof holder permanently attached to the tank. In addition, Nalco states that section 1194 requires each cargo tank to have a "CT" number. Further, Nalco states Section 1194 requires that "the assigned CT number shall be displayed in characters not less than 2.54 cm (1 in.) in height on a contrasting background in" one of three specified locations, or alternatively, that the CT number be dye-stamped on the manufacturer's plate.

In summary, Nalco says that the California Code requires that three items be placed on the tank which are not required by the HMTA, *i.e.*, the certification sticker, the weatherproof pouch, and a "CT" marking.

Nalco states that it extensively uses an intermediate bulk container called the Nalco Porta-Feed Advanced Chemical Handling System to deliver a variety of products to customers.

It describes the system as:

> * * * a complete distribution system including the return, cleaning and refilling of tanks. These products include flammable and combustible liquids * * * The tanks are constructed and marked in accordance with Nalco Specification 57, 49 CFR 178.253. They have a volumetric capacity in excess of threshold level expressed in the California legislation and, therefore, they are within the California regulatory program * * *.
>
> Specification 57 tanks must also meet the general requirements of DOT Specification 51, prescribed in 49 CFR 178.251. Section 178.251–1C in turn requires compliance with 49 CFR 173.24 and 173.32.

Nalco then cites specific HMR requirements that are applicable to its operation, *i.e.*, 49 CFR 171.2(c) and (d) (general requirements); 172.204 (Shipper's certification); 173.22 (shipper's responsibility); 173.24 (standard requirements for all packages); 173.32 (qualification maintenance and use of portable tanks other than specification IM portable tanks); 177.853(a) (transportation and delivery of shipments—hazardous materials shall be transported without unnecessary delay); 178.0–2(b) (applicability—certifying compliance with the HMR); and 178.251–7 (identification and marking).

Nalco asserts that the California Code is inconsistent with the HMR for four specific reasons. First, Nalco asserts that the California Code provisions constitute a prior restraint on the movement of hazardous materials otherwise authorized and presumed safe for transportation under the HMR. Nalco alleges that no tank may move until it is inspected and separately marked by an authorized representative of the California Highway Patrol, despite the fact that the tank meets all of the HMR requirements. Nalco adds:

> * * * Despite full complaince with all of these federal certifications the shipment must be held until the administrative office in Sacramento at which the company's application is filed transmits its instructions to the California Highway Patrol office in the area. Then the applicant must wait further until it is convenient for the California State inspector to get there, conduct his own inspection, and apply his own marking to the tank and issue his certificate of compliance. The paper record of his inspection in the form of a card must be inserted in a plastic holder on the tank. Then the CT number issued by Sacramento then must be marked by painting or stencilling on the tank.
>
> * * * tanks often wait as much as two weeks before being inspected. These tanks often are full as they await arrival of the inspector. Delays are encountered with both flammable and combustible liquids, and the delays have been compounded by inspector's schedules, vacations, and sick leave.
>
> * * * these delays have caused repackaging, diversion of traffic to locations more convenient to inspectors, and increased inventories at California distribution centers.

Nalco states that other companies may not have the same experience with the system because the marking applied by the California inspector is described as an annual permit. Nalco, however, states that it cleans its tanks after each use. Nalco says that the cleaning removes the California sticker, CT marking, and weatherproof pouch, which cannot be reapplied by the company. As a result, Nalco states that it must await another visit from the California inspector before the tank may be used again.

Nalco notes that California officials have predicted that use of intermodal tanks is expected to increase from 15,000 in 1985 to 60,000 by the end of 1990. Nalco understands that California now employs approximately 180 inspectors to inspect tanks but has indicated a need for approximately 300 inspectors. Nalco, thus, believes that the inspection task is growing faster than California's ability to perform it, and "all projections are that delays experienced to date will become more pronounced in the future." Nalco states that these delays have been discussed in numerous inconsistency rulings, notably IR–28, 55 FR 8884 (Mar. 8, 1990). Nalco, therefore, objects to having to hold its tanks until California's inspectors examine the tanks.

Second, concerning the container specifications, Nalco objects to the implications in the California statute that California tank regulations and specifications may vary from the HMR.

Nalco states that the HMR includes provisions on all types of packaging for use in transporting hazardous materials, including definitions of flammable and combustible liquids, 49 CFR 173.115, and packaging requirements. Nalco states that the HMR, "by specific discussion in Docket Nos. HM–42 and HM–102 establishing and defining the combustible liquid classification, affirmatively determined that federal packaging specifications were unnecessary, and that federal regulations are limited to hazard communication." 49 CFR 173.118a.

Nalco states that, despite RSPA's decision that Federal packaging specifications for combustible liquids are unnecessary, these materials are subject to California's packaging standards and are part of the inspector's review. Nalco also states that it is unaware of the standard by which the California inspectors assess these tanks.

Citing, IR–2, 44 FR 75,566 (Dec. 20, 1979); IR–22, 52 FR 46,574 (Dec. 8, 1987), correction, 52 FR 49,107 (Dec. 29, 1987), and IR–28, *supra*, Nalco contends that hazardous materials packaging, including any tank container, is an "exclusively federal province." Thus, says Nalco, citing IR–7 through 15, 49 FR 46,632 (Nov. 27, 1984), to the extent the California requirements for tanks vary from the HMR, they are inconsistent and preempted.

Third, concerning hazard communications, Nalco states that a pre-condition to obtaining a California certificate of compliance is to have a unique marking indicating the location of the emergency shut-off valve. Citing IR–2, *supra*, Nalco asserts that if such a marking is appropriate, California should petition to have it added to the HMR, and should not create its own unique requirement. Nalco states that California "requires three additions to the tank to communicate information with regard to state registration—the compliance sticker, the compliance certificate in a weatherproof pouch, and the CT number, all of which must be placed on or near the DOT specification plate."

Nalco also objects to the paperwork involved. It believes that the Application

for Cargo Tank Registration, CHPP 408A (Rev. 10–86) [copies available in RSPA's Dockets Unit], is "redundant, unnecessarily duplicating the provisions prescribed in [the HMR] for the specification plate, record keeping by the manufacturer of the tanks * * *, retest or repair of the tanks, and shipping documents prepared by the shipper."

Fourth, citing IR–19, 52 FR 24,404 (June 30, 1987) and IR–22, *supra*, Nalco states that California's equipment requirements are intimately tied to a permitting system and therefore, are inconsistent.

Nalco thus seeks a ruling finding that California's cargo tank inspection program is inconsistent because it:

(1) Vests * * * discretion in California officials to establish tank specifications that differ in any respect from the [HMR]; (2) requires any additional markings on hazardous materials tanks * * * either with regard to shut-off valves or indications of the tank having been registered or inspected; (3) requires any permit, including the detailed application for a permit or a certificate of compliance issued by a State official, as a precondition to movement of a tank otherwise in full compliance with the provisions of [the HMR]; (4) requires inspection by a California official as a precondition to transportation; (5) involves enforcement of inconsistent provisions; (6) diverts traffic from otherwise permissible distribution patterns; or, (7) unnecessarily delays transportation in any mode.

3. Public Comment

Comments should be limited to the issue of whether the requirements of 14.7 Cal. Veh. Code sections 34000–34102 (West 1985 & Supp. 1990) and Cal. Admin. Code tit. 13, sections 1160.1–1165 and 1190–1197, governing cargo tanks transporting flammable and combustible liquids, are inconsistent with the HMTA and the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Branch, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR sections 107.201–107.211).

Issued in Washington, DC on August 28, 1990.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90–20906 Filed 9–5–90; 8:45 am]

BILLING CODE 4910–60–M

Research and Sepcial Programs Administration

[Appeal of Inconsistency Ruling No. IR–31; Docket No. IRA–49]

State of Louisiana; Statutes and Regulations on Hazardous Materials; Invitation To Comment

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The State of Louisiana (Louisiana) and Union Pacific Railroad Company (UPRR) have appealed to the Administrator of the Research and Special Programs Administration (RSPA) the June 15, 1990 decision of the Director, Office of Hazardous Materials Transportation (IR–31; 55 FR 25572–25585, June 21, 1990). The Director's decision found certain of Louisiana's hazardous materials statutes and regulations consistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR), and other provisions inconsistent with the HMTA and the HMR and thus preempted under section 112(a) of the HMTA. Comments are invited on the merits of the appeals.

DATES: Comments received on or before October 22, 1990, and rebuttal comments received on or before December 5, 1990 will be considered before an administrative ruling is issued by the Administrator.

Rebuttal comments may discuss only those issues raised during the initial comment period and may not discuss new issues.

ADDRESSES: The appeals and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments and rebuttal comments must be submitted to the Dockets Unit and the above address and include the Docket Number IRA–49. Three copies are requested. A copy of each comment and rebuttal comment also must be sent to Howard P. Elliott, Jr., Esq., General Counsel, State of Louisiana, Department of Public Safety and Corrections, P.O. Box 66614, Baton Rouge, LA 70896; Dennis J. Hauge, Esq. Breazeale, Sachse & Wilson, Counsel for Illinois Central Railroad, P.O. Box 3197, Baton Rouge, LA 70821; and Lawrence E. Wzorek, Esq., General Commerce Counsel, Law Department, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179. Each comment and rebuttal comment submitted to the Dockets Unit must contain a certification that a copy has been sent to each person on the service list. [The following format is suggested: "I hereby certify that a copy of this comment has been sent to Howard P. Elliott, Jr., Dennis J. Hauge, and Lawrence E. Wzorek at the addresses specified in the Federal Register."

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone: 202–366–4400.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA at section 112(a) [49 U.S.C. App. 1811(a)] expressly preempts any requirement of a State or political subdivision thereof which is inconsistent with any requirement of the HMTA or the HMR. Section 107.209(c) of title 49, Code of Federal Regulations, sets forth the following factors that are considered in determining whether a State or political subdivision requirement is inconsistent: (1) Whether compliance with both the State or political subdivision requirement and the HMTA or the HMR is possible; and (2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR.

The State of Louisiana, Department of Public Safety and Corrections, applied for an inconsistency ruling concerning certain of its statutes and regulation as they pertain to rail carrier and shipper transportation of hazardous materials.

2. The Inconsistency Ruling (IR–31)

On June 15, 1990, the Director, Office of Hazardous Materials Transportation (OHMT) issued Inconsistency Ruling 31 (IR–31), which was published at 55 FR 25572 on June 21, 1990.

The Director determined that Louisiana Revised Statutes 32:1501–1520 and Louisiana Regulations, title 33, part V, sections 10501–10505 and 10901–10905 are consistent with the HMTA and the HMR except that the following provisions thereof are inconsistent with the HMTA and the HMR to the extent indicated and thus preempted to that extent under section 112(a) of the HMTA (49 U.S.C. App. 1811(a)):

(1) La.Rev.Stat. 32:1502(5)(a) and (8) insofar as they authorize the designation as hazardous materials of any materials other than those so designated in the HMR;

(2) La.Rev.Stat. 32–1502(5)(b) to the extent it defines as "explosives" any material not so defined in the HMR;

(3) La.Admin.Code, Tit. 33, sections 10501(c) and 1901(c) definitions of "train";

(4) La.Rev.Stat. 32–1503, imposing hazardous materials transportation insurance requirements;

(5) La.Rev.Stat. 32–1510, requiring written incident/accident reports;

(6) La.Rev.Stat. 32–1512–1514 insofar as those penalty provisions relate to the enforcement of inconsistent substantive requirements;

(7) La.Rev.Stat. 32–1512 insofar as it imposes civil penalties for other than "knowing" violations; and

(8) La.Rev.Stat. 32–1504B, 32:1505, 32:1508, and 32:1509A(3) insofar as those inspection and enforcement provisions relate to inconsistent substantive requirements.

The Director also responded to several railroad industry commenters who contended that OHMT should find all of Louisiana's statutory and regulatory requirements at issue in the proceeding inconsistent because of the preemption provision of the Federal Railroad Safety Act (FRSA) and the application of that provision to hazardous materials rail transportation requirements of the State of Ohio in *CSX Transportation, Inc.* v. *Public Utilities Commission of Ohio* 701 F.Supp. 608 (S.D. Ohio 1988), aff'd 901 F.2d 497 (6th Cir. 1990). The Director noted that OHMT inconsistency rulings address only preemption issues under the HMTA. The Director concluded that because the Court of Appeals in the *CSX* case explicitly declined to address HMTA preemption issues, the *CSX* case was irrelevant to the consideration of whether Louisiana's requirements are consistent with the HMTA and the HMR.

3. The Appeal of IR–31

By letter dated July 10, 1990, Louisiana appealed the following three findings of preemption in the Director's decision:

(1) La.Rev.Stat. 32:1502(5)(a) and (8) insofar as they authorize the designation as hazardous materials of any materials other than those so designated in the HMR;

(2) La.Rev.Stat. 32:1502(5)(b) to the extent it defines as "explosives" any material not so defined in the HMR; and

(3) La.Rev.Stat. 32:1510, requiring written incident/accident reports.

Louisiana disagrees with the Director's conclusion that its definitions of "hazardous materials" and "explosives" are inconsistent with the HMR. Louisiana contends that its definition of "hazardous materials" is virtually identical to HMA definition of "hazardous material," and that Louisiana adopts the HMR list of hazardous materials. Louisiana also contends that its defintion of "explosives" could include any of the classes, types, and definitions of explosives found in the HMR. Finally, Louisiana contends that La.Rev.Stat. 32:1502(5)(b) "specifically provides that the rules and regulations adopted by the Secretary of the Department of Public Safety and Corrections *shall* be consistent with Table 49 of the Code of Federal Regulations.

Louisiana disagrees with the Director's conclusion that its written incident reporting requirements "are redundant with Federal requirements (particularly 49 CFR 171.16), tend to undercut compliance with the HMR requirements, and thus are inconsistent." Louisiana argues that the information required to be reported is the same information required by 49 CFR 171.16 and that written reports may be submitted on a DOT Form 5800.1. Louisiana contends that, while possibly redundant, its requirement is an immense help to the State in tracking hazardous materials incidents and forecasting the need for enforcement personnel. Louisiana contends that dual compliance is possible, and that its incident reporting requirement does not unreasonably burden commerce and affords an equal or greater level of protection to the public.

By letter dated July 19, 1990, UPRR appealed the Director's decision finding Louisiana's adoption and enforcement of the HMR as they pertain to railroads to be consistent with the HMTA. UPRR disagrees with the Director's conclusion that the preemption provision in the FRSA and the *GSX* case are irrelelant to a determination of preemption under the HMTA. UPRR contends that the Director: ignored the interrelationship between the HMTA and the FRSA; failed to recognize the exclusive role Congress gave the Federal Government in regulating hazardous materials transportation by rail; failed to distinguish between permissible state involvement in hazardous materials transportation and the unique nature of rail transportation; erroneously held that Louisiana may license locomotive engineers who are domiciliaries of the State; and erred in finding Louisiana's stop-and-inspect requirement consistent with the HMTA's objectives. UPRR requested that the Administrator overrule IR–31. UPRR further requested that a notice be published in the **Federal Register** inviting public comment on IR–31 for purpose of the appeal.

4. Public Comment

Comments should particularly address the three provisions that Louisiana contends are not inconsistent with the HMTA and the HMR, and whether the Director's decision should have considered the FRSA, its relationship to the HMTA, and the *CSX* case. Persons intending to comment should examine the complete appeal documents in the RSPA Dockets Unit and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–107.211).

Issued in Washington, DC on August 29, 1990.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90–20907 Filed 9–5–90; 8:45 am]

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Research and Special Programs Administration

[Inconsistency Ruling No. IR–32; Docket IRA–46]

City of Montevallo, Alabama Ordenance on Hazardous Waste Transportation

APPLICANT: Chemical Waste Transportation Council.

ORDNANCE AFFECTED: City of Montevallo, Alabama Code, sections 7–40 through 7–50 concerning the transportation of hazardous waste.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA or Act) (Pub. L. No. 93–633, 49 U.S.C. App. 1801–1813) and the Hazardous Materials Regulations (HMR) (49 CFR parts 171–180) issued thereunder.

MODES AFFECTED: Highway, Railroad.

ISSUE DATE: August 28, 1990.

RULING: The following provisions of the Montevallo, Alabama City Code, are inconsistent with the HMTA and the HMR and thus preempted under section 112(a) of the HMTA (49 U.S.C. 1811(a)) as they apply to the transportation of hazardous materials, including the loading, unloading and storage incidental to that transportation:

(1) The definitions of hazardous waste in section 7–41;

(2) The routing requirements in section 7–42;

(3) The time restrictions in section 7–45;

(4) The weather-related restrictions in section 7–46 (a) and (b);

(5) The citizens band radio requirement in section 7–45(d) as it relates to radioactive materials;

(6) The prenotification requirements in section 7–47(a);

(7) The accident reporting requirement in section 7–48(b) as it relates to irradiated reactor fuel;

(8) The liability insurance requirement in section 7–48(c); and

(9) The section 7–49 prohibition on storage of hazardous waste as it relates to storage of hazardous waste incidental to transportation.

As applied to the transportation of hazardous materials, including the loading, unloading and storage incidental to that transportation, the following provisions of the Montevallo, Alabama City Code are consistent with the HMTA and the HMR:

(1) The speed limit restrictions in section 7–43;

(2) The separation distance requirement in section 7–44;

(3) The headlight requirement in section 7–46(c);

(4) The citizens band radio requirement in section 7–46(d) except as it relates to radioactive materials;

(5) The placarding requirements in section 7–47(b);

(6) The requirement in section 7–48(a) that drivers transporting hazardous waste carry a hazardous waste manifest; and

(7) The accident reporting requirement in section 7–48(b) except as it relates to irradiated reactor fuel.

This ruling does not address the consistency of any provisions not described above, including the savings clause provisions in section 7–50 of the City Code.

SUMMARY: This inconsistency ruling is the administrative ruling of the Research and Special Programs Administration's (RSPA's) Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether the City of Montevallo, Alabama Code, sections 7–40 through 7–50 relating to the transportation of hazardous waste are inconsistent with the HMTA or the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201–107.209.

FOR FURTHER INFORMATION CONTACT: Mr. Edward H. Bonekempter, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001 [Tel. (202) 366–4400].

I. General Authority and Preemption Under the HMTA

Section 112(a) of the HMTA, 49 U.S.C. App. 1811(a) states that "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]" is preempted. The HMTA preempts only those State and local requirements that are "inconsistent."

In the HMTA's Declaration of Policy (section 102, 49 U.S.C. App. 1801) and in the Senate Commerce Committee report on section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of State and local regulations and potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rept. No. 1192, 93rd Cong., 2d Sess. 37 (1974)). Under the HMTA, DOT has the authority to promulgate uniform national standards. While the HMTA did not totally preclude State or local action in this area, Congress intended, to the extent possible, to make such State or local action unnecessary. The comprehensiveness of the HMR, issued to implement the HMTA, severely restricts the scope of historically permissible State or local activity.

Although advisory in nature, inconsistency rulings issued by RSPA under 49 CFR part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a State or political subdivision. If a State or political subdivision requirement is found to be inconsistent, the State or local government may apply to RSPA for a waiver of preemption. 49 U.S.C. App. 1811(b); 49 CFR 107.215–107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, RSPA is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41,685 (Oct. 30, 1987)). Section 4(a) of that Executive Order states that Executive agencies shall construe a Federal statute to preempt State law only when the Federal statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority under this Federal statute.

The HMTA, of course, contains an express preemption provision, which RSPA has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption under the HMTA will be considered. RSPA does not make determinations in an inconsistency ruling concerning possible preemption of non-Federal requirements for other reasons, such as statutory preemption under another Federal statute, preemption under State law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce.

RSPA has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a State or local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

These criteria are based upon, and supported by, United States Supreme Court decisions on preemption. These include *Ray* v. *Atlantic Richfield C.*, 435 U.S. 151 (1978); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); and *Hines* v. *Davidowitz*, 312 U.S. 52 (1941).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a State or local requirement is an obstacle to executing and accomplishing the purposes of the HMTA and the HMR; a requirement constituting such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through RSPA's regulatory program.

II. The Application for Inconsistency Ruling

On January 3, 1989, Chemical Waste Transportation Council (CWTC) filed an application for an inconsistency ruling. That application specifically requested a finding as to whether sections 7–40 through 7–50 of the City of Montevallo, Alabama Code concerning the transportation of hazardous waste are inconsistent with the HMTA and the HMR.

CWTC states that it is a council of the National Solid Wastes Management Association. The council serves as a forum for issues specific to the transport of hazardous waste. CWTC states that some of its members go through Montevallo, Alabama, by truck and rail, to service small waste generating customers in the vicinity. CWTC provides the following summary of the City Code provisions it is challenging:

> The City of Montevallo Code requires the driver and his employer of a motor vehicle carrying hazardous waste within the corporate limits of the City to notify the Montevallo Police Department by telephone prior to 8 a.m. on the day that the hazardous waste will be transported through the City (section 7–47(a)). The notification must include the number of vehicles expected; the approximate time, within one hour, of arrival at the City limits; and the road on which the vehicle will arrive. Upon arrival at the City limits, the motor vehicle must travel on designated routes (section 7–42), is limited to 30 miles per hour (section 7–43), is not allowed to follow within 150 feet of any other vehicle except if following a police vehicle (section 7–44), is prohibited from operating from 6:30 a.m. to 8:30 a.m. and from 2:00 p.m. to 3:30 p.m. (section 7–45)), and is prohibited from operating when the temperature is below 35 °F and when rain or other precipitation has occurred within two hours of arrival (section 7–46(a)).

CWTC contends that its affected members will not be able to comply with both the City Code provisions and the HMTA and HMR. CWTC also alleges that the City's requirements pose obstacles to the accomplishment and execution of the HMTA and the HMR. CWTC, citing Inconsistency Ruling No. IR–2 (IR–2) (Decision on Appeal), 45 FR 71,881 (Oct. 30, 1980), correction 45 FR 76,838 (Nov. 20, 1980), and IR–3, 46 FR 18,916 (Mar. 26, 1981), IR–3 (Decision on Appeal), 47 FR 18,457 (Apr. 29, 1982), states that compliance with sections 7–43 through 7–46(a) of the City's Code, would cause transportation delays.

Citing IR–23, 53 FR 16,840 (May 11, 1988), CWTC states that section 7–42 of the City Code causes inconsistency with the HMTA because it discriminates against hazardous materials which happen to be in a waste form and were not, according to the City Attorney, based on a completely safety analysis or preceded by consultations with all affected jurisdictions—but instead allegedly were imposed in an effort to thwart the siting of a hazardous waste incinerator.

Finally, citing IR–6, 48 FR 760 (Jan. 6, 1983), CWTC contends that advance notice requirements in section 7–47(a) are generally inconsistent.

III. Public Comments

A. General

On January 23, 1989, RSPA published a Public Notice and Invitation to Comment (54 FR 3178) soliciting public comments on CWTC's application. It provides for a comment period ending March 10, 1989, and a rebuttal comment period ending April 28, 1989. Comments opposing a finding of inconsistency were filed by the City of Montevallo, Alabama (City); the Alabama Conservancy, and Alabamians for a Clean Environment (ACE). Comments favoring a finding of inconsistency were filed by Autumn Industries, Inc.; National Tank Truck Carriers, Inc. (NTTC); Jack Gray Transport, Inc.; Price Trucking Corp.; Chemical Waste Management, Inc.; American Trucking Associations (ATA); and Metropolitan Environmental Inc. Rebuttal comments were filed by the Hazardous Materials Advisory Council (HMAC), the City, and CWTC.

B. Comments Opposing Consistency

The American Trucking Associations (ATA) states that it supports uniform national regulations which enhance the safe transportation of hazardous materials in a manner that is both cost-effective and not unduly burdensome. ATA contends that the City Code is not only an obstacle to transportation but an obstacle to the HMTA and the HMR and in conflict with the HMR.

The ATA advances several arguments against the consistency of the City's requirements. First, ATA contends that the City requirements for the transportation of hazardous waste are not part of a system of uniform national standards. ATA states that if the City were allowed to create its own hazardous materials transportation system, other jurisdictions would probably develop their own regulations. ATA also contends that if each State or local jurisdiction were able to create its own requirements, it would create a multiplicity of different regulations that would interfere with compliance with the HMR and reduce safety.

Second, ATA states that section 7–41 of the City Code includes a definition of hazardous waste that is different from the HMR. It states that the HMR definition is limited to those materials subject to the EPA hazardous waste manifest requirements in 40 CFR part 262, while the City definition includes those substances and a host of other substances. ATA cites IR–5, 47 FR 51,991 (Nov. 18, 1982), and IR–6, 48 FR 760 (Jan. 6, 1983) for the proposition that local hazardous materials definitions which result in regulating more or different hazardous materials than the HMR are obstacles to uniformity in transportation regulation and thus are inconsistent. Additionally, citing IR–18, 52 FR 200 (Jan. 2, 1987), ATA notes that RSPA has long held that non-Federal definitions of hazardous materials are inconsistent with the HMTA and the HMR because the Federal role is exclusive.

Third, citing IR–22, 52 FR 46,574 (Dec. 8, 1987), correction, 52 FR 49,107 (Dec. 29, 1987), ATA contends that section 7–45, which precludes vehicles from operating in the City between 6:30 and 8:30 a.m. and 2 to 3:30 p.m., and section 7–46, which prohibits vehicles from operating when the temperature is below 35°F and when there has been precipitation within the last two hours, would cause transportation delays. It states that truck drivers carrying hazardous waste will not always be able to control when they reach the City or may not know beforehand the weather in the City.

Fourth, ATA cites IR–23, 53 FR 16,840 (May 11, 1988) for the proposition that the City's routing and speed limit restrictions in sections 7–42 through 7–44 of the City Code are inconsistent with the Federal requirements. It contends that there is nothing in the record to suggest that the City has determined the effect on overall safety or consulted with other affected jurisdictions. ATA also contends that the City Code is an attempt to divert its hazardous waste problems to other jurisdictions.

Fifth, citing IR–8 (Decision on Appeal), 52 FR 13,000 (Apr. 20, 1987), ATA argues that section 7–47 of the City Code is inconsistent because local prenotification requirements are generally inconsistent. It also notes that, because the City's definition of hazardous waste includes radioactive materials, its prenotification requirements also apply to radioactive materials, which is inconsistent with the HMR.

Additionally, ATA comments on the issues raised by the City, ACE, and the Alabama Conservancy. ATA states that the statements of the City supporting retention of the City Code have little or no legal basis and are based only on emotion.

ATA asserts that the incident statistics provided by ACE are irrelevant because they do not reflect hazardous waste accidents alone. ATA states that it agrees with ACE that communities must be allowed to reinforce DOT regulations, but, with over 30,000 local jurisdictions throughout the country, ATA contends that communities should not be allowed to impose their own restrictions with no regard for the impact on commerce and other affected communities.

ATA also argues that the comments of the Alabama Conservancy also rely on emotional issues. ATA states that "if transporters were to be banned from all winding roads, business districts, church areas, and school zones, there would be no alternative route for a transporter to take, as just about every road in the nation would include one or all of the areas mentioned." ATA further states that the Alabama Conservancy misinterpreted 49 CFR 397.9(a). ATA argues that most hazardous wastes do not require marking and placarding due to their ORM–E classifications and, therefore, transporters of them are not required by Federal regulations to avoid populated areas.

In the Hazardous Materials Advisory Council's (HMAC's) rebuttal comments, it cites IR–2, 44 FR 75,566 (Dec. 20, 1979); IR–2 (Decision on Appeal), 45 FR 71,881 (Oct. 30, 1980), correction, 45 FR 76,838 (Nov. 20, 1980); IR–3, 46 FR 18,918 (Mar. 26, 1981), and IR–3 (Decision on Appeal), 47 FR 18,457 (Apr. 29, 1982), for the proposition that the City Code would cause transportation delays. HMAC also argues that the City requirements unfairly discriminate against hazardous materials. Based on its version of the City's reasoning behind the promulgation of section 7–42 of the City Code, HMAC questions why "heavy or constant" truck traffic of any kind is or may be allowed to travel the "narrow and bending" streets. HMAC states that similar questions arise regarding sections 7–43 through 7–46 of the City's requirements. HMAC also says that the City's stringent advance notice requirements are inconsistent with the HMTA.

The National Tank Truck Carriers, Inc. (NTTC), in support of CWTC, argues that the City's requirements at issue fail either or both the obstacle and dual compliance tests and, therefore, are inconsistent with the HMTA and the HMR.

NTTC states that section 7–41 of the City Code contains a number and variety of definitions of "hazardous waste." The definitions include those published by the U.S. Environmental Protection Agency, the U.S. Nuclear Regulatory Commission, the State of Alabama, and the Southeast Interstate Low-Level Radioactive Waste Management Compact. Citing, IR–5, 47 FR 51,991 (Nov. 18, 1982); IR–6, 48 FR 760 (Jan. 6, 1983); IR–8, 49 FR 46,635 (Nov. 27, 1984); IR–12, 49 FR 46,650 (Nov. 27, 1984); IR–15, 49 FR 46,660 (Nov. 27, 1984); IR–16, 50 FR 20,872 (May 20, 1985); IR–18, 52 FR 200 (Jan. 2, 1987); IR–19, 52 FR 24,404 (June 30, 1987), correction, 52 FR 29,468 (Aug. 7, 1987); and IR–20, 52 FR 24,396 (June 30, 1987), correction, 52 FR 29,468 (Aug. 7, 1987), NTTC states that RSPA has defined "hazardous waste" in 49 CFR 171.8 and that it has exclusive jurisdiction in defining hazardous materials.

NTTC notes that section 7–42 of the City requirements redirects regulated transportation away from City streets onto specified Alabama roadways. NTTC cites IR–1, 43 FR 16,954 (Apr. 20, 1978); IR–3, 46 FR 18,918 (Mar. 26, 1981), IR–3 (Decision on Appeal), 47 FR 18,457 (Apr. 29, 1982); IR–10, 49 FR 46,645 (Nov. 27, 1984), correction, 50 FR 9939 (Mar. 12, 1985); IR–11, 49 FR 46,647 (Nov. 27, 1984); IR–14, 49 FR 46,656 (Nov. 27, 1984); and IR–16, 50 FR 20,872 (May 20, 1985), for the proposition that DOT encourages political subdivisions within a State to consult with State government for the purposes of having the State designate suitable alternative routing for hazardous materials shipments. NTTC states that if the City officials have received approval from the State of Alabama for the specified routes, and Alabama has followed DOT policy in 49 CFR part 177 (appendix A), it presumes that section 7–42 of the City Code is consistent with the HMTA. However, NTTC says that it cannot determine from the docket whether or not City officials consulted appropriate entities of the State. [RSPA has deleted appendix A of part 177 from the CFR (55 FR 4423 (Feb. 8, 1990)), and comments based upon it are irrelevant.]

Citing IR–20, 52 FR 24,396 (June 30, 1987), correction, 52 FR 29,468 (Aug. 7, 1987), NTTC states that it believes no high speed highway passes through Montevallo; therefore, it asserts that section 7–43 of the City Code is a "local traffic control" and is consistent with the HMTA. Based on IR–20, NTTC states that if section 7–44 is found to be consistent RSPA should caution the City against abuse.

NTTC argues that the City has made no claim of extraordinary population density or traffic density to justify its curfew, and, combined with its exception for local businesses and educational entities, section 7–45 fails to meet both the obstacle and dual compliance tests.

Addressing section 7–46(a) of the City Code, NTTC states that if the City believes that vehicle safety is compromised at certain ambient temperatures and/or following precipitation, the City should petition RSPA for a waiver of preemption. Additionally, NTTC says that if climatic conditions detract from safety RSPA should elevate the issue to one of national concern. NTTC argues that section 7–46(b) would create unnecessary delays and thus fails the dual compliance test.

Citing IR–2, 44 FR 75,566 (Dec. 20, 1979); IR–2 (Decision on Appeal), 45 FR 71,881 (Oct. 30, 1980), correction, 45 FR 76,838 (Nov. 20, 1980); IR–3, 46 FR 18,918 (Mar. 26, 1981), and IR–3 (Decision on Appeal), 47 FR 18,457 (Apr. 29, 1982), NTTC contends that the City's headlight requirement in section 7–46(c) is consistent.

NTTC also contends that sections 7–46(d) and 7–48(b) fail the obstacle test because title III of the Superfund Amendments and Reauthorization Act (SARA) requires that hazardous materials incidents be reported by telephone, not citizen band radio. NTTC quotes IR–8, 49 FR 46,637 (Nov. 27, 1984), for the proposition that "State or local rules which grant an official discretionary authority to set equipment requirements for carriers engaged in interstate commerce impede the Congressional purposes of increased safety and regulatory uniformity underlying the HMTA." NTTC adds that if the City believes that citizen band radios will enhance hazardous materials transportation safety, it should petition RSPA for rulemaking action.

Citing IR–8 (Decision on Appeal), 52 FR 13,000 (Apr. 20, 1987), and IR–16, 50 FR 20,872 (May 20, 1985), NTTC contends that section 7–47(a) is inconsistent in that it requires prenotification. However, NTTC states that sections 7–45(b) and 7–48(a) are consistent with the HMR.

Section 7–48(c) is inconsistent, says the NTTC, because 49 CFR 387.7(d) of the Federal Motor Carrier Safety Regulations (FMCSR) requires that evidence of financial responsibility be maintained for public inspection at the carrier's principal place of business. NTTC states that, although § 387.7(d) has not been adopted in the HMR, 49 CFR part 392 has been adopted and does not require a driver to carry any evidence of financial responsibility. Citing, IR–15 (Decision on Appeal), 52 FR 13,062 (Apr. 20, 1987), NTTC contends that any insurance or indemnification requirement not

identical to the HMR requirement is an obstacle.

NTTC cites IR–8 (Decision on Appeal), 52 FR 13,000 (Apr. 20, 1987), and IR–16, 50 FR 20,872 (May 20, 1985), for the proposition that the "actual language" rather than "intent" is controlling concerning its challenge to the consistency of the City's definition of "temporary" storage as used in section 7–49 of the City Code.

Jack Gray Transport, Inc. (Jack Gray), in support of CWTC, states that section 7–46 of the City's requirements, concerning time and weather restrictions, accomplishes nothing to promote public safety. It asserts that the City's requirements impede the transportation of waste and create potential problems in surrounding communities. Jack Gray concludes by stating that if every jurisdiction established similar provisions it would be impossible to provide the necessary transportation services for the hazardous waste industry.

Price Trucking Corporation (Price) states that it is not possible to comply with both the HMTA and the Montevallo City Code. Price states that section 7–45 of the City Code, which stipulates the hours a carrier is permitted to transport hazardous waste in the City, is inconsistent with the HMTA because it would cause unnecessary delays in transportation.

Autumn Industries, Inc. (Autumn) cites IR–6, 48 FR 760 (Jan. 6, 1983), for the proposition that sections 7–43 through 7–46(a) are inconsistent with the HMTA because they create unnecessary delays in transportation. It states that the City's requirements concerning routing, time, and weather restrictions do not address adjacent jurisdictions' abilities to handle an increase in traffic. Autumn also states that it does not understand why the City focused its restrictions on hazardous waste when there are far more dangerous shipments of hazardous materials that also should be included.

Chemical Waste Management, Inc. (CWM), in support of CWTC, asserts that compliance with both the Montevallo City Code and the HMR is not possible. CWM states that the City's hazardous materials definition is different from the HMR. It asserts that sections 7–45 and 7–47(a) of the City Code will cause unnecessary delays of hazardous waste transportation while vehicles await allowable transit times. It states that this delay will make it impossible to comply with 49 CFR 177.853(a).

CWM also asserts that section 7–42 of the City Code, which imposes route restrictions, frustrates compliance with 49 CFR 177.804 by forcing shipments of hazardous waste into adjacent communities which may otherwise have been avoided. CWM states that this is particularly true for hazardous waste transporters servicing small business. CWM contends that the justification for section 7–42 indicates that a ban should be placed on all truck traffic, not solely hazardous waste traffic.

CWTC, in its rebuttal comment, refutes the accuracy of the statistics used by the Alabamians for a Clean Environment (ACE). CWTC states that it is unclear from ACE's statistics whether the cited incidents involved hazardous materials and whether the deaths and injuries resulted from hazardous waste exposures. CWTC notes that DOT statistics indicate that between 1983 and 1987, 572 incidents involving hazardous materials were reported in Alabama and that only 26 of those were hazardous waste incidents. Additionally, CWTC notes that, although 29 injuries occurred as a result of these 26 incidents, no fatalities occurred.

CWTC also submitted comments responding to those of the City of Montevallo and the Alabama Conservancy. CWTC contends the City has given a new meaning to the term "dual compliance" different from that intended by RSPA. CWTC states that the preamble to the City Code indicates that it will regulate hazardous materials but that the Code narrowly focuses on hazardous waste transportation. CWTC adds, however, that transporters of hazardous wastes servicing customers within the City limits are not required to comply with the requirement (section 7–49). Additionally, CWTC notes that the City Code regulates hazardous wastes while ignoring risks posed by other hazardous materials, such as petroleum products and "pure chemicals."

CWTC indicates that, just like the City, it is concerned about the welfare of Montevallo's citizens. CWTC notes that each of its members has much to lose if it is involved in a spill, *i.e.*, its employees' health and safety, its business liabilities and insurance, and its company reputation. CWTC states that its members do not take their responsibilities lightly and that they comply with the requirements of 49 CFR 397.9(a).

Metropolitan Environmental Inc. (Metropolitan) states that the City's requirements pose obstacles to the accomplishment and execution of the HMTA and the HMR. Metropolitan cites IR–2, 44 FR 75,566 (Dec. 20, 1979 and IR–3, 46 FR 18,918 (Mar. 26, 1981), for the proposition that sections 7–43 through 7–46(a) of the City's Code would cause delays in transportation. Metropolitan states that such delays are incongruous with safe transportation and that the mere threat of delay may redirect the transport of hazardous waste to other jurisdictions that may not be aware of or prepared for the alteration of traffic patterns.

Based on IR–23, 53 FR 16,840 (May 11, 1988), Metropolitan states that section 7–42 of the City Code is inconsistent with the HMR because its routing restrictions were not based on complete safety analyses and consultations with all affected jurisdictions. Metropolitan also notes that the routing restrictions are not imposed equally on all cargoes presenting similar risks. For example, Metropolitan states that "shipments of flammable materials are only restricted if they are in a waste form."

Citing IR–6, 48 FR 760 (Jan. 6, 1983), Metropolitan states that the City's advance notice requirements in section 7–47(a) are generally inconsistent with the HMTA and the HMR.

C. Comments Supporting Consistency

The City of Montevallo, Alabama (City), submitted comments supporting the consistency of its requirements. The City contends that dual compliance is possible because several companies have complied with the requirements. The City indicates that it was not its goal to burden industry and that commercial concerns were considered when the ordinance was debated.

The City contends that its ordinance meets the obstacle test because it furthers the larger purpose and intent of the HMTA by providing for the general welfare of its citizens. The City contends that if some details of the Federal and local regulations differ, section 7–50 of the City Code (the savings clause) should solve the problem.

The City also states that the passage of the City requirements at issue here reassured the citizens of Montevallo about hazardous waste transportation. The City contends that if sections 7–40 through 7–50 are voided on a perceived "technicality" there may be adverse public reaction.

In its rebuttal comments, the City states that delays are not always incongruous with safe transportation. For example, the City states that "it is better to wait for freezing precipitation to pass and for school buses to clear the roads."

The City contends that commenters misinterpreted section 7–45(a) of the City Code. The City argues that section 7–45(a) prohibits the transportation of hazardous waste into the City when the temperature is below 35 °F and when

rain or other precipitation has occurred within the last two hours. The City rebuts the comments of Autumn concerning its weather restrictions. It states that Autumn's comment that the weather restrictions are "ridiculous" "fails to consider that freezing precipitation increases the risk of a traffic accident, and magnifies the damage done by a spill that might result."

Concerning its definition of hazardous waste, the City states that it used "outside sources" and its failure to equally restrict other materials with similar risks arises from use of the "mostly federal definitions" or "is inherent in the volatile nature of the subject matter." The City indicates that it is willing to use a definition that would suit national needs.

Concerning routing, the City states that the City Council thoroughly considered safety and that every effort was made to minimize any impact on other jurisdictions. The City states that it is open to consultation with all affected jurisdictions. In addition, the City asserts that the City requirements were not passed in an effort to thwart the siting of a hazardous waste incinerator. The City contends that an application was made to site such an incinerator about five miles from Montevallo; however, the application was rejected by the Alabama Department of Environmental Management three months prior to the passage of the City Code. The City also notes that no commenter provided suggestions for improving its hazardous waste requirements.

The Alabama Conservancy (Conservancy) also submitted comments supporting consistency of the City requirements. The Conservancy states that the City of Montevallo is located at the junction of three State highways. It further states that the City's main street is Highway 119, which is a winding, curving street that is close in proximity to churches, schools, and most of the City's businesses. The Conservancy also notes that the City is built on limestone and carbonate rock and that underground aquifers run as close as six feet from the surface. It adds that the ground is very porous and sinkhole-prone and that some of those holes expose the springcreek and drycreek aquifers.

The Conservancy contends that the City Code does not unduly tie up traffic or even keep hazardous waste trucks out but that "it simply monitors them through a busy thoroughfare in a populated area of the City." It requests that the City Code be left in place or replaced "with a strengthened ordinance that reflects [the HMTA] and sections of the Clean Water Act and surface water protection clauses." If the City's requirements cannot remain intact, the Conservancy requests that 49 CFR 397.9(a) be enforced to protect the citizens of Montevallo.

Alabamians for a Clean Environment (ACE) also submitted comments in support of the City Code. ACE alleges that "Alabama has become the toxic waste dumping ground for the United States. In 1988, [it] received about 600,000 tons of hazardous wastes from 48 States. About 40 percent of the nation's Superfund waste was dumped in Emelle, Alabama." ACE states that many of the trucks transporting these wastes travel through the State's interstate systems and farm roads. ACE contends that many of the cities are not equipped to respond to a toxic incident. ACE asserts that the City ordinance was passed in response to this problem and that it reinforces the HMTA.

IV. RULING

A. Preliminary Issues

Several commenters indicated that compliance with the City's Code would frustrate compliance with the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR parts 390–397).

Although the FMCSR generally were incorporated by reference into the HMR by 49 C.F.R. § 177.804, that action had limited preemptive effect. The preemptive effect of that incorporation was discussed in IR–22, 52 FR 46,574 (Dec. 8, 1987).

There, RSPA stated:

> The FMCSR generally were incorporated by reference into the HMR to allow the imposition of civil penalties and the use of additional enforcement tools provided by the HMTA. That action was accomplished by adding § 177.804 of the HMR * * *.
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> However, when the FMCSR were thereby incorporated by reference into the HMR, the Department declared that such action was not intended to change the intent, scope of application, or preemptive effects of the FMCSR as they existed under their original statutory authority * * * Therefore, RSPA will consider the preemptive effects of 49 CFR parts 391 through 397 only to the extent those effects existed prior to their incorporation by reference by § 177.804 of the HMR, Inconsistency, Ruling (IR–2), 44 FR 65566, 75568 (Dec. 20, 1979), *unless* they are specifically incorporated by reference by another provision of the HMR.

The standards to be used in determining the preemptive effect of the FMCSR are set out in 49 CFR 390.30, which states:

> Except as otherwise specifically indicated, parts 390 through 397 of this subchapter are not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto.

These standard are virtually identical to the "dual compliance" test. Thus, any FMSCR provision which is applicable solely through 49 CFR 177.804 of the HMR preempts a State or local requirement only if compliance with both is impossible. On the other hand, if an FMCSR provision is specifically incorporated by reference into the HMR by a HMR provision other than 49 CFR 177.804, that FMCSR provision is treated, for the purpose of preemption, as an HMR provision to the extent incorporated into the HMR. The premptive effect of such a provision, would be determined through application of both the obstacle and dual compliance tests.

In addition, the City states that none of the comments discuss how improvements can be made to its requirements. In discussing why certain of the City's requirements are inconsistent, this inconsistency ruling should aid the City in the future promulgation of consistent requirements.

CWTC's application raises important preemption issues under the HMTA, and all parties engaged in hazardous materials transportation or the regulation of that transportation will be served by RSPA's addressing those issues.

Consistent with its policy of liberally construing the threshold requirements for obtaining inconsistency rulings, IR–21, 52 FR 37,072 (Oct. 2, 1987), RSPA will address the preemption issues raised in CWTC's application.

B. Section 7–40—Hazardous Waste Definition

Section 7–41 of the City Code defines "hazardous waste" as:

> (b) * * * a waste or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, otherwise managed, and includes:
>
> (1) The meaning assigned that term in regulations promulgated by the United States Environmental Protection Agency and codified at 50 C.F.R. 261.3. 50 C.F.R. 261.3 is incorporated herein by reference. All lists in 40 C.F.R. part 261, subpart D, and the Appendices to part 261 are also expressly incorporated by reference.

(2) The term "high-level waste" as defined by the United States Nuclear Regulatory Commission and Article II(d) of the Southeast Interstate Low-Level Radioactive Waste Management Compact.

(3) The term "low-level radioactive waste" as defined in Article 11(f) of the Southeast Interstate Low-Level Radioactive Waste Management Compact.

(4) The term "transuranic waste" as determined by the regulations of the United States Nuclear Regulatory Commission.

(5) Spent nuclear fuel or by-product material as defined in section 11e(2) of the Atomic Energy Act of 1954.

(6) Any substance on the Alabama substance list, promulgated by the Alabama Department of Environmental Management, acting through the Environmental Management Commission pursuant to section 22–33–4 of the 1975 Alabama Code.

(7) Any substance or mixture containing polychlorinated biphenyls ("PCBs") at greater than one tenth of one percent concentration when such substance or mixture is not intended for beneficial use or reuse.

(8) "Source material," including uranium, thorium, and any other material determined to be source material by the United States Nuclear Regulatory Commission.

(9) "Special nuclear material," including plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, any material artificially enriched by any of the foregoing, and any other materials determined to be special nuclear material by the United States Nuclear Regulatory Commission.

The HMR defines "hazardous waste" as "any material that is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency, specified in 40 CFR Part 262." 49 CFR § 171.8.

The City's definition of "hazardous waste" also includes "low-level radioactive wastes." Low-level radioactive wastes fall within RSPA's "radioactive materials" definition. The HMR defines "radioactive material" as "any material having a specific activity greater than 0.002 microcuries, per gram (μCi/g)." 49 CFR § 173.403(y). On the other hand, the City specifically defines low-level radioactive wastes "as defined in Article II(f) (sic) of the Southeast Interstate Low-Level Radioactive Waste Management Compact" (Southeast Compact). Article 2(6) of the Southeast Compact defines low-level radioactive waste or "waste" as a radioactive waste not classified as a high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material, as defined in section 11e(2) of the Atomic Energy Act of 1954, or as may be further defined by Federal law or regulation, Pub. L. No. 99–240, 99 Stat. 1873 (1986).

The result of the City's broad definitions of "hazardous waste" and "radioactive material" is the regulation of the transportation of materials not regulated under the HMTA and the HMR, including the regulation of radioactive materials having a specific activity of 0.002μCi/g or less, and the exclusion of certain hazardous materials regulated thereunder. Thus, the City's hazardous waste definition is significantly different from the HMR definition.

Congress approved the Southeast Compact to encourage the development of compacts as a tool for disposal of low-level radioactive waste. Hence, the purpose of the Southeast Compact was to provide for proper disposal of low-level waste. Although this Compact does not address transportation issues, the Act upon which this Compact is based states that no compact may be construed to confer any authority "to regulate the packaging, generation, treatment, storage, disposal, or transportation of low-level radioactive waste in a manner * * * *inconsistent* with the regulations of the Department of Transportation." Low-Level Radioactive Waste Policy Act Amendment of 1986, 42 U.S.C. 2021d(3)(A). (Emphasis added.)

The express purpose of the HMTA is to "improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks of life and property which are inherent in the transportation of hazardous materials in commerce." 49 U.S.C. App. § 1801. Another Congressional purpose of the HMTA was to secure a general pattern of uniform, national regulations, and to preclude multiplicity of State and local regulations and the potential for varying as well as conflicting regulations concerning hazardous materials transportation. S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974); *National Tank Truck Carriers, Inc.* v. *Burke,* 608 F.2d 819, 824 (1st Cir. 1979).

The HMTA authorizes the Secretary of Transportation to designate the quantity and form of material, or group or class of such materials, which constitutes a "hazardous material." 49 U.S.C. App. sec. 1803. Acting pursuant to that authority, as delegated (49 CFR § 1.53(b)), RSPA has adopted a body of regulations (particularly 49 CFR § 172.101 (Hazardous Materials Table)) defining hazardous materials.

RSPA has stated in previous inconsistency rulings that it considers the Federal rule in definition of hazardous classes to be exclusive. IR–5, 47 FR 51,991 (Nov. 18, 1982); IR–6, 48 FR 760 (Jan. 6, 1983); IR–8; 49 FR 46,637 (Nov. 27, 1984); IR–15, 49 FR 46,660 (Nov. 27, 1984). As stated in IR–5, if a material does not possess the characteristics described in any of the HMR hazard class definitions, it is not a material that "may pose an unreasonable risk to health and safety or property, and application of the HMR to its transportation is not deemed warranted." IR–5, 47 FR at 51,993. Hence, those materials listed in section 7–40 of the City's definition of "hazardous waste" which are not listed in the HMR Table have been determined not to warrant regulation in transportation as posing an unreasonable risk to health, safety or property.

State or local hazardous materials definitions which result in the regulation of more or different hazardous materials than regulated by the HMR are obstacles to the uniformity in transportation regulation, which is essential to safety, and, thus, these definitions are inconsistent with the HMTA and the HMR. IR–5, 47 FR 51,991 and IR–6, 48 FR 760. Specific problems caused by different hazardous materials definitions were identified in earlier inconsistency rulings:

> The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations. This is precisely the situation which Congress sought to preclude when it enacted the premption provision of the HMTA (49 U.S.C. 1811).
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> IR–6, 49 FR 760, 764 (Jan. 6, 1983).

> The HMR are, in and of themselves, a comprehensive and technical set of regulations which occupy approximately 1000 pages of the Code of Federal Regulations * * * For the City to impose additional requirements based on differing hazard class definitions adds another level of complexity to this scheme. Thus, shippers and carriers doing business in the City must know not only the classifications of hazardous materials under the HMR and the regulatory significance of those classifications, but also the City's classifications and their significance. Such duplication in a regulatory scheme where the Federal presence is so clearly pervasive can only result in making compliance with the HMR less likely, with an accompanying decrease in overall public safety.
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> IR–5, 47 FR 51,991, 51,994 (Nov. 18, 1982)

> If every state were to assign additional requirements on the basis of independently created and variously named subgroups of * * * materials, the resulting confusion of regulatory requirements would lead ineluctably to the increased likelihood of reduced compliance with the HMR [a]nd subsequent decrease in public safety.
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> IR–15, 49 FR 46,660 (Nov. 27, 1984).

For these reasons, the Federal role in defining hazardous materials with respect to hazardous materials transportation is exclusive, and State and local definitions of hazardous materials differing from the HMR are inconsistent with the HMR. IR–18, 52 FR 200 (Jan. 2, 1987); IR–18 (Decision on Appeal), 53 FR 28,850 (July 29, 1988); IR–19, 52 FR 24,404 (June 30, 1987), correction, 52 FR 29,468 (Aug. 7, 1987); IR–19 (Decision on Appeal), 53 FR 11,600 (Apr. 7, 1988); IR–20, 52 FR 24,396 (June 30, 1987), correction, 52 FR 29,468 (Aug. 7, 1987); IR–21, 52 FR 37,072 (Oct. 2, 1987); IR–21 (Decision on Appeal), 53 FR 46,735 (Nov. 18, 1988); IR–26, 54 FR 16,314 (Apr. 21, 1989), correction, 54 FR 21–526 (May 19, 1989); IR–29, 55 FR 9304 (Mar. 12, 1990); *Missouri Pacific RR Co.* v. *Railroad Comm'n of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds*, 850 F.2d 264 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 794 (1989); *Union Pacific RR Co.* v. *City of Las Vegas*, No. CV–LV–85–932 HDM (D. Nev. 1986).

These same principles apply to the City's Code under consideration in this proceeding. The City states that it used "mostly Federal definitions" in defining "hazardous waste." However, the City's definition of "hazardous waste" consists of ambiguous and subjective standards and includes not only those materials regulated under the HMR but also other materials not regulated under the HMR. Therefore, the City's hazardous waste definition is inconsistent with the HMR, and, therefore, preempted.

C. Section 7–42—Routing Requirement

The City Code requires that certain routes be used by trucks transporting hazardous waste. According to the City, the rationale behind this section is that "many of the streets of Montevallo being narrow and bending [are] not generally designed to accommodate heavy or constant truck traffic."

In prior inconsistency rulings, IR–3, 46 FR 18,918 (Mar. 26, 1981); IR–3 (Decision on Appeal), 47 FR 18,457 (Apr. 29, 1982); IR–10, 49 FR 46,645 (Nov. 27, 1984), correction, 50 FR 9939 (Mar. 12, 1985); IR–11, 49 FR 46,647 (Nov. 27, 1984); IR–14, 49 FR 46,656 (Nov. 27, 1984); and IR–16, 50 FR 20,873 (May 20, 1985), RSPA has indicated that State and local governments imposing routing requirements on hazardous materials are required to consider overall safety effects and to consult with all affected jurisdictions.

In IR–3 (Decision on Appeal), 47 FR 18,457, 18,458–9 (Apr. 29, 1982), RSPA stated that:

> Local transportation bans export risks from one jurisdiction to another. IR–3 addressed the problems caused when a local jurisdiction does not evaluate the effects of an exported risk on another jurisdiction or does not consult other jurisdictions and consider their risks in comparing them with the risks it is avoiding by resorting to a ban. While a jurisdiction can be assumed to have reduced its own risk by exporting it, there is no reason to think that overall risk is reduced unless the changes in risk have been analyzed from all perspectives, including the perspectives of the jurisdictions to which the risk is shifted. Even where the long-term risk is reduced by avoiding a local jurisdiction, those jurisdictions to which risk is shifted are likely to be unaware of the nature and extent of the risk until it actually materializes and they may be unprepared to deal with it unless some prior consultation has occurred. In short, a unilateral ban, lacking inter-jurisdictional perspective and driven by the isolated interest of one jurisdiction, is entitled to no practical assumption in favor of increased public safety. Such action may be assumed only to move the risks from one place to another.
>
> * * * * *
>
> The legislative history of the HMTA clearly indicates that the intent of Congresss in enacting section 112 was to preclude State and local governments from enacting piecemeal restrictions on hazardous materials transportation. In the portion of the Committee report relating to section 112, the Senate Commerce Committee stated: "The Committee endorses the principles of Federal preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." [S. Rep. No. 1192, 93d Cong., 2d Sess. 37 (1974)].
>
> As expressed in IR–3, it is [RSPA's] view that local bans are almost invariably the sort of piecemeal requirements that Congress intended to preempt unless they are adopted through "a process that adequately weighs the full consequences of its (the local government's) routing choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules." (46 FR 18922 [Mar. 26, 1981)]).

In 1981, RSPA published appendix A to part 177 in order to provide guidance to State and local governments concerning preemption issues arising under that part concerning the transportation of radioactive materials. Appendix A was expressly a policy statement not a mandatory requirement. After reexamining appendix A, RSPA determined that it was no longer necessary due to the subsequent publication of numerous inconsistency rulings addressing the transportation of radioactive materials. Therefore, in February 1990, RSPA deleted appendix A from part 177. 55 FR 4423 (Feb. 8, 1990). Thus, appendix A was, and is, irrelevant.

Local routing requirements for radioactive materials face even greater hurdles than those for all hazardous materials. Here the City's definition of "hazardous waste" includes radioactive waste; therefore, the City's routing restrictions are applicable to radioactive waste. Such routing restrictions are inconsistent with the specific HMR highway routing regulations for radioactive materials set forth in 49 CFR 177.825.

Radioactive material is a class of materials that emit a defined level of ionizing radiation. Required package labels indicate certain characteristics of the packaged material that must be known for appropriate package handling and stowage. Those labels are commonly referred to as White I, Yellow II and Yellow III in increasing order of hazard. Package radiation emission levels, fissionability, and total package radioactivity determine label use. 49 CFR 172.403(c). Any motor vehicle carrying a package bearing a Yellow III label is required by the HMR to be placarded. 49 CFR 172.507(a).

Section 177.825(a) requires highway carriers of radioactive materials required to be placarded to operate on routes that minimize radiological risk. It requires each carrier to consider certain criteria in determining the route and also provides that the routing requirement does not apply when there is only one practicable route or when the carrier is operating on a "preferred highway."

Section 177.825(b) requires highway carriers of "highway route controlled quantities" of radioactive materials to operate on "preferred routes," which are Interstate System highways or State-designated routes, selected by the carrier to reduce time in transit. All State-designated routes are identified in a "Registry of State-designated Routes" maintained by RSPA. 49 CFR 177.825(b)(1)(ii).

The effect of these HMR routing requirements on State and local routing requirements for radioactive materials was addressed by RSPA in IR–8 (Decision on Appeal), 52 FR 13,000 (Apr. 20, 1987). In that decision RSPA stated that:

> * * * the Department, through promulgation of 49 CFR 177.825, has established a near total occupation of the field of routing * * * requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation routing * * * requirements other than (1) those identical to Federal requirements or (2) state-designated * * * routes under 49 CFR 177.825(b), are very likely to be inconsistent and thus preempted under section 112(a) of the HMTA.

52 FR at 13,003.

Thus, State and local routing restrictions on radioactive materials required to be placarded are inconsistent with the HMR unless they are identical to 49 CFR 177.825(a). Likewise, State and local routing restrictions on highway route controlled quantities of radioactive materials are inconsistent with the HMR—except for State, *not local*, designations of preferred routes pursuant to 49 CFR 177.825(b). IR–8 (Decision on Appeal), 52 FR 13,000 (Apr. 20, 1987); IR–16, 50 FR 20,872 (May 20, 1985); IR–18, 52 FR 200 (Jan. 2, 1987); IR–18 (Decision on Appeal), 53 FR 28,850 (July 29, 1988); IR–20, 52 FR 24,396 (June 30, 1987), correction, 52 FR 29,468 (Aug. 7, 1987); IR–30, 55 FR 9676 (Mar. 14, 1990); *Jersey Central Power & Light Co.* v. *New Jersey*, No. 84–5883 (D.N.J. Dec. 27, 1984), *appeal dismissed as moot*, 772 F.2d 35 (3d Cir. 1985). RSPA also has determined that, at this time, there is no need for highway routing requirements for other kinds of radioactive materials. IR–30, *supra*.

The City states that it thoroughly considered safety. It also states that every effort was made to minimize the impact of its requirements on other jurisdictions. The City, however, fails to elaborate on this process or to demonstrate whether or how it consulted with other jurisdictions. It merely states its willingness to engage in such consultations.

The City has asserted the authority to designate routes for highway route controlled quantities of radioactive materials. However, only the State can designate highway routes for radioactive materials transportation. 49 CFR 177.825(b).

For all the foregoing reasons, the City's requirements concerning the routing of hazardous materials are inconsistent with the HMR.

D. Section 7–43—Speed Limit Restriction

Section 7–43 of the City's Code requires that vehicles transporting hazardous waste within the City observe a speed limit of 35 mph. The record does not indicate what speed limit applies to other vehicles.

The HMR do not address speed limit restrictions. The FMCSR state that "every motor vehicle containing hazardous materials must be *driven* and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, *unless* they are at variance with specific regulations of the (DOT) which are applicable to the operation of that vehicle and which impose a more stringent obligation on restraint." 49 CFR 397.3 (emphasis added).

In IR–20, 52 FR 24,396 (June 30, 1987), correction, 52 FR 29,468 (Aug. 7, 1987), and IR–23, 53 Fed. Reg. 16,840 (May 11, 1988), which is currently on appeal. RSPA stated that local traffic controls are presumed to be valid. Thus, in the absence of any significant relevant evidence on this matter, the City's speed limit restriction is consistent with the HMR.

E. Section 7–44—Separation Distance

Section 7–44 of the City Code requires that:

> No hazardous waste-carrying vehicle shall follow within 150 feet of any other vehicle when within the City limits, *provided*, that this section shall not apply to vehicles following State, county, or city police vehicles.

The HMR do not specify a separation distance for motor vehicles carrying hazardous materials. This issue was addressed in IR–3, 46 Fed. Reg. 18,918, 18,923 (Mar. 26, 1981), and in IR–20, *supra*. In IR–3, although RSPA questioned "the advisability of encouraging a driver to constantly direct his attention away from the proximity of his vehicle" and how the distance requirement promoted safety, it found no basis for concluding that the requirement was inconsistent with the HMTA. As in IR–3, I find no basis in this record for concluding that section 7–44 of the City Code is inconsistent with the HMR. Based on this record, therefore, it is consistent.

F. Section 7–45—Time Restrictions

Section 7–45 of the City Code requires that hazardous waste not be transported between 6:30 and 8:30 a.m. or between 2 and 3:30 p.m.

Time-of-day restrictions are a subset of routing restrictions. IR–3, *supra*. Such restrictions effectively may route vehicles carrying hazardous materials into other jurisdictions during the time the prohibition applies. Thus, without adequate overall safety justification and appropriate coordination with other affected jurisdictions, time restrictions are inconsistent with the HMTA. IR–3 (Decision on Appeal), *supra*; IR–23, *supra*.

A similar Rhode Island State regulation forbidding the transportation of certain hazardous materials during certain time frames was held preempted in *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D. R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983). The court held that although the regulation did not directly conflict with the HMTA, it undermined the purpose of the Act. The court stated that the State's concern about the possibility of an accident during rush hour was legitimate, but the regulation, in forcing carriers to remain loaded and stationary, or to remain outside the State, or both, would cause unnecessary delays in the transportation of hazardous materials contrary to the terms of 49 CFR § 177.853 and would shift the risk of accidents to adjacent States. The court said the time restrictions also defeated Congress' intent for uniformity in the transportation of hazardous materials.

IR–23 resulted in a similar holding. There, the Director of OHMT stated that a New York City restriction of hazardous materials through-traffic on weekdays from 10 a.m. to 3 p.m. and 7 p.m. to 6 a.m. for explosives and "prohibited materials" and from 8 a.m. to 4 p.m. and 6 p.m. to 7 a.m. for other "hazardous cargo" was inconsistent because it was not based on adequate safety analysis nor preceded by consultations with all affected jurisdictions. The Director specifically noted that:

> [t]he City's "safety analysis" consists of findings that rush-hour bans on hazardous materials transportation reduce the likelihood of, and the consequences of, hazardous materials incidents and facilitate prompt emergency response to such incidents. However, this rationale is completely undercut by the City's allowing City-permitted vehicles carrying hazardous materials to ignore the time restrictions.

IR–23 at 16,846.

This same principle applies to this case because the City's time restrictions are not based on an adequate overall safety analysis and have not been preceded by substantive consultations with other affected jurisdictions. The City's requirements have a propensity to cause unnecessary delay, create obstacles to the accomplishment and execution of the HMTA and the HMR, are thus inconsistent with the HMTA and the HMR, and, therefore, are preempted.

G. Section 7–46—Weather Conditions, Headlights & Citizen Band Radios

Section 7–46 of the City Code states:

> (a) No vehicle carrying hazardous wastes may operate when the temperatures are below 35°F (2°C) and rain or other precipitation has occurred within the last two hours.
>
> (b) No vehicle carrying hazardous waste may be operated during any officially-designated hurricane or tornado watch.
>
> (c) All vehicles carrying hazardous waste in the City of Montevallo shall operate with their headlights on at all times.
>
> (d) All vehicles carrying hazardous waste in the City of Montevallo shall be equipped

with citizens band radios, and shall monitor Channel 9.

Subsections (a) and (b) of the City's requirements are additional routing restrictions and are preempted for the reasons set forth above concerning routing (section 7–42). In addition, with respect to radioactive materials, traffic and road conditions are all reflected in accident rates and transit time, and the HMR requires carriers of highway route controlled quantity radioactive materials to consider these factors in selecting routes. 49 CFR 177.825(a). An illustration of this requirement was given in IR–14, 49 FR 46,656, 46,658–9 (Nov. 27, 1984):

For example, if available information demonstrated a higher accident rate during the winter months, a carrier would be required to consider this as a constant. As for short-term adverse weather conditions, carriers of radioactive materials, like all highway users, are subject to a State's inherent power to control traffic. Similarly, chronic highway conditions are inherent in considerations of accident rates and transit times. As for short-term degradation of highway conditions, all highway users are subject to State's inherent power to control traffic.

* * * MTB [Materials Transportation Bureau] recognized the possibility of chronic problems on portions of the Interstate System of highways * * *. The State of New York has not yet chosen to designate alternate preferred routes. This does not mean that Jefferson County may take independent action. If Jefferson County could impose a partial ban on radioactive materials transportation, then any political subdivision could do so, and the resulting proliferation of varying and possibly conflicting regulations would completely undercut the Congressional objective of regulatory uniformity * * *.

The restrictions imposed * * * may be completely justifiable on the basis of local conditions, but this does not justify their unilateral imposition by Jefferson County * * *. Such restrictions could be imposed by a State routing agency but only if an alternate route were designated for the duration of the prohibition. The reasons for placing such authority at the State level were articulated clearly in [the Department's Radioactive Materials Routing and Driver Training Requirements rulemaking, commonly known by its docket number, HM–164]:

"Local jurisdictions are inherently limited in perspective with respect to establishing routing requirements. While the Department recognizes that local governments are accountable only to their own citizens, such a limited accountability has some undesirable effects. For example, a routing restriction in one community may have adverse safety impacts on surrounding jurisdictions. Also, some communities, in determining that they do not have the appropriate expertise or manpower to perform a routing analysis, may find attractive the option of completely prohibiting the transport of radioactive materials through their jurisdictions. This has already happened in some cases. Uncoordinated and unilateral local routing materials would simply not be conductive to safe transportation. There is a clear need for national uniformity and consistency."

46 FR 5301 [(Jan. 19, 1981)]).

The same principles are applicable here. It should be noted, however, that RSPA has held that as long as reasonably administered on a case-by-case basis, the local authority to restrict or suspend transportation operations, when the road, weather, traffic or other hazardous conditions or circumstances warrant, is consistent with the HMTA and the HMR. IR–3, *supra*; IR–15 (Decision on Appeal), 52 FR 13,062 (Apr. 20, 1987); IR–20, *supra*; *American Trucking Ass'ns* v. *City of Boston*, No. 81–628–MA (D. Mass. 1981); *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D. R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983).

Subsection (c) of the City's Code requires that vehicles carrying hazardous wastes have their headlights on at all times. In IR–2, 44 FR 75,566, 75,572 (Dec. 20, 1979), RSPA considered headlight requirements as:

a driving requirement of the type covered by the Federal Motor Carrier Safety Regulations at 49 CFR Part 392 and Part 397. Neither of these Parts contain [sic] a requirement that conflicts with the [headlight] requirement. Absent such a direct conflict, general operating and equipment requirements of the type covered by the Federal Motor Carrier Safety Regulations, as incorporated into the Hazardous Materials Regulations, are not precluded.

Hence, the headlight requirement was found not to be inconsistent with the HMTA or HMR. The same conclusion was reached in IR–3, 46 FR 18,918 (Mar. 26, 1981); IR–27, 54 FR 16,326 (Apr. 21, 1989), correction, 54 FR 20,001 (May 9, 1989); *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd*, 698 F. 2d 559 (1st Cir. 1982); and *Colorado Pub. Utilities Comm'n* v. *Harmon*, No. 88–Z–1524 (D. Colo. 1989).

Therefore, the "headlights on" requirement is a valid local requirement as long as (1) reasonable notice thereof is given to vehicle operators, and (2) it applies only to vehicles carrying "hazardous materials" and/or "hazardous wastes"—which terms are defined in a manner identical to the HMR definitions.

Subsection (d) requires that all vehicles carrying hazardous waste in the City of Montevallo be equipped with citizen band radios and that their operators monitor Channel 9.

Some commenters suggest that this subsection fails the obstacle test because Title III of the Superfund Amendments and Reauthorization Act (SARA) requires that hazardous materials incidents be reported by telephone, not citizen band radio. This argument is irrelevant to preemption under the HMTA.

Except for radioactive materials transportation, the HMR do not address or impose any Federal requirement with regard to radios. Although the record contains no information concerning how this requirement enhances safety, it is not inconsistent with the HMTA or HMR as it relates to non-radioactive hazardous materials transportation.

However, with respect to radioactive materials, communication capabilities are an element of physical security, and a State or local transportation rule is inconsistent if it conflicts with 49 CFR 173.22, which incorporates by reference the physical security regulations of the Nuclear Regulatory Commission, 10 CFR part 73, or equivalent requirements approved by RSPA. Those NRC regulations require highway shippers to establish a single, continuously staffed communications center which shipment escorts are to call at least every two hours. Highway shippers must ensure that escorts have the capability of communicating with the communications center, local law enforcement agencies, and one another through the use of a citizens band radio, a radio-telephone, or other NRC-approved equivalent means of two-way voice communications, and normal local law enforcement agency radio.

Since the HMR requires highway transporters of radioactive materials to comply with the NRC requirements or their equivalent approved by RSPA, these are the standards with which the City's requirements will be compared for consistency.

Because of the existence of "dead zones," (areas in which continuous communication is disrupted or non-existent), the communications equipment required by the HMR is incapable of ensuring that drivers can "monitor Channel 9" as required by the City Code. This precise issue was addressed in IR–8, 49 FR 46,637, 46,638 (Nov. 27, 1984);

Were transporters required to change the means and/or frequency of communication each time they entered a different jurisdiction, the overall reliability of the communication system would be seriously jeopardized. Thus, shipments would be subject, not only to the minor delays inherent in system changeover, but also to potentially significant delays necessary to restore communications capability. It is axiomatic that equipment changes pose a greater risk of system breakdown than does maintenance of a single system. And an increased risk of communications breakdown constitutes a

serious degradation of physical protection safeguards.

The same principle applies to this case. Therefore, with respect to radioactive materials transportation, I find that the City's requirement impedes the interrelated Congressional purposes of increased safety and regulatory uniformity which underlie the HMTA.

H. Section 7–47—Prenotification/ Placards

Section 7–47 of the City Code requires that vehicles carrying hazardous waste through the City of Montevallo shall:

> (a) Notify the Montevallo Police Department by telephone prior to 8 am on the day that any such driver or employer expects to transport hazardous waste through the City of Montevallo. If more than one vehicle is expected, the employer shall state in one call the expected number. The approximate time(s) of arrival at the city limits, within one hour, shall be given. The road(s) on which the vehicle(s) will arrive shall be given and may not be changed without one hour's further notification.

In prior inconsistency rulings, RSPA has held that advance notice requirements of hazardous materials transportation generally are inconsistent. IR–6, 48 FR 760 (Jan. 6, 1983); IR–8 (Decision on Appeal), 52 FR 13,000 (Apr. 20, 1987); IR–16, 50 FR 20,872 (May 20, 1985); IR–28, 55 FR 8884 (Mar. 8, 1990); IR–30, 55 FR 9676 (Mar. 14, 1990), correction, 55 FR 12,111 (Mar. 30, 1990). In addition, DOT has determined what prenotification requirements are necessary for the safe transportation of radioactive materials. In the process of analyzing rulemaking comments and studies, DOT has commissioned or examined, it has determined what prenotification requirements are not necessary. This field has been totally occupied by the HMR. IR–8 (Decision on Appeal), *supra*.

State and local provisions either authorizing less prenotification or requiring greater prenotification than the HMR, therefore, constitute obstacles to the accomplishment and execution of the objectives of the HMTA and the HMR. Such requirements are therefore inconsistent and preempted. IR–8 (Decision on Appeal), *supra*.

Section 7–47(b) of the City's Code requires that vehicles be placarded or marked in accordance with DOT's requirements. This requirement is not in addition to, or different from, the Federal placarding requirements, and therefore is consistent with the HMTA and the HMR. IR–2, *supra*; IR–3, *supra*; IR–24, 53 FR 19,848 (May 31, 1988); IR–30, *supra*; *Kappelmann* v. *Delta Air Lines, Inc.*, 539 F.2d 165 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 1061 (1977); *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982).

I. Section 7–48—Manifest, Accident Reporting, Driver's License, Liability Insurance

Section 7–48(a) requires that each driver of a vehicle carrying hazardous waste have available for inspection the manifest for the transportation of such waste pursuant to the Resource Conservation and Recovery Act (RCRA) or Federal or State regulations implementing that Act.

Federal regulation, 49 CFR 172.205(a), requires that the driver transporting hazardous waste must carry a hazardous waste manifest that has been prepared in accordance with 40 CFR 262.20 (RCRA regulations). The City's manifest requirement, although worded differently, is essentially the same as the HMR requirement, and therefore is not inconsistent with the HMTA or HMR.

Section 7–48(b) requires that the driver of a vehicle carrying hazardous waste immediately report any accident or collision involving such vehicle to the Montevallo police via two-way CB radio.

Some commenters suggest that this subsection fails the obstacle test because Title III of SARA requires that hazardous materials incidents be reported by telephone, not citizen band radio. This argument is irrelevant to preemption under the HMTA.

IR–2, 44 FR 75566 (Dec. 20, 1979), involved a similar State requirement. There, the State required vehicles transporting liquified natural gas over highways within the State to be equipped with a two-way radio in order to alert the appropriate Federal, State, or municipal agencies of any accident or mishap occurring within the State. The Director of OHMT stated:

> There is presently no Federal requirement with regard to radios and even were a final rule to be published in the Federal Motor Carrier Safety Regulations it would only preempt a State or local requirement directly in conflict with it. Absent any such requirement, the Rhode Island Rule * * * is not inconsistent with the HMTA or the Hazardous Materials Regulations.

44 FR at 75,569.

In IR–2, the Director of OHMT also stated that a requirement for immediate notification of certain incidents facilitates State and local governmental emergency response measures to protect persons and property and is consistent with the HMTA and the HMR. In addition, in IR–3, 46 FR 18,918, 18,924 (Mar. 26, 1981), OHMT indicated that "any immediate reporting requirement, applied differentially to carriers of hazardous materials, that is necessary to support an emergency response effort is not inconsistent with the HMTA." See also, IR–28, 55 FR 8884 (Mar. 8, 1990); *National Tank Truck Carriers, Inc.* v. *Burke*, 535 F. Supp. 509 (D. R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983). This same principle applies to the City's requirement. (However, this does not obviate the necessity for the carrier to comply with the "as soon as practicable" requirement in 49 CFR § 171.15 to report a hazardous materials incident.

However, insofar as the City's oral reporting requirement applies to irradiated reactor fuel (spent nuclear fuel), it is inconsistent with the HMR. IR–8, IR–8 (Decision on Appeal), and IR–28, all *supra*. In IR–28, 55 Fed. Reg. 8884, 8893–94 (Mar. 8, 1990), the Director of OHMT stated:

> Two HMR provisions are relevant to this issue. First, 49 C.F.R. 177.861 requires the "earliest practicable" notification to the shipper of radioactive materials incidents. Second, 49 C.F.R. 173.22(c) requires shippers of irradiated reactor fuel to provide physical protection in compliance with a plan established under Nuclear Regulatory Commission (NRC) requirements; those requirements include a 10 CFR 73.37 provision for notification to appropriate agencies in the event of a "safeguards emergency."

Therefore, the City's requirements for oral notification concerning hazardous materials accidents are consistent except as they apply to irradiated reactor fuel.

Section 7–48(c) requires that every driver of a hazardous waste vehicle shall carry a valid driver's license and evidence of liability insurance covering the consequences of cargo spills.

The requirement to carry a valid driver's license is consistent with the HMTA and the HMR. (See, however, IR–26, *supra*, which imposes limits on imposition of non-domiciliaries of States' substantive drivers' licensing requirements.)

Several prior inconsistency rulings have made it clear that indemnification, bonding or insurance requirements for radioactive materials transportation differing from the Federal requirements are inconsistent. IR–10, *supra*; IR–11, *supra*; IR–15, 49 Fed. Reg. 46,660 (Nov. 27, 1984); IR–15 (Decision on Appeal), 52 FR 13,062 (Apr. 20, 1987); and IR–18, *supra*.

In addition, this principle has been broadened to the transportation of all hazardous materials. The absence of a bonding, insurance, or indemnity requirement in the HMR "is a reflection of RSPA's determination that no such

requirement is necessary and that any such requirement imposed at the State or local level is inconsistent with the HMR." IR–25, 54 FR 16,308, 16,311 (Apr. 21, 1989). "[N]o such requirement is necessary—particularly because 49 CFR §§ 387.7 and 397.9 already require insurance or surety bonds of between $1,000,000 and $5,000,000 for motor carriers transporting hazardous wastes, hazardous substances and other hazardous materials." *Ibid.* Those rules require insurance or surety bond of either $1 million or $5 million depending upon the nature of the hazardous material being transported.

In this instance, however, it does not appear that the City is attempting to impose any substantive insurance or similar requirements. Rather, the City is requiring drivers to carry evidence of such insurance.

Section 387.7(d) and 397.9 of the FMCSR have not been adopted in the HMR and thus are not relevant. Nevertheless, 49 CFR part 392 has been adopted in the HMR and does not require a driver to carry any evidence of financial responsibility.

In summary, there is no HMR provision on the subject of carrying evidence of insurance. Nevertheless, requirements for information of documentation in excess of Federal requirements create potential delay, constitute an obstacle to executive of the HMTA and the HMR, and thus are inconsistent. IR–2; IR–6; IR–8; IR–8 (Decision on Appeal); IR–15; IR–15 (Decision on Appeal); IR–18; IR–18 (Decision on Appeal); IR–19, IR–19 (Decision on Appeal); IR–21; and IR–26, all *supra;* IR–27, 54 Fed. Reg. 16,326 (Apr. 21, 1989); IR–28; IR–30, both *supra; Southern Pacific Transp. Co.* v. *Public Service Comm'n of Nevada,* No. 88–15541 (9th Cir. July 18, 1990), reversing *South Pacific Transp. Co.* v. *Public Service Comm'n of Nevada,* No. CV–N–86–444 BRT (D. Nev. 1988); *Chem-Nuclear Systems, Inc.* v. *City of Missoula,* No. 80–18–M (D. Mont. 1984). *Contra, Colorado Pub. Utiltities Comm'n* v. *Harmon,* No. 88–Z–1524 (D. Colo. 1989), *appeal docketed,* No. 89–1288 (10th Cir. Aug. 25, 1989), *appeal docketed,* No. 89–1288 (10th Cir. Aug. 25, 1989). There is no de *minimis* exception of the "obstacle" test because thousands of jurisdictions could impose *de minimis* information requirements. IR–8 (Decision of Appeal), *supra.*

Therefore, the City's requirement that the driver carry evidence of insurance is inconsistant with the HMTA and the HMR.

J. Section 7–49—Storage

Section 7–49 sets forth the following prohibitions:

> The storage of hazardous waste within the City of Montevallo is prohibited, except that materials defined as hazardous waste may be used for education or research in an accredited school or University, except that such materials may be used for industrial processes in industries operating within the City before the enactment of this ordinance, except that dry cleaning establishments and gasoline stations may continue their normal activities, and except by special permission of the City. The disposal of hazardous waste within the City of Montevallo is entirely prohibited.

In IR–28, *supra,* RSPA, held that local governments' hazardous materials storage requirements present possible consistency problems when they are applied to storage of hazardous materials incidental to their transportation. In IR–19 and IR–19 (Decision on Appeal), both *supra,* OHMT and RSPA, respectively, also indicated that State or local prohibitions of storage incident to transportation of hazardous materials at places where, and at time when, the HMR allow such storage is inconsistent with the HMTA and the HMR. Such prohibitions are obstacles to the execution of the HMR and thus are inconsistent. Therefore, insofar as the City's prohibition applies to transportation-related storage, it is inconsistent with the HMTA and the HMR. However, when applied to nontransportation-related storage, it is not inconsistent with the HMTA or the HMR because they have no application to such activities.

K. Section 7–50—Savings Clause

Section 7–50 of the City's Code states that "Sections 7–40 to Section 7–49 are subject to, and meant to complement, Federal and State legislation and regulations." The City argues that § 7–50 will solve any inconsistency between its requirements and the HMR.

It is a matter of Alabama law whether the words "subject to" would render consistent provisions which otherwise would be inconsistent with the HMTA and the HMR. Therefore, this ruling only addresses the consistency of the substantive provisions at issue and leaves determination of the effect of this savings clause to the courts or others.

V. Summary

For the foregoing reasons, and on the basis of this record, I find that the following provisions of the Montevallo City Code of 1982, are inconsisent with the HMTA and the HMR and thus preempted under section 112(a) of the HMTA (49 U.S.C. 1811(a)) as they apply to the transportation of hazardous materials, including the loading, unloading and storage incidental to that transportation:

(1) The definitions of hazardous waste in section 7–41;

(2) The routing requirements in section 7–42;

(3) The time restrictions in section 7–45;

(4) The weather-related restrictions in section 7–46 (a) and (b);

(5) The citizens band radio requirement in section 7–46(d) as it relates to radioactive materials;

(6) The prenotification requirements in section 7–47(a);

(7) The accident reporting requirement in section 7–48(b) as it relates to irradiated reactor fuel;

(8) The liability insurance requirement in section 7–48(c); and

(9) The section 7–49 prohibition on storage of hazardous waste as it relates to storage to hazardous waste incidental to transportation.

As they apply to the transportation of hazardous materials, including the loading, unloading and storage incidental to that transportation, the following provisions of the Montevallo, Alabama City Code are consistent with the HMTA and the HMR:

(1) The speed limit restrictions in section 7–43;

(2) The separation distance requirement in section 7–44;

(3) The headlight requirement in section 7–47(c);

(4) The citizens band radio requirement in section 7–46(d) except as it relates to radioactive materials;

(5) The placarding requirements in section 7–47(b);

(6) The requirement in section 7–48(a) that drivers transporting hazardous waste carry a hazardous waste manifest; and

(7) The accident reporting requirement in section 7–48(b) except as it relates to irradiated reactor fuel.

This ruling does not address the consistency of any provisions not described above, including the savings clause provisions in section 7–50 of the City Code.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211. The appeal should be addressed to the Administrator, Research and Special Programs Administration, Room 8410, 400 Seventh Street, Washington, DC 20590–0001. The appeal should state, with particularity, the findings in the administrative ruling that the appealing party challenges, and

include all information and arguments pertinent to the Appeal.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

sued in Washington, DC on August 28, 1990.

[FR Doc. 90-20902 Filed 9-5-90; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 30, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0494.
Form Number: ATF REC 5530/3.
Type of review: Extension.
Title: Liquors and Articles from Puerto Rico or the Virgin Islands.
Description: Information collection requirements for persons bringing nonbeverage products into the United States from Puerto Rico and the Virgin Islands is necessary for the verification of claims for drawback of distilled spirits taxes paid on such products.
Respondents: Business or other for-profit, Small business or organizations.
Estimated number of respondents: 20.
Estimated burden hours per response: 1 hour.
Frequency of response: Monthly, Quarterly.
Estimated total reporting burden: 120 hours.
Clearance officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-20934 Filed 9-5-90; 8:45 am]

BILLING CODE 4810-31-M

General Counsel

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil Service Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Jeanne S. Archibald, Acting General Counsel.
2. David L. Jordan, Deputy Chief Counsel.
3. Richard J. Mihelcic, Associate Chief Counsel (Finance & Management).
4. Kenneth Klein, Associate Chief Counsel (Technical).
5. William A. Goss, Southeast Regional Counsel.
6. Benjamin C. Sanchez, Western Regional Counsel.

This publication is required by 5 U.S.C. 4314(c)(4).

Abraham N.M. Shashy, Jr.,

Chief Counsel.

[FR Doc. 90-20986 Filed 9-5-90; 8:45 am]

BILLING CODE 4830-01-M

Internal Revenue Service

Trade Show; IRS's Electronic Filing Systems National Conference and Exhibition

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of IRS's Electronic Filing Systems National Conference and Exhibition.

SUMMARY: The Electronic Filing Systems Office of the Internal Revenue Service (IRS) has planned an IRS Electronic Filing Systems National Conference and Exhibition for November 2-3, 1990. The show will be hosted in the Rosemont/O'Hare Exposition Center, 9301 W. Bryn Mawr Avenue, in Rosemont, Illinois.

The show will provide a forum, in a trade show environment. This show is for those interested in becoming electronic filers, participating electronic filers, other interested hardware and software vendors, and banking authorities. This will provide an opportunity for an interchange of technological ideas, equipment, and other information.

Commercial vendors of computer hardware, software, and other electronic technology useful in the filing of electronic tax returns, are invited to exhibit their products during this two-day show.

This two-day event will allow attendees an opportunity to hear up- to-date information and view the latest in computer hardware and software used for electronic tax filing. Scheduled seminars include:

Electronic Filing for Individual Income Tax Returns
Introduction for New Participants
Technical Workshops for the Experienced Filer
Initiatives for the Banking Industry
Benefits and Business Opportunities
Electronic/Magnetic Media Filing for Fiduciary Returns, Employee Plan Returns and Partnership Returns
History and Advantages to Filers/ Transmitters
Paper Input Processed as Electronic Returns (PIPER)

Processing and Application/ Acceptance Procedures Attendance at those seminars will qualify for Continuing Professional Education (CPE) Credits for Enrolled Agents. Other professional groups should consult with their respective licensing agencies regarding acceptability of credit.

Participants who currently have an application on file with the IRS for filing electronic/magnetic media returns, will receive a mail-out which details the specifics of this show.

DATES: November 2-3, 1990.

ADDRESSES: Rosemont/O'Hare Exposition Center, 9301 W. Bryn Mawr Avenue, Rosemont, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Interested parties who would like to participate, obtain an Exhibitor Prospectus or have questions relating to exhibitor information should contact: Pat Smith or Carey Anderson (214) 929-9023, P.F. Smith Enterprises, Electronic Filing Systems, 8338 Sterling, Irving, TX 75063, FAX #—(214) 929-9021.

Questions about attending the Conference and Exhibition should be directed to the Electronic Filing Coordinator at your local IRS office.

Peggy Strunk,

Chief, Marketing and Quality Assurance Section.

[FR Doc. 90-20985 Filed 9-5-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the annual meeting of the Department of Veterans Affairs Voluntary Service National Advisory Committee, comprised of 57 national voluntary organizations, will be held at the Galt House Hotel, Louisville, Kentucky, October 18 through October 21, 1990.

Registration of the conferees and orientation of new committee members will be held beginning at 1 p.m. on October 17, 1990. The committee will officially convene with the Opening Session at 9 a.m., October 18, 1990, and will conclude at 12 noon, October 21, 1990.

The purposes of the meeting are to instruct committee members and organization officials of the obligations they have accepted for volunteer recruitment, communications and program interpretation, and to seek the advice of the committee in further developing volunteer participation in the care and treatment of veteran patients throughout the agency's nationwide medical program.

For further information contact Mr. Edward F. Rose, Director, Voluntary Service (135), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 233–4110.

Dated: August 28, 1990.

By direction of the Secretary:

Laurence M. Christman,

Executive Assistant.

[FR Doc. 90–20919 Filed 9–5–90; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act; Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Matching Program

SUMMARY: Notice is hereby given that VA (Department of Veterans Affairs) intends to conduct a recurring computer matching program. This will match personnel records of the Department of Defense with VA records of benefit recipients under the Montgomery GI Bill.

The goal of these matches is to identify the eligibility status of veterans, servicemembers and reservists who have applied for or who are receiving education benefit payments under the Montgomery GI Bill. The purpose of the match is to enable VA to determine whether an applicant is eligible for payment of benefits under the Montgomery GI Bill—Active Duty or the Montgomery GI Bill—Selected Reserve, and to verify compliance with the requirements of both programs.

DATES: This match will commence on October 1, 1990, and continue for 18 months. The departments may renew the agreement for another 12 months at that time.

FOR FURTHER INFORMATION CONTACT: John L. Fox (224), Assistant Director for Education Procedures and Systems, Vocational Rehabilitation and Education Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington DC 20420, (202) 233–3736

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by paragraph 6c of the Guidelines on the Conduct of Matching Programs issued by the Office of Management and Budget (54 FR 25818, June 19, 1989). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

a. *Names of participating agencies:* Department of Veterans Affairs and Department of Defense.

b. *Purpose of the match:* The purpose of the match is to enable VA to determine whether an applicant is eligible for payment of benefits under the Montgomery Gi Bill—Active Duty or the Montgomery GI Bill—Selected Reserve, and to verify continued compliance with the requirements of both programs.

c. *Authority:* The authority to conduct this match is found in 38 U.S.C. 3006.

d. *Categories of records and individuals covered:* The records covered include eligibility records extracted from Department of Defense personnel files and benefit records which VA establishes for all individuals who have applied for and/or are receiving, or have received education benefit payments under the Montgomery GI Bill.

e. *Inclusive dates of matching program:* The match will begin on October 1, 1990 and recur through April 1, 1992.

f. *Address for receipt of public inquiries or comments:* Members of the public who wish to submit written comments or inquiries should write to: D'Wayne Gray, Chief Benefits Director (22), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

Approved: August 31, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 90–21030 Filed 9–5–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 173
Thursday, September 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).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Forwarded to the Federal Register on August 27, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Tuesday, September 4, 1990.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Proposed changes to the Board's guidelines regarding employee responsibilities.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: September 4, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-21109 Filed 9-4-90; 8:45 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 55, No. 173
Thursday, September 6, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

Listing of Stellar Sea Lions as Threatened Under the Endangered Species Act

Correction

In proposed rule document 90-20202 appearing on page 35156 in the issue of Tuesday, August 28, 1990, the CFR citation should read as it appears above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Animal Drugs, Feeds, and Related Products; VET-A-MIX, Inc.

Correction

In rule document 90-18859 beginning on page 32615 in the issue of Friday, August 10, 1900, make the following correction:

On page 23616 in the second column in the authority citation for part 532 in the last line "3606" should read "360b".

The correction published at 55 FR 34985, August 27, 1990 should be disregarded.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-048-00-4211-10]

Environmental Assessment Proposed Action Within Wilderness Study Area; Escalante Resource Area; Utah

Correction

In the file line following the first document in the third column on page 35470 in the issue of Thursday, August 30, 1990, the document number should read "90-20480".

BILLING CODE 1505-01-D#

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-77-89]

RIN 1545-A029

Acquisitions Made To Evade or Avoid Income Tax; Use of Corporate Tax Attributes Following an Ownership Change

Correction

In proposed rule document 90-18993 beginning on page 33137 in the issue of Tuesday, August 14, 1990, make the following corrections:

§ 1.269-7 [Corrected]

1. On page 33140, in the second column, in § 1.269-7:

a. In the heading, the second "of " should read "to".

b. In the fourth line of text, "notwithstanding" was misspelled.

c. In the seventh line "section 282" should read "section 382".

d. In the 14th line "whatever" should read "whether".

§ 1.382-3 [Corrected]

2. On the same page, in § 1.382-3(a)(2):

a. In the seventh line "immediately" was misspelled.

b. In the 12th line "determine" should read "determined".

c. The final sentence should have appeared as a separate box-style paragraph.

BILLING CODE 1505-01-D

federal register

Thursday
September 6, 1990

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412

Medicare Program; Geographical Classification Review Board; Procedures and Criteria; Interim Final Rule With Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-684-IFC]

RIN 0938-AF19

Medicare Program; Geographical Classification Review Board; Procedures and Criteria

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements provisions of the Omnibus Budget Reconciliation Act of 1989 establishing the Medicare Geographical Classification Review Board (MGCRB) and sets forth criteria for the MGCRB to use in issuing its decisions concerning the geographic reclassification of hospitals for purposes of payment under the prospective payment system.

DATES: *Effective Date.* This interim final rule is effective on September 6, 1990.

Deadline for Applications: Initial applications for reclassification effective October 1, 1991 must be submitted by October 1, 1990. Additional information necessary to complete the applications will be considered timely if received by the MGCRB at the appropriate address, as provided below, no later than 5 p.m. on November 6, 1990.

Mail applications to the following address: Medicare Geographical Classification Review Board, Professional Bldg., Suite 13, 6660 Security Blvd., Baltimore, MD 21207.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 6, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-684-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert Humphrey Building, 200 Independence Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-684-IFC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Ave., SW. Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Paul Olenick—MGCRB Procedures (301) 966-4472

Barbara Wynn—Reclassification Guidelines (301) 966-4529

SUPPLEMENTARY INFORMATION:

I. Background

Under the prospective payment system, a hospital's payment rate is dependent, to some degree, on whether the county in which a hospital is located is classified as a large urban area, an other urban area, or as a rural area. These terms are defined in section 1886(d)(2)(D) of the Social Security Act (the Act). The term "urban area" means an area within a Metropolitan Statistical Area (MSA). An urban area in New England is defined as a New England County Metropolitan Area (NECMA). The term "large urban area" means an urban area with a population of more than one million (or more than 970,000 in New England) as determined by the Secretary using the most recent available population data published by the Bureau of the Census. We use the term "other urban area" for an urban area that is not a large urban area. The term "rural area" means any area outside an urban area. Section 1886(d)(2)(D) of the Act requires that average standardized amounts per discharge be determined for hospitals located in large urban areas, other urban areas, and rural areas. The MSA and NECMA classifications are also used to define labor market areas for purposes of establishing a hospital's wage index value under section 1886(d) of the Act.

Effective with discharges on or after October 1, 1988, section 4005(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) as amended by section 411(b)(4) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) revised 1886(d)(8)(B) of the Act to provide that, if certain conditions are met, the Secretary treats a hospital located in a rural county adjacent to one or more urban areas as being located in the urban area to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an urban area, under the standards for designating MSAs (and NECMAs), published in the **Federal Register** on January 3, 1980 (45 FR 956). (We use the terms "classified" and "designated" interchangeably in referring to the area in which a hospital is considered to be located.) The commuting rates used in determining outlying counties were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous MSAs (or NECMAs). Thus, hospitals in rural counties adjacent to one or more MSAs or NECMAs are deemed to be urban if the counties meet the following criteria:

- The rural county would otherwise be considered a part of an MSA (as an outlying county) but for the fact that the rural county does not meet the OMB standard relating to the commuting rate of workers between the rural county and the central county or counties of any single adjacent MSA or NECMA.
- The aggregate commuting rate to the central county or counties of all adjacent MSAs or NECMAs is at least 15 percent of the number of residents of the rural county who are employed, or the total commuting rate to and from the central county or counties of all adjacent MSAs is at least 20 percent of the number of residents of the rural county who commute for employment and the county meets the applicable population criteria.

For purposes of payment under the prospective payment system, a hospital located in a rural county that qualifies under this provision is deemed to be located in the MSA to which the greatest number of workers in the rural county commute.

The reclassification of hospitals located in rural counties to MSAs in accordance with the provisions of section 4005(a) of Public Law 100-203 resulted in reductions in the wage index values for the MSA to which the hospitals in rural counties had been redesignated. As a result, Congress enacted section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). Under section 8403(a) of Public Law 100-647, the wage index value of the urban area was calculated exclusive of the redesignated hospitals. A hospital located in a rural county that was redesignated urban had its wage index values applied on a county-specific basis, as if its county were a separate urban area. The wage index of the rural area of which the redesignated hospital had been a part was calculated as if the redesignated hospital remained in the rural area. As a result of the implementation of section 8403(a) of

Public Law 100–647, the increase in the wage index values of hospitals located in rural counties, but reclassified to MSAs, has been reduced significantly.

Section 6003(h)(3) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), further revised section 1886(d)(8)(C) of the Act. This provision revises the application of the wage index to reclassified hospitals based on the hypothetical impact the wage data from these hospitals would have on the wage index value of the MSA to which they have been redesignated. This provision was implemented in the April 20, 1990 prospective payment system mid-year FY 1990 final rule with comment period (55 FR 15150).

Congress intended that section 1886(d)(8)(B) of the Act apply to a limited number of hospitals that, arguably, merited payment at the other urban rate or the large urban rate because of their location in counties adjacent to at least one MSA and their commuting patterns. However, many hospitals have sought urban classification under this provision, but their requests have been denied because the hospitals do not meet the specific criteria necessary for redesignation.

In response, Congress enacted section 6003(h)(1) of Public Law 101–239, which added new paragraph (10) to section 1886(d) of the Act. Section 1886(d)(10) of the Act establishes the Medicare Geographical Classification Review Board (MGCRB), which has the authority to issue decisions on hospital requests for geographic reclassification. In addition, new section 1886(d)(10)(D)(i) requires that the Secretary publish guidelines to be utilized by the MGCRB in making decisions on hospital applications for geographic reclassification.

II. The MGCRB Provisions of the Omnibus Budget Reconciliation Act of 1989

On December 19, 1989, Public Law 101–239 was enacted. Section 6003(h)(1) of Public Law 101–239 added section 1886(d)(10) to the Act, which includes the following provisions that affect the geographic classification of hospitals for purposes of payment under the Medicare prospective payment system:

- This section establishes the MGCRB, which has the authority to issue decisions on hospital requests for geographic reclassification.
- The MGCRB is to consist of five members appointed by the Secretary. The MGCRB is to include: Two members who are representatives of prospective payment system hospitals located in rural areas; at least one member of the Prospective Payment Assessment Commission (ProPAC); and at least one MGCRB member knowledgeable in analyzing inpatient hospital service costs.
- A prospective payment system hospital may obtain a change in geographic classification on a prospective basis only. That is, if a hospital requests reclassification and meets the specified criteria by the first day of a Federal fiscal year (October 1), the MGCRB reclassifies the hospital or hospitals effective the first day of the following Federal fiscal year.
- The MGCRB is required to issue decisions on hospital applications for geographical reclassification filed within the above time frame no later than 180 days after the first day of the Federal fiscal year.
- The decision of the MGCRB is final unless an unsuccessful hospital or group of hospitals appeals the decision to the Secretary no later than 15 days after the date of the MGCRB decision.
- The Secretary may not receive any new evidence on appeal, and must issue a decision based only upon the record as it appeared before the MGCRB. The Secretary's decision is issued not later than 90 days after the appeal is filed. The Secretary's decision is final, and is not subject to judicial review.
- The Secretary is to publish guidelines by July 1, 1990, to be utilized by the MGCRB in issuing reclassification decisions. New section 1886(d)(10)(D)(i) of the Act requires that the Secretary address the following:

—Guidelines for comparing wages, taking into account occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be reclassified.
—Guidelines for determining whether the county in which the hospital is located should be treated as being a part of a particular MSA.
—Guidelines for considering information provided by a hospital with respect to the effects of the hospital's geographic reclassification on access to inpatient hospital services of Medicare beneficiaries.
—Guidelines for considering the appropriateness of criteria used to define NECMAs.

- The MGCRB is authorized to make rules and establish procedures that are not inconsistent with the provisions of this title or regulations of the Secretary.
- In the course of any oral hearing, the MGCRB may administer oaths and affirmations. The provisions of section 205 (d) and (e) of the Act with respect to subpoenas applies to the MGCRB to the same extent as these provisions apply to the Secretary under title II of the Act.

III. Provisions of this Interim Final Rule With Comment

A. Establishment of Medicare Geographical Classification Review Board

Section 1886(d)(10)(A) of the Act provides for the establishment of the MGCRB. The MGCRB is responsible for issuing decisions on applications submitted by hospitals seeking geographic reclassification. The MGCRB will consider the application of any prospective payment hospital requesting that its geographic classification (as rural, large urban, or other urban) be changed for purposes of determining the hospital's average standardized amount or the applicable area wage index or both. In addition, if all hospitals in a county seek a change concerning their designation, the MGCRB may change the designation for all hospitals in the county from a rural area to an urban area.

The provisions in section 1886(d)(10) of the Act establishing the MGCRB are similar to, in many respects, the provisions in section 1878 of the Act that established the Provider Reimbursement Review Board (PRRB), However, both the language of section 1886(d)(10) of the Act and the context in which applications for geographic reclassification arise suggest that the MGCRB application process should be quite different from the proceedings before the PRRB. In PRRB proceedings, the PRRB considers an appeal of an intermediary's determination. The primary question to be decided on appeal is whether the intermediary's determination regarding a provider's cost report should be affirmed, modified, or reversed. Accordingly, the PRRB applies the same adjudicative criteria that the intermediary was required to apply.

However, section 1886(d)(10)(C)(i) of the Act provides that the MGCRB will consider "applications" for geographic reclassification. In considering these applications, the correctness of the intermediary's determination is not at issue, since the intermediary does not set the criteria for urban and rural classification. Instead, a hospital's application for geographic reclassification is similar to an exceptions process, whereby the MGCRB will actually be making an initial determination using different criteria from those that the intermediary is required to apply.

Section 1886(d)(10)(C)(i) of the Act specifically provides that "The Board (MGCRB) shall consider the application of any subsection (d) hospital requesting

that the Secretary change the hospital's geographic classification * * *." Moreover, although section 1886(d)(10) provides that the board may administer oaths and affirmations "in the course of any hearing", the statute does not entitle a prospective payment hospital to a hearing before the MGCRB. Rather, it suggests that the MGCRB may hold hearings at its discretion. This constitutes a major difference from the statutory rights offered providers in PRRB proceedings conducted under section 1878(a) of the Act, which, subject to certain jurisdictional requirements, affords a provider of services the right to a hearing by the PRRB with respect to a cost report.

Further, given the issues to be decided by the MGCRB in considering hospitals' applications for geographic reclassification, we do not anticipate that oral proceedings will be necessary in the majority of cases before the MGCRB. Oral hearings are appropriate when a witness' credibility and demeanor must be evaluated by an adjudicator. Credibility and demeanor of witnesses are not expected to be issues in most cases in a hospital's application for reclassification because the criteria to be applied by the MGCRB involve primarily data analysis that can be effectively presented and reviewed in a written format.

We have provided that the MGCRB will issue on-the-record decisions in most cases. In issuing an on-the-record decision, the MGCRB considers all documents, data, and other written evidence and comments submitted timely to the MGCRB by the hospital and in certain cases, by HCFA, but does not conduct an oral hearing. Since section 1886(d)(10) of the Act does not specifically provide a hospital with the right to a hearing and because credibility and demeanor of witnesses are not relevant issues, we believe providing for on-the-record decisions by the MGCRB is clearly consistent with the applications process established by the statute. Moreover, on-the-record decisions are entirely appropriate given the tight statutory timeframes (set forth below) for issuing decisions and the types of issues to be decided by the MGCRB. Following are some major features of the MGCRB proceedings:

- The MGCRB is required to issue decisions on hospital applications no later than 180 days after October 1, the first day of the Federal fiscal year, if a complete application has been filed by that day. That is, if a hospital (or all the hospitals in a county), files a complete application by October 1, the MGCRB must issue its decision by the following March 30. (The PRRB has no mandatory timeframe for issuing decisions.) Congress established this time limit so that the effects of reclassifications can be reflected in the budget neutral adjustment required by section 1886(d)(6) of the Act. The budget neutral adjustment must be made to the following fiscal year's proposed prospective payment system rates, which must be published in the **Federal Register** by May 1, preceding each Federal fiscal year for which they would apply. Publication of the proposed rates by May 1, is necessary in order to ensure that the final rates are published timely in the final rule. Accordingly, we are only requiring the MGCRB to issue decisions "on-the-record." The MGCRB would be unable to satisfy the 180-day deadline for issuing decisions if it were required to conduct oral hearings in all cases. Moreover, as described above, we do not anticipate that oral proceedings will be necessary to adjudicate the issues which the MGCRB will consider. However, since the statute provides that the MGCRB may hold an oral hearing, we are providing in the regulation that the MGCRB may do so on its own motion or if a hospital can show to the MGCRB's satisfaction that such a hearing is necessary.

- As noted above, the proceedings before the MGCRB are similar to an exceptions process. Accordingly, we have concluded that these proceedings are nonadversarial. The applicant hospital or group of hospitals will be the only party before the MGCRB. However, since HCFA is responsible for the administration of the prospective payment system, including the geographic criteria for hospital classification and reclassification and the budget neutrality requirements, we have concluded that it is appropriate for HCFA to have the opportunity to participate in MGCRB proceedings in an advisory role, on a case-by-case basis. Accordingly, HCFA will provide technical advice to the MGCRB by reviewing the applications and information submitted by hospitals seeking reclassification and will decide whether to provide comments and recommendations on the applications on a case-by-case basis. When a hospital submits its application to the MGCRB for consideration, it will also send an informational copy of the application and any accompanying evidence to HCFA in care of the Office of Payment Policy at the following address: Office of Payment Policy, Division of Hospital Payment Policy, Room 1–H–1, East Low Rise Building, 6325 Security Blvd., Baltimore, MD 21207. Re: MGCRB Applications.

When the MGCRB determines that the hospital's application contains all the necessary elements for a complete application, it notifies the hospital and HCFA in writing that the application is complete and that the case may proceed to a MGCRB decision. HCFA has 30 days from the date of receipt of this notice to advise the MGCRB in writing that it intends to participate in the proceeding, and, during this same 30-day period, HCFA may submit written comments to the MGCRB for consideration. At the same time, HCFA will send a copy of any comments it submits to the MGCRB to the hospital. The hospital has 15 days from the date of receipt of HCFA's comments to submit to the MGCRB a written response to HCFA's comments. The hospital will also send a copy of its response to HCFA in care of the Office of Payment Policy at the address shown above.

1. Composition of MGCRB

Section 1886(d)(10)(B)(i) of the Act provides that the MGCRB shall be composed of five members appointed by the Secretary. It further provides that two of the members shall be "representatives of" prospective payment system hospitals located in rural areas. We have interpreted this provision to mean that the two members shall be representative of and, therefore, familiar with, the concerns of rural hospitals rather than serve as members who are representatives of or are selected by rural hospitals. This interpretation is consistent with our interpretation of a similar provision, section 1878(h) of the Act, which describes the composition of the PRRB. The Secretary will also appoint at least one member who is knowledgeable in analyzing inpatient hospital service costs. In addition, the Secretary has appointed one member of ProPAC to the MGCRB.

The term of office for MGCRB members is 3 years, except that the Secretary may designate initial appointments for shorter terms to permit staggered terms of office. The Secretary will not appoint a member for more than two consecutive 3-year terms of office. The Secretary has the authority to terminate a member's tenure prior to its full term.

The Secretary designates one member of the MGCRB to be chairman. The chairman coordinates and directs the administrative activities of the MGCRB.

2. A Quorum

A quorum is required for making MGCRB decisions. A majority of all MGCRB members currently seated, at least one of whom, if possible, represents the interests of rural hospitals, constitutes a quorum.

In the event that four members are deciding a case, three votes are needed to change the hospital's classification. If less than a quorum is present for an oral hearing, the chairman, with the consent of the hospital, may designate less than a quorum to conduct the hearing. The member in such cases submits a recommended decision for approval by a majority of the MGCRB members, including, if possible, a member who represents rural hospital interests.

3. Sources of MGCRB's Authority

The MGCRB, in exercising the authority to consider applications under section 1886(d)(10)(C) of the Act, complies with all the provisions of title XVIII of the Act and regulations issued under that title (which include the guidelines published in the Federal Register under section 1886(d)(10)(D) of the Act) and HCFA Rulings issued under the authority of the Administrator. In addition, the MGCRB affords great weight to other interpretive rules, general statements of policy and rules of agency organization, procedure, or practice established by HCFA.

4. Right To Submit Application to MGCRB

An individual hospital under the Medicare prospective payment system has the right to submit an application to the MGCRB concerning its request for a change in geographic classification based on hospital-specific criteria.

All prospective payment hospitals within a county, but only as a group, have the right to submit a joint application to the MGCRB concerning their request for the redesignation of all hospitals in the county into a different geographic area based on county-specific criteria.

5. Proceedings Before MGCRB

The MGCRB will issue an on-the-record decision (that is, a review of submitted written material without any oral presentations) in each case, unless the MGCRB schedules an oral hearing on its own motion or if a hospital can show to the MGCRB's satisfaction that a hearing is necessary.

6. Timing and Content of Application

A prospective payment system hospital may obtain a change in geographic classification on a prospective basis only. A hospital may request the MGCRB to change its classification effective with the beginning of the second Federal fiscal year following the year in which the request is filed. (However, if a complete application is filed on October 1, the reclassification is effective the following October 1.) For example, a hospital desiring a reclassification for Federal fiscal year (FY) 1993 (October 1, 1992 through September 30, 1993) must file its written request for Board hearing no later than October 1, 1991. The MGCRB will dismiss a hospital's request for reclassification for Federal fiscal year 1993 that is filed after October 1, 1991.

The MGCRB will also dismiss a hospital's request for reclassification if it fails to file a complete application by October 1. Dismissals will be based on a hospital's failure to timely submit an application that contains all the necessary elements of a complete application, as explained below in this section. The MGCRB will not dismiss an application when the hospital has timely submitted all necessary elements of an application, but the data submitted does not support the hospital's request for reclassification.

Although applications may be submitted to the MGCRB as late as October 1, there is no guarantee that the MGCRB will find than an initial application will contain the necessary elements of a complete application. Therefore, it is incumbent upon hospitals to submit their applications as early as possible so that the MGCRB may identify incomplete applications and allow hospitals to perfect them prior to the October 1 deadline.

The MGCRB has 15 days from the receipt of a hospital's application to review it and decide whether it is complete. The MGCRB will notify the hospital within that time frame if the application is incomplete and advise the hospital that it has until October 1 to perfect the application. If a hospital submits its application by September 1, this should give the hospital 15 days or more to complete the incomplete application in accordance with the necessary criteria. However, a hospital submitting an incomplete application between September 2 and October 1, runs the risk of filing an incomplete application and not having enough time to perfect the application by the filing deadline of October 1. (See, however, the special rules for applications for reclassification for Federal fiscal year 1992, explained below.) The MGCRB will dismiss any application that is not complete by the filing deadline.

A decision by the MGCRB dismissing a hospital's application as being incomplete or filed untimely will be mailed to the hospital and to HCFA. The dismissal order will contain the reasons for the action taken by the MGCRB. The hospital may request that the Administrator review the dismissal within 15 days of the date of the notice of dismissal. Within 20 days of receipt of the hospital's appeal request, the Administrator may affirm the dismissal or reverse the dismissal and remand the case to the MGCRB to determine whether reclassification would be appropriate.

The hospital, or all the hospitals in a county, must identify the guidelines under which reclassification is requested. The application must also contain sufficient documentation for the MGCRB to evaluate whether the criteria for reclassification are met. The filing date of the application is the date the application is received by the MGCRB. Applications must be received by October 1. Applications must be mailed to the following address: Medicare Geographical Classification Review Board, Professional Bldg., Suite 13, 6660 Security Blvd., Baltimore, MD 21207.

Because this final rule is being published so close to October 1, 1990, we recognize that many hospitals seeking reclassification for Federal fiscal year 1992 would be unable to submit complete applications to the MGCRB by October 1, 1990. Therefore, for this first application period only, we are extending the deadline for completing applications to the MGCRB. Hospitals must file an application by October 1, 1990, and should attempt to submit as complete an application as possible by that date. However, if a hospital files an application by October 1, the MGCRB will consider additional information necessary to complete the application if the information is received by the MGCRB no later than 5 p.m. on November 6, 1990. All other procedures connected with the applications process remain applicable.

The MGCRB will not accept a facsimile (FAX) copy of an application or any additional material from the hospital or group of hospitals or from HCFA for any purpose related to filing or completing an application.

The following elements are necessary for a complete application:

a. Information required of individual hospitals

- Name of hospital.
- Address of hospital.
- Name and signature of responsible hospital official.
- County in which hospital is located.
- Demonstration of status as a rural referral center or sole community

hospital status, if applying on the basis of access.

• Fiscal year for which the hospital is applying for redesignation.

• Names of all adjacent MSAs or NECMAs (or nearest MSA or NECMA if the applicant is a rural referral center or sole community hospital applying on the basis of access).

• Medicare provider numbers.

• Narrative explaining reason for requesting reclassification that must include:

—Which criteria in the guidelines constitute the basis of the hospital's application, that is, under which provisions in the regulations the hospital is applying; and

—An explanation of how the hospital meets the relevant criteria.

• Data from approved sources, as described in the criteria contained in section III.B of this preamble, to support the hospital's application.

b. Information required for joint application from all hospitals in a seeking redesignation

• Names, addresses, county, and provider numbers of all hospitals

• Names and signatures of responsible officials of all hospitals

• Federal fiscal year for which hospitals are applying

• Narrative explaining reason for requesting reclassification must include:

—Which criteria in the guidelines constitute the basis for the hospitals' application, that is, under which provisions in the regulations the hospitals are applying; and

—An explanation of how the hospitals meet the relevant criteria.

• Data (from approved sources, as described in section III of this preamble) to support the hospitals' application.

7. Party or Parties to MGCRB Proceeding

The party or parties to the MGCRB proceeding are the hospital requesting a change in geographic classification or group of hospitals requesting reclassification to an urban or rural area. Although not a party, HCFA will review all applications and may offer comments and recommendations on selected applications, if appropriate.

8. Establishment of Time and Place of an Oral Hearing by the MGCRB

If the MGCRB decides that an oral hearing is necessary, it sets the time and place for the hearing and notifies the hospital or group of hospitals in writing, with a copy of HCFA, not less than 10 days before the scheduled time. Either on its own motion or for good cause shown by the hospital or group of hospitals, the MGCRB may, as appropriate, reschedule, adjourn, postpone, or reconvene the hearing, provided that reasonable written notice is given to the hospital (or group of hospitals), with a copy of HCFA.

9. Disqualification of MGCRB Members

A MGCRB member is not to participate in a decision in a case in which he or she is prejudiced or partial with respect to a requesting hospital or has any interest in the matter pending before the MGCRB. If the hospital believes that an MGCRB member is prejudiced or partial and therefore, should not participate in the decision, the hospital will state its objection in writing to the MGCRB. HCFA may also submit such a suggestion to the MGCRB.

The MGCRB member will consider the objection and, at his or her discretion, either will proceed in the conduct of the case or will withdraw. If the MGCRB member does not withdraw, the hospital may petition the MGCRB for withdrawal of the member and at the earliest opportunity before the reclassification decision is made, the MGCRB will rule on this issue.

10. Evidence

During the course of an MGCRB proceeding, the parties may submit evidence that is generally inadmissible under the rules of evidence applicable to court procedures. The MGCRB will rule upon the admissibility of evidence.

11. Ex parte Communications

The members of the MGCRB and its staff may not consult or be consulted by an individual representing the interests of an applicant hospital or by any other individual on any matter in issue before the MGCRB without notice to the hospital or HCFA. If such communication occurs, the MGCRB will disclose it to the hospital or HCFA, as appropriate, and make it part of the record after the hospital or HCFA has had an opportunity to comment. MGCRB members and staff may not consider any information outside the record about matters concerning a hospital's application for reclassification.

The prohibition of ex parte communications does not apply to the following: Communications among MGCRB members and staff; communications concerning the MGCRB's administrative functions or procedures; requests from the MGCRB to a party or HCFA for a document; and material that the MGCRB includes in the record after notice and an opportunity to comment.

12. Requests for Information or Data

A hospital may request from HCFA information concerning wage data that is necessary for a complete application. If the information is requested by September 1 or October 9, 1990, for applications for reclassification to be effective for Federal fiscal year 1992), HCFA will provide the information to the hospital within 15 days in order for the hospital to complete its application by October 1. The request for this information from HCFA should be made to the following address: Office of Payment Policy, Division of Hospital Payment Policy, Room 1–H–1, East Low Rise Building, 6325 Security Blvd., Baltimore, MD 21207. Re: Request for HCFA Wage Data.

If HCFA does not respond timely to the request for wage data necessary for the hospital to file a complete application timely, the hospital should file its application; provide a copy of the prior request for HCFA for data; and request the necessary information through the MGCRB. That request must accompany the application to the MGCRB. If the MGCRB grants the request, HCFA must respond within 15 days of the MGCRB's ruling.

13. Subpoenas

When reasonably necessary for the full presentation of a case, and only after a pre-decision request for information or data has failed to produce the necessary evidence, the MGCRB may, either upon its own motion or upon the request of the hospital issue subpoenas for the attendance and testimony of witnesses (for an oral hearing) or for the production of books, records, correspondence, papers, or other documents that are relevant and material to any matter in issue. A party that desires the issuance of a subpoena files with the MGCRB a written request prior to the decision. The request must designate which witnesses or documents are to be produced, and describe the addresses or locations with sufficient particularity to permit these witnesses or documents to be found. The request for a subpoena must state the pertinent facts that the party expects to establish by the requested witnesses or documents and whether these facts could be established by other evidence without the use of a subpoena. Subpoenas are issued as provided in section 205(d) of the Act.

14. Witnesses

Witnesses at an oral hearing testify under oath or affirmation, unless excused by the MGCRB for cause. The MGCRB may examine the witnesses and also allow the hospital or its representative to examine any

witnesses called. In addition, the hospital may cross-examine any witnesses who are called to testify.

15. Record of Proceeding Before MGCRB

A complete record of the proceedings before the MGCRB is made in all cases. The record will not be closed until a decision has been issued by the MGCRB. A transcription of an oral hearing will be made at a party's request, at the expense of the requesting party.

16. MGCRB Decision and Notice

The MGCRB issues a written decision within 180 days after the first day of the Federal fiscal year preceding the Federal fiscal year for which a hospital has filed a complete application for reclassification. The decision is based on the evidence of record, including the hospital's application and other evidence obtained or received by the MGCRB. An MGCRB decision must be supported by substantial evidence when the record of the proceeding is viewed as a whole and be in accordance with and cite applicable law, regulations and HCFA rulings. A copy of the decision is mailed to the hospital and to HCFA. The MGCRB will notify the hospital or group of hospitals that it has 15 days from the date of the decision to request the Administrator to review the decision.

The decision of the MGCRB is final and binding on the hospital and HCFA, unless it is reviewed by the Administrator in accordance with § 412.278 which provides for review of MGCRB decisions by the Administrator at the request of the hospital. The statute is silent with respect to review of an MGCRB decision on the motion of the Administrator or the Secretary. Serious constitutional questions would arise if the statute were interpreted to preclude review by the Secretary of decisions favorable to hospitals. However, the Secretary does not presently intend to seek review of MGCRB decisions, although experience with MGCRB proceedings may result in our revisiting this issue. Accordingly, for the present, the Secretary has delegated to the MGCRB the authority to issue final decisions of the Secretary on hospitals' applications for geographic reclassification, unless the MGCRB's decision is appealed to the Administrator, as described below in section III.A.17. However, nothing in this delegation to the MGCRB prejudices the Secretary's authority to amend the delegation at some future date and to delegate the authority to review all MGCRB decisions to the Administrator of HCFA or elsewhere.

17. Administrator's Review

Under section 1886(d)(10)(C)(iii)(II) of the Act, the Secretary has the authority to review decisions by the MGCRB regarding geographic reclassification or redesignation. The Secretary has delegated this authority to the HCFA Administrator in cases in which an unsuccessful hospital appeals the MGCRB's decision. Thus, in these cases the Administrator's review is the final Department review of MGCRB decisions provided for in section 1886(d)(10)(C)(iii)(II) of the Act.

If a hospital is dissatisfied with the MGCRB's decision regarding its geographic classification, the hospital may request the Administrator to review the decision. In addition, a hospital may request that the Administrator review the dismissal of its application by the MGCRB. In conjunction with considering the request for review, the Administrator may also review rulings made by the MGCRB regarding admissibility of evidence, and if the Administrator decides that an MGCRB evidentiary ruling is erroneous, the Administrator has the authority to consider the previously excluded evidence.

The hospital's request for review must be in writing and sent to the Administrator, in care of the Office of the Attorney Advisor, as follows: Office of the Attorney Advisor, Room 669 East High Rise, 6325 Security Blvd., Baltimore, MD 21207. Re: Appeal of MGCRB Decision.

The request must be received by the Administrator within 15 days after the date of the MGCRB's decision. A request for Administrator review filed by facsimile or other electronic means will not be accepted. The hospital must also mail a copy of the request for Administrator review to HCFA's Office of Payment Policy at the following address: Office of Payment Policy, Division of Hospital Payment Policy, Room 1–H–1, East Low Rise Building, 6325 Security Blvd., Baltimore, MD 21207. Re: Appeal of MGCRB Decision.

The request for review may contain proposed findings of fact and conclusions of law, disagreements with the MGCRB's decision, and supporting reasons therefor.

Within 15 days of receipt of the hospital's request for review, HCFA may submit to the Administrator, with a copy to the hospital, written comments concerning the hospital's request. The hospital is allowed 10 days from receipt of HCFA's comments to submit a response to the Administrator.

The Administrator may not consider any new evidence and must issue a decision based only upon the record as it appeared before the MGCRB. The Administrator's decision is issued in writing and furnished to the parties, with a copy to HCFA, not later than 90 days following receipt of the hospital's request for review. The Administrator's decision is final and is not subject to judicial review.

18. Representation

A hospital may be represented by legal counsel or any other person appointed to act as its representative with regard to any application filed by a hospital, which is under consideration by the MGCRB or the Administrator.

A representative appointed by the hospital may accept or give on behalf of its client any request or notice relative to any application before the MGCRB or the Administrator. A representative is entitled to present evidence and allegations as to facts and law regarding a hospital application to the same extent as the party he or she represents. Notice of any action or decision sent to the representative of a party has the same effect as if it had been sent to the party itself.

B. General Criteria for the Medicare Geographical Classification Review Board

Section 1886(d)(10)(D) of the Act requires the Secretary to publish guidelines to be utilized by the MGCRB. The guidelines enumerated below specify the criteria to be used by the MGCRB in making its decisions on requests for geographic reclassification. The purpose of these criteria is to lend direction, to both the MGCRB and those hospitals seeking geographic reclassification, with respect to the types of situations that may merit an exception to the rules governing the geographic classification of hospitals for purposes of payment under the Medicare prospective payment system.

As required in section 1886(d)(10)(D), these criteria address the following:

- The comparison of wages, taking into account occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified.
- The determination of whether the county in which the hospital is located should be treated as being a part of a particular MSA.
- The consideration of information provided by an applicant with respect to the effects of the hospital's geographic classification on access to inpatient hospital services of Medicare beneficiaries.

• The consideration of the appropriateness of criteria used to define NECMAs.

The following general principles apply to the criteria:

• The MGCRB has the authority to make decisions with respect to reclassification from a rural area to an urban area or another rural area and reclassification from an urban area to another urban area. While the statute does not specifically address reclassification from one rural area to another rural area, we believe that the goal of the legislation, to provide an exceptions process so that hospitals may obtain a geographic classification more appropriate to their circumstances, is met by permitting rural-to-rural redesignations on an individual hospital basis.

• In order to be reclassified, a hospital, or group of hospitals, must be located in a county or MSA that is adjacent to the MSA or rural area to which that hospital or group of hospitals seeks reclassification. That is, the border must be adjacent. However, this requirement does not apply with respect to rural referral centers and sole community hospitals that apply for urban redesignation, as explained in section III.B.1.e, below.

• As specified in section 1886(d)(10)(C)(ii) of the Act, the applicant must request reclassification not later than the first day (October 1) of the Federal fiscal year preceding the Federal fiscal year for which the decision will be effective. (As explained in section III.A.6, above, because publication of this interim final rule with comment is being published so close to October 1, 1990, we are extending the deadline for submitting complete applications to the MGCRB for reclassification affective for Federal fiscal year 1992 to November 6, 1990.)

• As specified in section 1886(d)(10)(C)(i) of the Act, a hospital may request a change in its geographic classification for a fiscal year. Accordingly, the term of an MGCRB decision is for one year, effective for discharges occurring on or after the first day of the Federal fiscal year following the MGCRB's decision, and expiring with discharges occurring on the last day of that same Federal fiscal year. A hospital, or group of hospitals, seeking continued reclassification, must reapply annually to the MGCRB in order to maintain the reclassification granted by the MGCRB. However, if the MGCRB detemines that the facts that provided the basis for reclassification will remain essentially unchanged through the end of the following Federal fiscal year, the MGCRB may, at its discretion, provide for a one-year automatic renewal of its decision, or an abbreviated application and decision process for renewals.

• Decisions of the MGCRB may be applicable either to a single hospital based on hospital-specific criteria, or to all hospitals in a county based on county-specific criteria. In the latter case, an application must be signed by all hospitals in the county that are subject to the prospective payment system.

• In the Conference Report that accompanied Public Law 100–203 (which amended section 1886(d)(3) of the Act and required the Secretary to compute three average standardized amounts, one for rural areas, one for urban areas and one for large urban areas), Congress specified "that the effect of this provision shall be limited to the treatment, for payment purposes, of the hospitals located in qualifying rural counties; the boundaries and population size of the adjacent urban areas shall not be altered." (H.R. Rep. No. 495, 100th Cong., 1st Sess. 532 (1987).) Accordingly, even though all hospitals located in a qualifying rural county could be deemed a part of an adjacent MSA or NECMA for payment purposes under the prospective payment system, the population of that county would not be included in the MSA or NECMA for purposes of determining whether the MSA or NECMA is a large urban area (that is, an MSA with a population of at least 1,000,000 or an NECMA with a population of at least 970,000). Under no circumstances will the MGCRB have the authority to designate areas as large urban areas by including the population of additional counties.

• It is the responsibility of the hospital to acquire and furnish data to support its application. In general, only substantiated data from an official source is acceptable for use by the MGCRB in issuing its decisions. We believe this is essential in order for the criteria to be applied uniformly to all hospitals nationwide. Moreover, where data are available on a national basis the national data must be used since all hospitals have equal access to these data sources. For example, with respect to population and commuting data, the Bureau of the Census is the only national data source available to all hospitals. Therefore, local population and commuting studies would not be acceptable since these studies may not be consistent with Census Bureau data and are not available to all hospitals on a national basis.

With respect to hospital-specific data, for the most part, only data used in preparing a hospital's Medicare cost report or HCFA wage survey form would be acceptable since these data were used in official documents submitted by hospitals and have generally been substantiated by the fiscal intermediaries. Following is a list of acceptable data sources:

—Financial Data

Hospital-specific data—Most recently settled and most recently filed cost report data.

Data for other hospitals—Most recently published **Federal Register** final rule revisions to the prospective payment system rates for Medicare inpatient hospital services; and data from the most recent HCFA wage survey.

HCFA wage data can be obtained by contacting Lana Price at the following address: Office of Payment Policy, Division of Hospital Payment Policy, Room 1–H–1, East High Rise Building, 6325 Security Blvd., Baltimore, MD 21207, (301) 966–4534.

—Occupational Data

Bureau of Labor Statistics, Industry Wage Survey: Hospitals.

Occupational mix data from the American Hospital Association annual survey data—"Hospital Personnel by Occupational Category, Annual Survey of Hospitals".

AHA wage data can be obtained by contacting Ollie Williams of the AHA at (312) 280–5991.

—Access, Appropriateness and Population

Residence of employees—verified by hospital payroll records.

Population, population density, and commuting data—The MGCRB considers only data from the Bureau of the Census in issuing a decision. Specifically, the MGCRB considers population surveys and estimates that are made periodically by the Bureau of the Census. The MGCRB may not consider commuting data that are more recent than the most recent decennial census because the Bureau of the Census does not update commuting data more often than once every ten years.

1. Guidelines for Individual Hospitals Seeking Reclassification

a. Introduction. An individual hospital may seek reclassification for purposes of its wage index, standardized amount, or both. Separate guidelines are set forth below for each situation. A hospital that is reclassified from a rural or other urban area only for purposes of the wage index is not considered urban for any other purpose than its labor market area designation. A hospital seeking reclassification for purposes of its wage index must demonstrate that its costs

per case are more comparable to the amount the hospital would be paid if it were reclassified than the amount it is currently paid.

A hospital that is reclassified from a rural or other urban area to an urban area only for purposes of its standardized amount is considered urban for all purposes except use of the wage index under 1886(d)(2)(D) of the Act. With respect to a reclassification request for purposes of a hospital's standardized payment amount, the hospital must demonstrate that it incurs costs similar to those hospitals in the adjacent area to which it would be reclassified.

Since individual hospitals may seek reclassification independent of other hospitals located in the same county, we believe the individual hospital must first demonstrate a considerable geographic relationship with the area to which it is seeking to be redesignated. We are requiring that an individual hospital seeking redesignation to an adjacent area meet at least one criterion based on proximity between the two areas. One factor we consider to be appropriate in this regard is the distance from the hospital to the MSA, NECMA, or rural area to which the hospital is seeking redesignation. Given the general density of urban areas, we believe that 15 road miles is a reasonable limit for urban hospitals. The criteria for rural hospitals is 35 road miles. We believe that use of a greater distance criterion is appropriate for a rural area. In particular, 35 road miles is the distance criterion used for qualifying as a sole community hospital and is the distance generally associated with defining rural hospital market areas.

A hospital that does not meet the mileage criteria may qualify based on the percentage of the hospital's employees that reside in the area to which the hospital is seeking redesignation. We believe it is reasonable to require that an urban hospital that is more than 15 miles or a rural hospital that is more than 35 miles from the adjacent area have 50 percent or more of its employees residing in the area to which it is seeking reclassification in order to demonstrate its relationship with that area.

With respect to wages, we believe that to require complete comparability with the average wage level of all hospitals in an adjacent labor market would be an overly strict criterion for hospitals. We recognize that within a given labor market area, there is likely to be variation in the average hourly wage across hospitals. We, therfore, set the criterion at 85 percent of the average hourly hospital wage for the area. We believe that requiring 85 percent wage parity will reflect wage competition with hospitals located in the adjacent area, and not imply the expectation that these hospitals demonstrate that they compete with all hospitals that provide services in the area.

We also believe that it is appropriate to permit hospitals to quality for redesignation based on labor prices. Therefore, we include a provision for hospitals to quality if they can show that they must pay comparable salaries for staff, even though, because of their occupational mix, their overall average hourly wage is lower than the average hourly wage in the adjacent labor market. Since the occupational mix adjusted average hourly wage comparison represents a labor price comparison, we have set the criterion at 90 percent, since we would expect the hospital to pay essentially the same price for labor as hospitals in the labor market area to which it is requesting reclassification. Accordingly, individual hospitals seeking reclassification must first meet the proximity guidelines set forth below and may meet either or both of the guidelines with respect to wages and labor costs.

b. *Proximity Guidelines.* Any individual hospital seeking reclassification from one area to another must meet one of the following proximity guidelines.

i. *Distance.* A rural hospital requesting redesignation to an urban area or another State rural area must be located no more than 35 road miles from the border of the urban area or the State rural area to which it is requesting redesignation. An urban hospital requesting redesignation to another urban area must be located no more than 15 road miles from the border of the urban area to which it is requesting to be redesignated. For this purpose, as defined in § 412.92(c)(1), the term (road) miles means "the shortest distance in miles measured over improved roads. An improved road for this purpose is any road that is maintained by a local, State, or Federal government entity and which is available for use by the general public."

ii. *Residence of employees.* A hospital requesting redesignation from one geographic area to another area must demonstrate that 50 percent or more of its employees reside in zip code areas located within the area to which it is requesting to be redesignated.

c. Wage Guidelines for a Hospital Requesting Reclassification for Wage Index Purposes

i. A hospital requesting reclassification to an adjacent labor market area for purposes of determining its wage index must demonstrate that its average hourly wage is equal to at least 85 percent of the average hourly wage of hospitals in the labor market area to which it is applying to become a part; or

ii. If the hospital's average hourly wage is less than 85 percent of that of the labor market area to which it is requesting reclassification because of a lower occupational mix, the hospital must demonstrate that its average hourly wage weighted for occupational categories is equal to or greater than 90 percent of the average hourly wage labor market area in the MSA, NECMA or State rural area, to which the hospital is requesting to be reclassified. Weighting for occupational categories is accomplished by using data that demonstrates the average occupational mix for the labor market area to which the hospital is requesting redesignation and weighting the hospital's average hourly wage based on that information. If the hospital's weighted average hourly wage is equal to or greater than 90 percent of that in the labor market area to which it is requesting reclassification, then the hospital may be reclassified for purposes of its wage index.

Wage Comparison Example

Hospital Y is a rural hospital located in Gratiot County, Michigan and is requesting reclassification as part of the Lansing, Michigan Metropolitan Statistical Area.

A. Labor Cost Comparison

Hospital Y's adjusted average hourly wage (From the HCFA Wage Survey Form)=$8.40.

Wage Index for Lansing, Michigan=1.0360
National Hourly Average Wage=$9.82989
Average hourly wage for Lansing, Michigan=1.0360×$9.82989=$10.18
85 percent of $10.18=$8.65 an hour.

Hospital Y cannot demonstrate that its labor costs are 85 percent of Lansing, Michigan's. Since Hospital Y cannot meet the labor cost comparison, it submits data for meeting the occupational mix requirement.

B. Occupational Mix Analysis

Hospital Y's average hourly wages Employment Category	Average occupational mix for MSA
Professional and Technical	$10.00×60%=$6.00
Management	$12.00×30%=$3.60
Clerical	$6.00×10%=$ .60
Other	$5.00×10%=$ .50
Total	$10.70

Using the average occupational mix for the MSA, multiply Hospital Y's average hourly wage per employment category by the average number of persons employed per category in the MSA. The result of this calculation will determine Hospital Y's

average hourly wage adjusted for occupational mix. If, as adjusted by this calculation, Hospital Y's average hourly wage is at least 90 percent of the average hourly wage for the MSA, the hospital meets the wage guideline.

Hospital Y's average hourly wage adjusted for occupational mix = $10.70. Hospital Y's average hourly wage adjusted for occupational mix is at least 90 percent of the average hourly wage for Lansing, Michigan, (90% of $10.18 = 9.16, $10.70 is greater than $9.16) Hospital Y does meet the required wage guideline.

d. Cost Guidelines for a Hospital Seeking Reclassification for Purposes of its Standardized Payment Amount.

With respect to costs per case, it is our intention to permit a hospital to qualify for reclassification for purposes of its standardized amount if it can demonstrate that its current costs per case are more comparable to the amount the hospital would be paid if it were reclassified.

Accordingly, in order to qualify for reclassification for purposes of its standardized payment amount, a hospital must meet the following cost guideline:

The hospital must demonstrate that its case mix adjusted cost per discharge is at least equal to its current rate plus 75 percent of the difference between that rate and what it would receive as a redesignated hospital.

Data used must be the most recent published in the **Federal Register**. Hospital specific data must be from the same time period.

Cost Comparison Example

Hospital Y is a 95 bed rural hospital located in Gratiot County, Michigan that is applying to be part of the Lansing, Michigan MSA.

Hospital Y's cost per case = $3,495.00
Hospital Y's case mix index = .9525

Hospital Y's disproportionate share patient percentage = 45 percent.

Hospital Y's indirect medical education adjustment factor = .0616.

Step One—Determine Hospital Y's case-mix adjusted cost per discharge.

Hospital Y's cost per case/Hospital Y's case-mix index = Hospital Y's case-mix adjusted cost per discharge.
$3,495.00/.9525 = $3,669.29

Step Two—Determine the payment hospital Y would receive as an urban hospital in the Lansing, Michigan MSA.

Hospital Y's disproportionate share adjustment factor = .05
Indirect medical adjustment factor = .0616
Lansing, Michigan MSA wage index = 1.0360

[(Labor portion standardized amount × wage index) + non-labor portion] ×[1+(DSH+IME)]=Payment Hospital Y would receive as part of the Lansing, MSA.

[(2467.88×1.0360)+874.11]×[1+(.05 +.0616)]=$3,813.71

Step Three—Determine the payment hospital Y currently receives as a rural hospital.

Hospital Y's disproportionate share adjustment factor=.04 Indirect medical education adjustment factor=.0616 Michigan rural wage index=.9110.

[(Labor portion standardized amount×wage index)+non-labor portion×[1+(DSH+IME)]=Payment Hospital Y currently receives.

[2433.05×.9110)]+673.66×[1+(.04+.0616)] =$3,183.81

Step Four—Determine whether Hospital Y qualifies to be redesignated as part of the Lansing, Michigan MSA on the basis of its costs.

Hospital Y's case mix adjusted cost per discharge must be at least equal to its rural rate plus 75 percent of the difference between that rate and what it would receive as an urban hospital.

Rural rate plus 75 percent of difference between that rate and MSA rate=$3,183.81 (Rural rate)+$472.43 (75 percent of the difference between the rural rate and the rate it would receive as an urban hospital)=$3,656.24

$3,669.29 (Hospital Y's case mix adjusted cost per discharge) is greater than the payment Hospital Y receives as a rural hospital plus 75 percent of the difference between its rural rate and what it would receive at the urban rate.

Hospital Y meets the cost guideline required for designation as part of the Lansing, MSA.

e. *Special Access Rule for Rural Referral Centers and Sole Community Hospitals Seeking Reclassification*—i. *Introduction.* Section 1886(d)(10)(D)(i)(III) of the Act requires that the guidelines include criteria for considering information provided by a hospital with respect to the effects the hospital's geographic classification has on access to inpatient hospital services for Medicare beneficiaries. We believe the intent of this provision is to ensure continued access to care where a hospital is the sole source of inpatient hospital care or is the only provider of needed tertiary services in rural areas. Accordingly, we are providing special access guidelines applicable to rural referral centers and sole community hospitals. We believe that except for those areas serviced by sole community hospitals and rural referral centers, access to care is not an issue since similar services are reasonably available at other hospitals in the area.

We are not requiring rural referral centers or sole community hospitals to be located in counties adjacent to an urban area in order to be reclassified urban since their continued financial viability is necessary in order to preserve access to needed services for Medicare beneficiaries residing in these providers' service areas. In addition, we are not imposing the proximity requirement for rural referral centers and sole community hospitals because of the need to maintain access to tertiary care for Medicare beneficiaries in relatively isolated rural areas. It is our intention to ensure that rural referral centers that compete with urban areas for labor, or which experience costs per case comparable to urban hospitals, be given the opportunity to qualify for the urban wage index, and, where applicable, the large urban payment rate. Similarly, we believe that it is important to ensure that sole community hospitals that must compete for labor, or that experience costs per case that are comparable to urban hospitals, be given the opportunity to qualify for urban designation.

ii. *Special Access Rule.* If a rural referral center or a sole community hospital can qualify for reclassification on the basis of its wages or costs, as described above, then it can apply for reclassification based on the need of the institution to provide access to care for Medicare beneficiaries. The requirement that the hospital be located in a county that is adjacent to an MSA or NECMA therefore, does not apply. However, if the MGCRB finds that the hospital qualifies for urban redesignation, then it must be redesignated as part of the MSA closest to the hospital.

2. Guidelines for a Joint Application for All Hospitals in a Rural County Seeking Urban Reclassification

a. *Introduction.* In order for all the Medicare prospective payment system hospitals located in a rural county to be reclassified as part of an adjacent MSA or NECMA, all of the Medicare prospective payment system hospitals in the county must jointly apply to the MGCRB. We are requiring all hospitals to participate in a request that pertains to the entire county because such an action affects all hospitals in the county. We believe that this requirement is essential given the impact that redesignation of all hospitals in a county could have on certain classes of rural hospitals under section 1886(d)(5)(G)(iii) of the Act. For example, Medicare-dependent, small rural hospitals would lose that status if all hospitals in the rural county were deemed to be urban. If all hospitals in a county do not wish to be part of a group appeal for redesignation, then each of those hospitals seeking redesignation must do so using the individual hospital guidelines outlined in section III.B.1., above.

The county in which the hospitals are located must first meet one of the census guidelines that follow in Section III.B.2. b or c. Finally, all the hospitals in the county must meet the wage guidelines in section III.B.2.d, below, of this preamble.

At the beginning of section III.B of this preamble, above, we have provided a list of data sources for hospitals to use

in meeting our data requirements. In addition, the MGCRB will consider requests based on more recent Bureau of the Census data regarding population density, population growth, and changes in designation of urbanized areas. The MGCRB may not consider more recent commuting data, since such data is not available from the Bureau of the Census. The MGCRB will not consider data developed from surveys outside the Bureau of the Census, such as proprietary surveys, State and local surveys, or surveys conducted by Federal agencies other than the Bureau of the Census, since these surveys may not be consistent with Bureau of the Census data and are not available to all hospitals on a national basis.

b. *Bureau of the Census Data—1980.* If the county failed to qualify for urban classification because it did not meet the OMB standards that were published in the **Federal Register** on January 3, 1980 (45 FR 956) or because it did not meet the standards under section 1886(d)(8)(B) of the Act, with respect to hospitals in certain rural counties adjacent to urban areas, it must be able to demonstrate that based on updated Bureau of the Census data, estimates, or projections, it now meets the standards.

c. *Bureau of the Census Data—1990.* If the county would qualify for reclassification as part of a MSA or NECMA based on the revised standards issued by OMB for the 1990 Census (55 FR 12154, March 31, 1990), those standards may be used to qualify for redesignation. The Appendix includes the part of those standards that is relevant to this issue.

d. *Wage Guideline.* The aggregate average hourly wage of all the hospitals in the county must be equal to or greater than 85 percent of the average hospital hourly wage, or 90 percent of the occupationally adjusted hourly wage, in the MSA or NECMA to which the hospitals in the county seek reclassification. The wage comparison must be based on HCFA wage survey data.

3. Alternative Guidelines Applicable to Hospitals Located in New England County Metropolitan Areas (NECMAs)

a. *Introduction.* These guidelines apply only to urban hospitals in New England whose designation is affected by the use of NECMAs to define urban areas, in lieu of MSAs. An individual hospital located in a NECMA may also qualify for redesignation based on the criteria contained in section III.B.1, above. NECMAs were defined because MSAs in New England had been established along township boundaries, rather than county boundaries. The intention in defining NECMAs was to establish an urban-rural classification for New England that is comparable to the rest of the United States. As a result of the differences in the criteria, some areas of a county that were designated as part of a particular MSA according to the criteria used for defining MSAs, were not included within the NECMA that corresponded to the metropolitan area, but were instead established as another NECMA.

b. *Guidelines Applicable to Individual NECMA Hospitals.* A hospital currently classified as urban due to its location in a NECMA, may be redesignated as part of another NECMA if it meets the following criterion:

The hospital demonstrates that it would have been classified in a different urban area under the criteria for designating MSAs in New England. For example, part of Bristol County was included in the Boston, Massachusetts MSA. However, under the criteria establishing NECMA boundaries, this area was included in a separate NECMA (that is, the New Bedford-Fall River-Attleboro Massachusetts NECMA), not part of the Boston, Massachusetts NECMA. Under this guideline, a hospital located in the section of Bristol County that is included in the Boston MSA may qualify for inclusion in the Boston NECMA.

c. *Guidelines Applicable to All Hospitals Within a NECMA.* All hospitals in a NECMA may qualify for redesignation to another NECMA if they meet the following two criteria:

i. All hospitals in the NECMA apply for redesignation as a group.

ii. The hospitals can show that the NECMA to which they are designated would be combined as part of the NECMA to which they seek redesignation if the criteria for combining NECMAs were the same as the criteria used for combining MSAs. It should be noted that combining MSAs should not be confused with the consolidating of MSAs. We do not recognize Consolidated MSAs (CMSAs) as a single urban area for purposes of classifying hospitals under the prospective payment system.

These criteria apply regardless of whether the hospitals pay wages comparable to hospitals located in the NECMA to which the hospitals seek redesignation.

The special criteria set forth in this section with regard to urban hospitals in New England do not preclude New England hospitals from qualifying for redesignation to another urban area under the criteria described in section III.B.1. of this preamble, which apply to all individual hospitals.

The basis for these criteria is section 6 of the Office of Management and Budget Standards for Defining Metropolitan Statistical Areas published on January 3, 1980, (45 FR 960). Section 6 states that "two adjacent MSAs not included in a consolidation by the above criteria [in section 5] will be combined as a single MSA if:

A. Their largest central cities are within 25 miles of one another, or their urbanized areas are contiguous; and

B. There is definite evidence that the two areas are closely integrated with each other economically and socially . . .; *and*

C. Local opinion in both areas supports the combination."

Definite evidence that the two areas are closely integrated with each other economically and socially is demonstrated by the commuting and urbanized area criteria, as stated in section 5 of the OMB standards (45 FR 960):

"The commuting interchange between the two metropolitan statistical areas is equal to:

(1) At least 15 percent of the employed workers residing in the smaller metropolitan statistical area, *or*

(2) At least 10 percent of the employed workers in the smaller metropolitan statistical area, *and*

a. The urbanized area of a central city of one metropolitan statistical area is contiguous with the urbanized area of a central city of the other metropolitan statistical area, or

b. A central city in one metropolitan statistical area is included in the same urbanized area as a central city in the other metropolitan statistical area.

For purposes of these guidelines, the criterion involving local opinion is not considered with respect to NECMAs.

Section 14.C of the OMB standards is explicit in stating that section 6 does not apply in New England (45 FR 961). These guidelines are intended to provide that hospitals that are located in NECMAs that would qualify for combination based on standards applicable outside of New England may qualify for this redesignation.

4. Effect of Decisions of the MGCRB on Payments to Hospitals

a. *Introduction.* The provisions in section 1886(d)(8)(C) of the Act, as amended by section 6003(h)(2) and (3) of Pub. L. 101–239 address the situation where all the hospitals in a county are reclassified from a rural to an urban area or from one urban area to another. Although section 1886(d)(8)(C) of the Act did not address rural to rural reclassifications for all the hospitals in a county, we believe it is appropriate to

apply the same standards in those situations.

Section 1886(d)(8)(C) of the Act is also silent with respect to how reclassifications of individual hospitals are to be treated. We are continuing to evaluate this issue. In the FY 1992 proposed prospective payment system update, we will propose a methodology to address the application of the wage index where not all hospitals in a county or MSA have been redesignated. We are especially interested in receiving comments on this issue.

Hospitals that are reclassified only for wage index purposes are not considered urban for any other purpose other than its labor market area (for example, the disproportionate share hospital formula). Hospitals that are reclassified only for purposes of the standardized payment amounts are considered urban for all purposes under section 1886(d)(2)(D) of the Act, except for the use of the wage index.

b. *Effect of Reclassification of All Hospitals in a County or Wage Index Values.* In accordance with section 1886(d)(8)(C) of the Act, the following policies apply to the situation in which all the hospitals in a county are reclassified. The effect of the reclassification on the wage index value of the affected areas is dependent on the hypothetical impact the wage data for the reclassified hospitals would have on the wage index value of the area to which they have been reclassified.

i. *Impact on Wage Index of One Percentage Point or Less.* If the wage data for the reclassified hospitals would reduce the wage index for the MSA or the rural area to which the hospitals are reclassified by one percentage point or less, the reclassified hospitals are subject to the MSA or rural wage index computed exclusive of the reclassified hospitals. If the wage data for the reclassified hospitals would increase the wage index for the MSA or the rural area to which the hospitals are classified, the wage data for the excluded hospitals will be included in the computation of the MSA or rural wage index.

ii. *Impact on Wage Index of More than One Percentage Point.* If the wage data for the reclassified hospitals would reduce the wage index for the MSA or rural area to which the hospitals were reclassified by more than one percentage point, the wage index is applied separately to the MSA or State rural area and to the redesignated hospitals. The redesignated hospitals will have their wage index determined on a county specific basis, as if their county were a separate area. However, the wage index will not be less than the hospital's original Statewide rural wage index or MSA wage index.

iii. *Impact on Areas Whose Wage Index Would Be Reduced by Excluding Redesignated Hospitals.* Rural areas or MSAs whose wage index values would be reduced by excluding the data for redesignated hospitals will continue to have their wage index calculated as if no redesignation had occurred.

c. *Budget Neutrality.* Section 1886(d)(8)(D) of the Act requires that the effect of decisions of the MGCRB be budget neutral. That section also required that a proportional adjustment to the standardized amount for urban hospitals be made to ensure that total aggregate payments made in the prospective payment system be neither greater than nor less than aggregate payments that would otherwise be made. In addition, that section requires that aggregate payments to those rural hospitals not affected by this provision remain constant.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that is likely to 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 domestic or export markets.

Hospitals reclassified as a result of this final rule will receive increased Medicare payments. However, in accordance with section 1886(d)(8)(D) of the Act, proportional adjustments will be made to the urban and rural standardized amounts, thereby eliminating any effect of the increased hospital payments on the Medicare budget. Because this rule's effect is budget neutral, this final rule with comment is not a major rule under E.O. 12291 criteria, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all prospective payment hospitals to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b), we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

This interim final rule with comment period will conform the regulations to the legislative provisions of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) and will specify procedures to be followed in implementing the law.

We are unable to determine the economic impact this interim final rule with comment period will have on prospective payment hospitals because sufficient data are not available. However, since this final rule represents a significant change in the rules governing the geographic classification of hospitals under the prospective payment system, we have prepared the following voluntary regulatory flexibility analysis, which, in combination with the preamble, is intended to conform to the requirements of the RFA and section 1102(b) of the Act.

1. Medicare Geographical Classification Review Board (MGCRB)

a. *On-the-Record Decisions.* We do not believe the provision allowing the MGCRB to issue on-the-record decisions will adversely affect hospitals. The MGCRB will be making decisions on reclassification requests, using the substantive criteria described in section III.B. of the preamble. On-the-record decisions will be used as a measure to help expedite decisionmaking by the MGCRB issue decisions within 180 days after the first day of the Federal fiscal year preceding the Federal fiscal year for which a hospital has filed a complete application for reclassification. We estimate approximately 300 initial applications will be received and these must be reviewed and decided upon by the MGCRB within the statutory timeframe indicated above. If a hospital desires an oral hearing, it must provide to the MGCRB's satisfaction reasons why an oral hearing is necessary. The MGCRB may also decide on its own that an oral hearing is necessary to resolve the matter.

b. *Timing and Content of Application to MGCRB.* As stated in section B.1.a of this impact statement, above, we anticipate approximately 300 applications initially. Within the 180-day timeframe, the MGCRB will be expected to review applications, conduct any necessary proceedings and issue decisions. The MGCRB will dismiss applications that are not filed within the statutory time frame. In addition, rather than requiring the MGCRB to issue decisions based on incomplete reclassification requests, and to expedite the decisionmaking process, only complete hospital applications will be accepted as described in section III.A.6 of the preamble, above. Therefore, incomplete applications will be dismissed by the MGCRB. We do not believe hospitals will be adversely affected by this requirement because hospitals should have ample time to assemble the data required for a complete reclassification application. Further, hospitals may appeal to the Administrator dismissals made by the MGCRB for those applications that are received late or are incomplete.

c. *Documentation Necessary for Making Decisions.* Some hospitals may object to the amount of documentation required to substantiate an application to the MGCRB or to the costs involved in providing the information. While there may be some costs involved in compiling the necessary documentation to substantiate the request for reclassification, we do not believe the costs will be significant. Further, such documentation is necessary in order for the MGCRB to issue its decisions.

2. General Criteria for the MGCRB

A. *Tenure of Determination.* We believe that the statutory language in section 1886(d)(10)(C)(i) of the Act provides that MGCRB decisions are to be effective for one year as described in section III.B of the preamble. Alternative provisions have also been included that permit the MGCRB to use discretion concerning the renewal of reclassification decisions.

b. *Criteria for Specific Reclassifications.* Some hospitals may view these criteria as being too restrictive or not addressing their particular cases satisfactorily. We believe these criteria are broad enough to cover those cases that merit an exception to the rules governing the geographic classification of prospective payment hospitals.

3. Impact on Hospitals

It is not possible to estimate the average increase in payments to reclassified hospitals because sufficient data (for example, number of requests approved; number of hospitals reclassified from rural to urban; urban to large urban, etc.) are not available. However, we are providing the following hypothetical examples to demonstrate the economic impact reclassifications could have on hospital payments per discharge and the urban standardized amount.

Example 1

Hospital B is a 100-bed rural hospital that had 1,600 Medicare discharges over the period of a Federal fiscal year. The hospital was then reclassified "Other Urban" for purposes of the standardized amount and the wage index. Since the inclusion of the wage data for the reclassified hospital would result in less than a 1.0 percentge point reduction in the wage index value for the MSA, the hospital will receive the wage index for the MSA and its wage index will increase from 0.8000 to 1.0000. The impact per discharge on the reclassified hospital is $3,517 (national labor-related rate for "Other Urban" hospitals multiplied by 1.0000 wage index, plus the non-labor related rate ($2,491 multiplied by 1.0000) plus $1,026)) minus $2,750 (national labor-related rate for rural hospitals multiplied by 0.8000 wage index plus the non-labor related rate ($2,450 multiplied by 0.8000) plus $789)) which equals $767 per discharge. The impact of the reclassification is a total increase of $1,227,200 for the 1,600 Medicare discharges. In addition, the disproportionate share provisions applicable to urban hospitals would apply.

Example 2

Hospital N is a 200-bed "other urban" hospital that has experienced 2,500 Medicare discharges over a Federal fiscal year. The hospital is reclassified as part of a "large urban" area. The previous wage index was 0.9500. The new wage index that will apply as a result of the redesignation is 1.1500, the wage index of the "large urban" area. The impact per discharge on the reclassified hospital is $3,954 ("large urban" area labor related standardized amount multiplied by 1.1500 wage index plus the non-labor related amount ($2,531 multiplied by 1.1500) plus $1,043)) minus $3,392 ("other urban" area labor related amount multiplied by 0.9500 wage index plus the non-labor related amount ($2,491 multiplied by 0.9500) plus $1,026)) which equals $562. The impact of the reclassification is an increase of $1,405,000 for the total 2,500 Medicare discharges.

Example 3

Assuming that MGCRB finds favorably for 200 hospitals that are then reclassified with a total impact of $123,000,000 in additional payments to these hospitals, the budget-neutrality adjustment impact (assuming $44 billion in payments to urban hospitals) would be a reduction of about 0.28 percent in the standardized amounts applicable to urban hospitals.

As a result of hospital reclassifications there will be a slight decrease in the urban standardized amount. However, we believe the decrease would not be significant.

C. Conclusion

This interim final rule will benefit all hospitals, including small rural hospitals, seeking geographic reclassification or redesignation for purposes of payment by providing an exceptions process to certain rules governing payment under the Medicare prospective payment system. However, it is possible that some provisions will create effects that are unintended or unexpectedly costly. Therefore, we are specifically requesting comments on aspects of these regulations that might create an unreasonable burden. We are particularly interested in comments on the MGCRB criteria and any alternative means by which the goals of this interim final rule with comment period could be achieved.

V. Other Required Information

A. Waiver of Notice of Proposed Rulemaking and 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking for a regulation to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impractical, unnecessary, or contrary to public interest. We find good cause to issue this regulation as an interim final rule with comment period because the delay involved in prior notice and comment procedures would be contrary to the public interest. As explained elsewhere in this preamble, the MGCRB is required, by statute, to issue decisions on hospital applications no later than 180 days after October 1, the first day of the Federal fiscal year preceding the Federal fiscal year for which the hospital is seeking reclassification. We have found it necessary, therefore, to issue this interim final rule with comment period in order to provide application procedures and reclassification criteria upon which hospitals can rely to submit their applications, and on which the MGCRB can rely in issuing its decisions. Moreover, publication of an interim final rule with comment period is essential to ensure that hospitals can apply timely for reclassification for fiscal year 1992 and the MGCRB can issue decisions on the hospitals' applications by the statutory deadline of March 30, 1991. We therefore find that the delay involved in prior notice and comment would be contrary to the public interest in that it would diminish hospitals' opportunities to file timely applications

for reclassification for Federal fiscal year 1992 and to receive the potential benefits of reclassification.

Timey adjudication is essential not only to ensure that hospitals are not deprived of the statutory right, subject to the specified criteria, to apply for reclassification in order to receive the full benefits of reclassification for Federal fiscal year 1992, but also to ensure that the budget neutral requirement imposed by Congress in section 1886(d)(6) of the Act can be met for Federal fiscal year 1992 prospective payment system rates.

Therefore, we have concluded that it is appropriate to issue an interim final rule in this instance. However, we are providing a 60-day period for public comment, as indicated at the beginning of this rule. After considering comments that are received timely, we will respond to the comments, include any changes in the rule that might be necessitated in light of those comments, and publish a final rule in the Federal Register.

We also normally provide a delay of 30 days in the effective date for documents such as this. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date. We find good cause to waive the usual 30-day delay in this instance. The statutory effective date for the provisions included in this rule is July 1, 1990. Moreover, as explained above, it is essential that these provisions have immediate effect so that hospitals may submit applications to the MGCRB by October 1, 1990. A 30-day delay in the effective date for this rule would not only deprive hospitals of the statute's intended benefits, as described above, but also would deprive the MGCRB of time necessary for it to issue its decisions within the statutory 180-day time frame. Moreover, the delay would jeopardize the budget neutral requirement described above. Thus, a 30-day delay in the effective date would be contrary to the public interest. Therefore, we find good cause to waive the usual 30-day delay in effective date.

B. Paperwork Reduction Act

Sections 412.230, 412.232, 412.234, 412.256, 412.262, 412.268 and 412.278 of this interim final rule with comment, contain information collection requirements subject to review by the Office of Management and Budget (OMB). These requirements will not be effective until OMB clearance is received. This rule describes criteria to be used in making reclassification determinations. These sections describe data needed to support a request for reclassification. It is estimated that the burden associated with supplying this data is 4 to 16 hours per response. We will submit a copy of this rule to OMB for its review of these information collection requirements and a notice will be published in the Federal Register after approval is obtained. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to: Allison Herron, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

C. Public Comments

Because of the large number of items of correspondence we normally receive concerning regulations, we cannot acknowledge or respond to the comments individually. However, we will respond to all comments received by the date and time specified in the **DATES** section of this preamble, and issue any necessary changes in a final rule.

List of Subjects in 42 CFR Part 412

Health facilities, Medicare.

42 CFR chapter IV is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter B—Medicare Program

Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for part 412 continues to read as follows:

Authority: Sections. 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

B. Subpart A, § 412.1(b), is revised as follows:

Subpart A—General Provisions

§ 412.1 Scope of part.

* * * * *

(b) *Summary of content.* This subpart describes the basis of payment for inpatient hospital services under the prospective payment system, and sets forth the general basis of this system. Subpart B sets forth the classifications of hospitals that are included in and excluded from the prospective payment system, and sets forth requirements governing the inclusion or exclusion of hospitals in the system as a result of changes in their classification. Subpart C sets forth certain conditions that must be met for a hospital to receive payment under the prospective payment system. Subpart D sets forth the basic methodology by which prospective payment rates are determined. Subpart E describes the transition rate-setting methods that are used to determine transition payment rates during the first four years of the prospective payment system. Subpart F sets forth the methodology for determining additional payments for outlier cases. Subpart G sets forth rules for special treatment of certain facilities. Subpart H describes the types, amounts, and methods of payment to hospitals under the prospective payment system. Subpart K describes how the prospective payment system is implemented for hospitals located in Puerto Rico. Subpart L sets forth the procedures and criteria concerning application from hospitals to the Medicare Geographical Classification Review Board for geographic redesignation.

C. A new subpart L is added to read as follows:

Subpart L—The Medicare Geographical Classification Review Board

Criteria and Conditions for Redesignation

Sec.

412.230 Criteria for an individual hospital seeking redesignation to a different rural or urban area.
412.232 Criteria for all hospitals in a rural county seeking urban redesignation.
412.234 Alternative Criteria for hospitals located in an NECMA.

Composition and Procedures

412.246 MGCRB members.
412.248 Number of members needed for a decision or a hearing.
412.250 Sources of MGCRB's authority.
412.252 Application.
412.254 Proceedings before the MGCRB.
412.256 Application requirements.
412.258 Parties to MGCRB proceeding.
412.260 Time and place of the oral hearing.
412.262 Disqualification of an MGCRB member.
412.264 Evidence and comments in MGCRB proceeding.
412.266 Request for information or data.
412.268 Subpoenas.
412.270 Witnesses.
412.272 Record of proceeding before the MGCRB.
412.274 Scope and effect of an MGCRB decision.
412.276 Timing of MGCRB decision and its appeal.
412.278 Administrator's review.
412.280 Representation.

Subpart L—The Medicare Geographical Classification Review Board

Criteria and Conditions for Redesignation

§ 412.230 Criteria for an individual hospital seeking redesignation to a different rural or urban area.

(a) *General*—(1) *Purpose.* An individual hospital may seek redesignation to an adjacent rural or urban area for the purposes of using the other area's standardized amount, wage index value, or both.

(2) *Adjacent Area.* Except for rural referral centers and sole community hospitals, a hospital must be located in a county or MSA that is adjacent to the rural area or urban area to which it seeks redesignation.

(3) *Proximity.* Except as provided in paragraph (a)(4) of this section, to be redesignated to a different rural or urban area, a hospital must demonstrate a close proximity to the adjacent area to which it seeks redesignation by meeting the criteria in paragraph (b), and submitting data requested under paragraph (c) of this section.

(4) *Special rules for sole community hospitals and rural referral centers.* (i) A hospital that is a rural referral center, a sole community hospital, or both may be designated to an area that is not an adjacent county.

(ii) A hospital that is a rural referral center, a sole community hospital, or both does not have to demonstrate a close proximity to the area to which it seeks redesignation.

(iii) If a hospital that is a rural referral center, a sole community hospital, or both qualifies for urban redesignation, it is redesignated to the urban area that is closest to the hospital.

(b) *Proximity criteria.* A hospital demonstrates a close proximity with the adjacent area to which it seeks redesignation if one of the following conditions applies:

(1) The distance from the hospital to the adjacent area is no more than 15 miles for an urban hospital and no more than 35 miles for a rural hospital.

(2) At least 50 percent of the hospital's employees reside in the adjacent area.

(c) *Appropriate proximity data.* For redesignation to an adjacent area, the hospital must submit appropriate data relating to its proximity to that adjacent area.

(1) To demonstrate proximity to the adjacent area, the hospital must submit evidence of the shortest route over improved roads to the adjacent area and the distance of that route.

(2) For employee address data, the hospital must submit current payroll records that include information that establishes the home addresses by zip code of its employees.

(d) *Use of an adjacent area's standardized amount*—(1) *Criteria.* To receive an adjacent area's standardized amount, a hospital must demonstrate that its incurred costs are more comparable to the amount it would be paid if it were reclassified than the amount it is currently paid, and that it has the necessary geographic relationship (as specified in § 412.230(b)) with the area to which it seeks redesignation.

(2) *Demonstrating comparable costs.* A hospital demonstrates that its costs are more comparable to the amount it would be paid if it were reclassified if the hospital's case mix adjusted cost per discharge is at least equal to its current rate plus 75 percent of the difference between that rate and the rate it would receive if it were reclassified.

(3) *Appropriate cost data.* For a standardized amount change, the hospital must submit appropriate data as follows:

(i) For hospital-specific data, the hospital must provide data from its most recently settled and most recently filed cost report.

(ii) For data on other hospitals, the hospital must base its application on the most recent revisions to the prospective payment system rates for inpatient hospital services, as published in the **Federal Register.**

(e) *Use of urban or other rural area's wage index*—(1) *Criteria for use of adjacent area's wage index.* To use an adjacent area's wage index, a hospital must demonstrate the following:

(i) The hospital's incurred wage costs are comparable to hospital wage costs in an adjacent urban or rural area;

(ii) The hospital has the necessary geographic relationship as specified in § 412.230(a); and

(iii) One of the following conditions apply:

(A) The hospital's average hourly wage is equal to at least 85 percent of the average hospital hourly wage in the adjacent area; or

(B) The hospital's average hourly wage weighted for occupational categories is at least 90 percent of the average hospital hourly wage in the adjacent area.

(2) *Appropriate wage data.* For a wage index change, the hospital must submit appropriate data as follows:

(i) For hospital-specific data, the hospital must provide data from the most recent HCFA hospital wage survey.

(ii) For data for other hospitals, the hospital must provide data concerning both of the following:

(A) The average hourly wage in the adjacent area, which is taken from the most recent HCFA hospital wage survey.

(B) Occupational-mix data to demonstrate the average occupational mix for each employment category in the adjacent area. Occupational-mix data can be obtained from the Bureau of Labor Statistics' survey of a limited number of metropolitan areas; or surveys conducted by the American Hospital Association.

§ 412.232 Criteria for all hospitals in a rural county seeking urban redesignation.

(a) *Criteria.* For all hospitals in a rural county to be redesignated to an urban area, the following conditions must be met:

(1) The county in which the hospitals are located must be adjacent to the MSA or NECMA to which they seek redesignation.

(2) All hospitals in a rural county must apply for redesignation as a group.

(3) The hospitals must demonstrate that the rural county in which they are located currently meets the criteria for metropolitan character under paragraph (b) of this section and the wage criteria under paragraph (c) of this section.

(b) *Metropolitan character.* The group of hospitals must demonstrate one of the following:

(1) The county in which the hospitals are located meets the standards for redesignation to an MSA or an NECMA as an outlying county that were published in the **Federal Register** on January 3, 1980 (45 FR 953) using Bureau of the Census data or Bureau of the Census estimates made after 1980.

(2) The county in which the group of hospitals is located meets the standards for designation to an MSA or an NECMA as an outlying county that were published in the **Federal Register** on March 30, 1990 (55 FR 12154) and intended for use with 1990 Census data, using Bureau of the Census data or Bureau of the Census estimates from 1980 or later.

(c) *Wage criteria.*—(1) *Aggregate hourly wage.* The aggregate average hourly wage for all hospitals in the rural county must be equal to at least 85 percent of the average hourly wage in the adjacent urban area; or

(2) *Aggregate hourly wage weighted for occupational mix.* The aggregate average hourly wage for all hospitals in the rural county, weighted for occupational categories, is at least 90

percent of the average hourly wage in the adjacent urban area.

(d) *Appropriate data.*—(1) *Metropolitan character.* (i) To meet the criteria in paragraph (b) of this section, the hospitals may submit data, estimates, or projections, made by the Bureau of the Census concerning population density or growth, or changes in designation of urban areas.

(ii) The MGCRB only considers data developed by the Bureau of the Census.

(2) *Appropriate wage data.* The hospitals must submit appropriate data as follows:

(i) For hospital-specific data, the hospitals must provide data from their most recent HCFA wage survey.

(ii) For data for other hospitals, the hospitals must provide the following:

(A) The average hourly wage in the adjacent area, which is taken from the most recent HCFA hospital wage survey.

(B) Occupational-mix data to demonstrate the average occupational-mix for each employment category in the adjacent area. Occupational-mix data can be obtained from the Bureau of Labor Statistics' survey of a limited number of metropolitan areas, or from surveys conducted by the American Hospital Association.

§ 412.234 Alternative criteria for hospitals located in an NECMA.

(a) *General.* (1) An urban hospital whose designation is affected by the implementation of NECMAs may qualify for redesignation by meeting the either criteria in § 412.230 or the criterion in paragraph (b) of this section.

(2) All the hospitals in a NECMA may qualify for redesignation by meeting the criteria in paragraph (c) of this section.

(b) *Criterion applicable to an individual urban hospital in a NECMA.* The hospital demonstrates that it would have been designated in a different urban area under the criteria for designating MSAs in New England.

(c) *Criteria applicable to a group of hospitals in a NECMA.* (1) All prospective payment hospitals in a NECMA must apply for redesignation.

(2) The hospitals must demonstrate that the NECMA to which they are designated would be combined as part of the NECMA to which they seek redesignation if the criteria for combining NECMAs were the same as the criteria used for combining MSAs.

(d) *Appropriate data.* (1) The MGCRB only considers population and commuting data developed by the Bureau of the Census.

(2) To meet the criterion in paragraph (b) of this section or the criteria in paragraph (c) of this section, hospitals must submit data from the Bureau of the Census.

Composition and Procedures

§ 412.246 MGCRB members.

(a) *Composition.* The Medicare Geographical Classification Review Board (MGCRB) consists of five members, including a Chairman, all of whom are appointed by the Secretary. The members include two members who are representative of prospective payment system hospitals located in rural areas, and at least one individual who is knowledgeable in analyzing the costs of inpatient hospital services.

(b) *Term of office.* The term of office for a MGCRB member is 3 years, and appointments are limited to two consecutive 3 year terms. Initial appointments may be for shorter terms to permit staggered terms of office. The Secretary may terminate a member's tenure prior to its full term.

§ 412.248 Number of members needed for a decision or a hearing.

(a) *A quorum.* A quorum, consisting of at least a majority of the MGCRB members, one of whom is representative of rural hospitals if possible, is required for making MGCRB decisions.

(b) *Number of members for a hearing.* If less than a quorum is present for an oral hearing, the chairman with the consent of the hospital may allow those members present to conduct the hearing and to prepare a recommended decision, which is then submitted to a quorum.

§ 412.250 Sources of MGCRB's authority.

(a) *Compliance.* The MGCRB, in issuing decisions under section 1886(d)(10)(C) of the Act, complies with all the provisions of title XVIII and related provisions of the Act and implementing regulations, including the criteria and conditions located at § 412.230 through § 412.234, issued by the Secretary under the authority of section 1886(d)(10)(D) of the Act; and HCFA Rulings issued under the authority of the Administrator.

(b) *Affords great weight.* The MGCRB affords great weight to other interpretive rules, general statements of policy and rules of agency organization, procedure, and practice established by HCFA.

§ 412.252 Applications.

(a) *By one hospital.* An individual prospective payment system hospital seeking redesignation to a different rural or urban area has the right to submit an application to the MGCRB.

(b) *By a group of hospitals.* A group of hospitals has the right to submit an application to the MGCRB requesting redesignation of all prospective payment hospitals in a county if all prospective payment hospitals located in a county or in a NECMA agree to the request.

§ 412.254 Proceedings before MGCRB.

(a) *On-the-record decision.* The MGCRB will ordinarily issue an on-the-record decision without conducting an oral hearing. The MGCRB will issue a decision based upon all documents, data, and other written evidence and comments submitted timely to the MGCRB by the parties.

(b) *Oral hearing.* The MGCRB may hold an oral hearing on its own motion or if a party demonstrates to the MGCRB's satisfaction that an oral hearing is necessary.

§ 412.256 Application requirements.

(a) *Written application.* A request for reclassification must be in writing and must constitute a complete application in accordance with paragraph (b) of this section.

(1) An application must be mailed or delivered to the MGCRB, with a copy to HCFA, and may not be submitted through the facsimile (FAX) process or by other electronic means.

(2) A complete application must be received not later than the first day of the Federal fiscal year preceding the Federal fiscal year for which reclassification is requested.

(3) The filing date of an application is the date the application is received by the MGCRB.

(b) *Criteria for a complete application.* An application is complete if the application from an individual hospital or from all hospitals in a county includes the following information:

(1) The Federal fiscal year for which the hospital is applying for redesignation.

(2) Which criteria constitute the basis of the request for reclassification.

(3) An explanation of how the hospital or hospitals meet the relevant criteria in §§ 412.230 through 412.234, including any necessary data to support the application.

(c) *Opportunity to complete a submitted application.* (1) The MGCRB will review an application within 15 days of receipt to determine if the application is complete. If the MGCRB determines that an application is incomplete, the MGCRB will notify the hospital, with a copy to HCFA, within the 15 day period, that it has determined that the application is incomplete and will be dismissed if a complete application is not filed by October 1.

(2) If the hospital does not file a complete application by October 1, the

MGCRB will dismiss the hospital's application.

(d) *Appeal of MGCRB dismissal.* (1) The hospital may appeal the MGCRB dismissal to the Administrator within 15 days of the date of the notice of dismissal.

(2) Within 20 days of receipt of the hospital's request for appeal, the Administrator will affirm the dismissal or reverse the dismissal and remand the case to the MGCRB to determine whether reclassification is appropriate.

(e) *Notification of complete application.* When the MGCRB determines that the hospital's application contains all the necessary elements for a complete application, it notifies the hospital in writing, with a copy to HCFA, that the application is complete and that the case may proceed to an MGCRB decision.

§ 412.258 Parties to MGCRB proceeding.

(a) The party or parties to an MGCRB proceeding are the hospital or group of hospitals requesting a change in geographic designation.

(b) HCFA has 30 days from the date of receipt of notice of a complete application to submit written comments and recommendations (with a copy to the hospital) for consideration by the MGCRB.

(c) The hospital has 15 days from the date of receipt of HCFA's comments to submit written comments to the MGCRB, with a copy to HCFA, for the purpose of responding to HCFA's comments.

§ 412.260 Time and place of the oral hearing.

If the MGCRB decides that an oral hearing is necessary, it sets the time and place for the hearing and notifies the parties in writing, with a copy to HCFA, not less than 10 days before the time scheduled for the hearing. The MGCRB may reschedule, adjourn, postpone, or reconvene the hearing provided that reasonable written notice is given to the parties, with a copy to HCFA.

§ 412.262 Disqualification of an MGCRB member.

(a) *Grounds for disqualification.* An MGCRB member may not participate in any decision in a case in which he or she may be prejudiced or partial with respect to a party or has any other interest in the case.

(b) *Request for disqualification.* If a party believes that an MGCRB member should not participate in a decision, the party submits the objection in writing to the MGCRB at its earliest opportunity, explaining the grounds for the request. HCFA may also submit such a suggestion to the MGCRB.

(c) *Consideration by the MGCRB member.* The MGCRB member will consider the objection and, at his or her discretion, either will proceed or withdraw.

(d) *Consideration by the MGCRB* If the member does not withdraw, a party may petition the MGCRB for withdrawal and the MGCRB will consider the objection and rule on whether the member may participate in the decision before it decides the case.

§ 412.264 Evidence and comments in MGCRB proceeding.

(a) *Submission by the parties.* Before a decision is issued and during an oral hearing, the parties may present evidence or comments to the MGCRB regarding the matters at issue in the case.

(b) *Content of evidence and comments.* The MGCRB may receive evidence and comments without regard for the rules of evidence applicable to court procedures.

(c) *Ex parte communications.* (1) The members of the MGCRB and its staff may not consult or be consulted by an individual representing the interests of an applicant hospital or by any other individual on any matter in issue before the MGCRB without notice to the hospital or HCFA. If such communication occurs, the MGCRB will disclose it to the hospital or HCFA, as appropriate, and make it part of the record after the hospital or HCFA has had an opportunity to comment. MGCRB members and staff may not consider any information outside the record about matters concerning a hospital's application for reclassification.

(2) The provisions in paragraph (c)(1) of this section do not apply to the following:

(i) Communications among MGCRB members and staff.

(ii) Communications concerning the MGCRB's administrative functions or procedures.

(iii) Requests from the MGCRB to a party or HCFA for a document.

(iv) Material that the MGCRB includes in the record after notice and an opportunity to comment.

(d) *MGCRB rulings on evidence and comments.* The MGCRB rules upon the admissibility of evidence and comments and excludes irrelevant, immaterial, or unduly repetitious evidence and comments.

§ 412.266 Request for information or data.

(a) A hospital may request from HCFA information concerning wage data that is necessary for a complete application.

(b) If the hospital requests the information by September 1, HCFA will provide the information within 15 days.

(c) If HCFA does not respond timely, the hospital files its application; provides a copy of the prior request to HCFA for data; and requests the information or data through the MGCRB.

(d) If the MGCRB rules that HCFA must produce the requested information or data, HCFA must respond to the requests within 15 days of the MGCRB ruling.

§ 412.268 Subpoenas.

(a) *In general.* When reasonably necessary for the full presentation of a case, and only after a pre-decision request for information or data has failed to produce the necessary evidence, either upon its own motion or upon the request of a party, the MGCRB may issue subpoenas for the attendance and testimony of witnesses, for an oral hearing or the production of books, records, correspondence, papers, or other documents that are relevant and material to any matter at issue.

(b) *Content of request.* The request must designate which witnesses or documents are to be produced, and describe addresses or locations with sufficient particularly to permit these witnesses or documents to be found. The request for a subpoena must state the pertinent facts that the party expects to establish by the requested witnesses or documents and whether these facts could be established by other evidence without the use of a subpoena.

(c) *Issuance.* Subpoenas are issued as provided in section 205(d) of the Act.

(d) *Payment for subpoena cost.* HCFA pays for the cost of issuing subpoenas and the fees and mileage of any witness who is subpoenaed, as provided in section 205(d) of the Act.

§ 412.270 Witnesses.

Witnesses at an oral hearing testify under oath or affirmation, unless excused by the MGCRB for cause. The MGCRB may examine the witnesses and may allow the parties or their representatives to also examine any witnesses called.

§ 412.272 Record of proceedings before the MGCRB.

A complete record of the proceedings before the MGCRB is made in all cases. The record will not be closed until a decision has been issued by the MGCRB. A transcription of an oral hearing will be made at a party's

request, at the expense of the requesting party.

§ 412.274 Scope and effect of an MGCRB decision.

(a) *Scope of decision.* The MGCRB may affirm or change a hospital's geographic designation. The MGCRB's decision is based upon the evidence of record, including the hospital's application and other evidence obtained or received by the MGCRB.

(b) *Effective date and term of the decision*—(1) *Application filed before October 1.* With the exception of the situation described in paragraph (b)(2) of this section, any classification change is effective for one year beginning with discharges occurring on the first day (October 1) of the second Federal fiscal year following the Federal fiscal year in which the complete application is filed and ending effective at the end of that Federal fiscal year (the end of the next September 30).

(2) *Application filed on October 1.* If the complete application is filed on October 1, the redesignation is effective for discharges occurring on the first day of the following Federal fiscal year.

(c) *Additional decisions.* When the MGCRB determines that the facts that provide the basis for reclassification will remain unchanged through the end of the following Federal fiscal year, it may also provide for the following:

(1) A one-year automatic renewal of its decision.

(2) An abbreviated application and decision process for renewals.

§ 412.276 Timing of MGCRB decision and its appeal.

(a) *Timing.* The MGCRB notifies the parties in writing, with a copy to HCFA, and issues a decision within 180 days after the first day of the Federal fiscal year preceding the Federal fiscal year for which a hospital has filed a complete application. The hospital has 15 days from the date of the decision to request Administrator review.

(b) *Appeal.* The decision of the MGCRB is final and binding upon the parties unless it is reviewed by the Administrator and the decision is changed by the Administrator in accordance with § 412.278.

§ 412.278 Administrator's review.

(a) *Requests for Review.* A hospital or group of hospitals dissatisfied with the MGCRB's decision regarding its geographic designation may request the Administrator to review the MGCRB decision. (A hospital or group of hospitals may also request that the Administrator review the MGCRB's dismissal of an application as untimely filed or incomplete, as provided in § 412.256(d).)

(b) *Criteria.* (1) The hospital's request for review must be in writing and sent to the Administrator, in care of the Attorney Advisor. The request must be received by the Administrator within 15 days after the date the MGCRB issues its decision. A request for Administrator review filed by facsimile (FAX) or other electronic means will not be accepted. The hospital must also mail a copy of its request for review to HCFA's Office of Payment Policy.

(2) The request for review may contain proposed findings of fact and conclusions of law, exceptions to the MGCRB's decision, and supporting reasons therefor.

(3) Within 15 days of receipt of the hospital's request for review, HCFA may submit to the Administrator, in writing, with a copy to the party, comments and recommendations concerning the hospital's submission.

(4) Within 10 days of receipt of HCFA's submission, the hospital may submit in writing, with a copy to HCFA, a response to the Administrator.

(c) *Administrator decision.* The Administrator may not receive or consider any new evidence and must issue a decision based only upon the record as it appeared before the MGCRB and comments submitted under paragraphs (b)(2) and (b)(3) of this section.

(3) The Administrator's decision is issued in writing and furnished to the party, with a copy of HCFA, not later than 90 days following receipt of the party's request for review.

(4) The Administrator's decision is the final Departmental decision.

(5) The Administrator's decision is not subject to judicial review.

§ 412.280 Representation.

(a) *General.* A party may be represented by legal counsel or by any other person appointed to act as its representative at any proceeding before the MGCRB or the Administrator.

(b) *Rights of a representative.* A representative appointed by a party may accept or give on behalf of the party any request or notice connected with any proceeding before the MGCRB or the Administrator. A representative is entitled to present evidence and argument as to facts and law in any MGCRB proceeding affecting the party represented and to obtain information to the same extent as the party represented. Notice of any action or decision sent to the representative of a party has the same effect as if it had been sent to the party itselt.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: August 13, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: August 23, 1990.

Louis W. Sullivan,

Secretary.

Appendix—Selected Office of Management and Budget Criteria for Designating Outlying Counties of Metropolitan Statistical Areas

From the Notice of Final Standards for Establishing Metropolitan Statistical Areas Following the 1980 Census. January 3, 1980 (45 FR 956)

Section 3. Outlying Counties

A. An outlying county is included in a metropolitan statistical area if any one of the four following conditions is met:

(1) At least 50 percent of the employed workers residing in the county commute the central county/counties and the population density of the county is at least 25 persons per square mile.

(2) From 40 to 50 percent of the employed workers commute to the central county/counties and the population density is at least 35 persons per square mile.

(3) From 25 to 40 percent of the employed workers commute to the central county/counties the population density is at least 35 persons per square mile, and any one of the following conditions also exists:

(a) Population density is at least 50 persons per square mile;

(b) At least 35 percent of the population is urban;

(c) At least 10 percent, or at least 5,000 of the population lives in the urbanized area that resulted in qualification under section 1A.

(4) From 15 to 25 percent of the employed workers commute to the central county/counties, the population density is at least 50 persons per square mile, and any two of the following conditions also exist:

(a) Population density is at least 60 persons per square mile;

(b) At least 35 percent of the population is urban;

(c) Population growth between the last two decennial censuses is at least 20 percent;

(d) At least 10 percent, or at least 5,000 of the population lives in the urbanized area that resulted in qualification under section 1A.

B. If a county qualifies on the basis of commuting to the central county/counties of two different metropolitan statistical areas, it is assigned to the area to which commuting is greatest, unless the relevant commuting percentages are within five points of each other, in which case local opinion about the appropriate assignment will be considered.

From the Notice of Metropolitan Statistical Areas; Definition Standards for 1990s, March 30, 1990 (55 FR 12154)

Section 3. Outlying Counties

A. An outlying county is included in an MSA if any one of the six following conditions is met:

(1) At least 50 percent of the employed workers residing in the county commute to the central county/counties, and either:

(a) The population density of the county is at least 25 persons per square mile, or

(b) At least 10 percent, or at least 5,000, of the population lives in the qualifier urbanized area(s);

(2) From 40 to 50 percent of the employed workers commute to the central county/counties and either:

(a) Population density is at least 35 persons per square mile, or

(b) At least 10 percent, or at least 5,000, of the population lives in the qualifier urbanized area(s);

(3) From 25 to 40 percent of the employed workers commute to the central county/counties, and either the population density of the county is at least 50 persons per square mile, and any two of the following conditions exists:

(a) Population density is at least 35 persons per square mile;

(b) At least 35 percent of the population is urban;

(c) At least 10 percent or at least 5,000 of the population lives in the qualifier urbanized area(s);

(4) From 15 to 25 percent of the employed workers commute to the central county/counties, the population density of the county is at least 50 persons per square mile, and any two of the following conditions also exist:

(a) Population density is at least 60 persons per square mile;

(b) At least 35 percent of the population is urban;

(c) Population growth between the last two decennial censuses is at least 20 percent;

(d) At least 10 percent, or at least 5,000 of the population lives in the qualifier urbanized area(s);

(5) From 15 to 25 percent of the employed workers commute to the central county/counties, the population density of the county is less than 50 persons per square mile, and any two of the following conditions also exist:

(a) At least 35 percent of the population is urban;

(b) Population growth between the last two decennial censuses is at least 20 percent;

(c) At least 10 percent, or at least 5,000 of the population lives in the qualifier urbanized area(s);

(6) At least 2,500 of the population lives in a central city of the MSA located in the qualifier urbanized area(s).

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Thursday
September 6, 1990

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 8 et al.

Federal Acquisition Regulation (FAR); Exemptions From Cost or Pricing Data; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 15, 31, 52, and 53

Federal Acquisition Regulation (FAR); Exemptions from Cost or Pricing Data

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Standard Form (SF) 1412, subpart 15.8, and section 52.215 to address the requirement for claiming and granting catalog price exemptions from the requirements for submission of certified cost or pricing data, and the policies regarding price negotiations. These changes were formulated after consideration of suggestions from industry, the General Accounting Office and the Department of Defense Inspector General's office, and in response to the FY 90–91 DoD Authorization Act. The changes are intended to minimize administrative impediments in the exemption procedures and to increase the efficacy of the pricing policies that apply to commercial catalog items.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 6, 1990, to be considered in the formulation of a final rule .

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4041, Washington, DC 20405.

Please cite FAR Case 90–17 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy, room 4041, GS Building, Washington, DC 20405, (202) 501–3221. Please cite FAR Case 90–17.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the policies regarding requesting and granting exemptions from the requirements for certified cost or pricing data for catalog items. These changes were formulated after consideration of suggestions from industry, the General Accounting Office and the Department of Defense Inspector General's office, and in response to the FY 90–91 DoD Authorization Act. The changes are intended to minimize administrative impediments in the exemption procedures and to increase the efficacy of the pricing policies that apply to commercial catalog items. A summary of the changes follows:

Eases Exemption Criteria

—Eliminates categories A, B, and C for determining catalog item exemption.
—Eliminates comparison of Government sales to commercial sales for catalog item exemption.
—Establishes new catalog exemption criteria that one-third of all sales must be at catalog price to the general public.
—Extends period for use of prior exemption from 1 year to 3 years.
—Raises threshold for price impact for use of prior exemption from $25,000 to $50,000.
—Permits exemption for new commercial items even where normal minimum criteria not yet met.
—Permits exemption for discontinued commercial item based on last commercial price.
—Increases threshold for submittal of SF 1412 for individual items.
—Permits exemption to be based on contracts, shipments, invoices or recorded sales.
—Lowers approval level to the Contracting Officer for granting exemptions not meeting normal criteria.

Creates Streamlined Exemption Method

—No data provided by a contractor.
—Government accepts proposed price and contractor certification in lieu of price analysis and review of contractor sales records.
—Contracts to contain price adjustment clause based on certificate.

Permits Reliance on Prior Exemptions Granted by GSA

—Contracting officer permitted to rely on prior exemption granted by GSA for catalog item.
—Contractor provides copy of certificate previously submitted to GSA.

Improves Efficacy of Pricing Policies

—Improves description of pricing information sought.
—Adds price adjustment clause if proposal information is not current, accurate, and complete.
—Provides guidance on customer classes.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most prime contracts, as well as subcontracts, with small entities do not require the submission of cost or pricing data. Most awards to small entities at either level are on a competitive basis obviating the need for cost or pricing data or an exemption. In those rare cases when a small entity does receive a noncompetitive prime contract or subcontract exceeding $100,000, the basic requirements for submitting and obtaining an exemption from the requirement for submission of certified cost or pricing data remain essentially unchanged. Comments from small entities concerning the affecting FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–17) in corespondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. It is estimated that there will be approximately 10,000 responses annually which will require the inclusion of the unpublished discount information. Where unpublished discounts are written, all that will be involved will be the copying of the written material. This is estimated to be the case in approximately 80 percent of the responses. Where unpublished discounts are not recorded, the offeror will have to reduce them to writing as well as to copy them. It is estimated that this will be the case in only 20 percent or less of the responses. Additionally, with the easing of exemption criteria, creation of the new streamlined exemption method and permitting reliance on GSA exemption, it is esimated that there will be a reduction in responses of 20 percent. Accordingly, a request for approval of a revised burden of an information collection requirement, OMB Control No. 9000–0013, concerning Exemptions from Cost or Pricing Data, is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, et seq. The Annual reporting burden is estimated as follows: Respondents, 14,781; responses per respondent, 10; total annual responses, 147,814; hours per response; 3.89; and total response

burden hours, 574,996. Any public comments concerning the information collection requirements should be submitted to the Office of Management and Budget (OMB), Mr. Stephen Holden, FAR Desk Officer (OIRA), Room 3235, NEOB, Washington, DC 20503.

List of Subjects in 48 CFR Parts 8, 15, 31, 52, and 53

Government procurement.

Dated: August 30, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 8, 15, 31, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR parts 8, 15, 31, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 8.404 is amended by revising paragraph (a) to read as follows:

8.404 Using schedules.

(a) The planning, solicitation, and award phases of Federal Supply Schedules comply with FAR requirements. Consequently, contracting officers need not seek further competition, synopsize the solicitation or award, obtain either certified cost or pricing data or a SF 1412, Claim for Exemption from Submission of Cost or Pricing data, determine fair and reasonable pricing, or consider small business-small purchase set-aside procedures when placing an order under a Federal Supply Schedule.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

3. Section 15.801 is amended by removing in the definitions "Price" and "Technical analysis", the words "as used in this subpart," and by alphabetically adding the definition "Market research" to read as follows:

15.801 Definitions.

* * * * *

Market research includes the process of performing an independent collection and analysis of price and other information for the purpose of comparing the price of a particular item to the price of other items offered to the general public for the same purpose (see section 11.004).

* * * * *

4. Section 15.802 is amended by revising paragraph (a) to read as follows:

15.802 Policy.

(a) 10 U.S.C. 2306(a) and 41 U.S.C. 254(d) provide that all executive agencies shall require a prime contractor, or any subcontractor, to submit and certify cost or pricing data under certain circumstances. The Acts also require inclusion of contract clauses that provide for reduction of the contract price by any significant amounts that such price was increased because of submission of contractor or subcontractor defective cost or pricing data. However, the best assurance of fair and reasonable pricing is a price based on adequate price competition. Thus, contracting officers shall promote and provide for adequate price competition to the maximum extent practicable. When the price is not based on adequate price competition, contracting officers will need to request information from contractors to support the proposed price. This information can be cost or pricing data (see 15.804) or information in support of prices based on a catalog or market price, law or regulation (see 15.804–3(c)(1) and 15.804–3(d)). Regardless of the type of information obtained, the contracting officer shall perform a price analysis (see 15.805–2) to determine that the contract price is fair and reasonable.

* * * * *

5. Section 15.803 is amended by revising paragraphs (b) and (c) to read as follows:

15.803 General.

* * * * *

(b) Before issuing a solicitation, the contracting officer shall (when it is feasible to do so) develop an estimate of the proper price level or value of the supplies or services to be purchased. Estimates can range from simple budgetary estimates to independent Government cost estimates based on inspection of the product itself to review of such items as drawings, specifications, and prior data.

(c) The contracting officer is solely responsible for the final pricing decision. Accordingly, the contracting officer is responsible for exercising the requisite judgment in determining the type of information required and the extent of the analysis of the information. The contracting officer is encouraged to seek the advice of experts and specialists as appropriate. However, the recommendations and counsel of contributing specialists, including auditors, are advisory only. Reasonable compromises may be necessary, and it may not be possible to negotiate a price that is in accord with all the contributing specialists' opinions or with the contracing officer's prenegotiation objective. Price negotiation does not require that agreement be reached on every element of cost.

* * * * *

6. Section 15.804–1 is revised to read as follows:

15.804–1 General.

(a) Cost or pricing data are required under the circumstances set forth below. Cost or pricing data may be submitted actually or by specific identification in writing.

(b) The Armed Servcies Pricing Manual (ASPM), Volume 1, Contract Pricing, and Volume 2, Price Analysis, is issued by the Department of Defense to guide pricing and negotiating personnel. It provides detailed discussions and examples through applying pricing policies to pricing problems. The ASPM is available for use for instruction and professional guidance. However, it is not directive, and its references to Department of Defense forms and regulations should be considered informational only. Copies of Volume 1 (Stock No. 008–000–00457–9) and Volume 2 (Stock No. 008–000–00467–6) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Please cite the stock number when ordering.

7. Section 15.804–2 is amended in paragraph (a)(1)(iii) by removing the reference "15.804–3(i)" and inserting in its place "15.804–3(g)", and by adding paragraph (d) as follows.

15.804–2 Requiring certified cost or pricing data.

* * * * *

(d) Items ordered from any indefinite delivery type contract containing definitive prices, such as a Federal Supply Service (FSS) or Information Resources Management Service (IRMS) Multiple Award Schedule contract, do not require the submission of cost or pricing data or a SF 1412, Claim for Exemption from Submission of Cost or Pricing Data (see 8.404(d)) or a determination that the price is fair and reasonable.

8. Section 15.804–3 is amended by revising paragraphs (c), (d), (e), (f), (g), and (h) to read as follows:

15.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

* * * * *

(c) *Established catalog or market prices and prices set by law or*

regulation. (1) Subsections 15.804–3 (d) and (e) describe the methods by which offerors may claim, and contracting officers may grant, exemptions from the requirement to submit certified cost or pricing data. Additionally, if the contracting officer has evidence, before solicitation, that an item meets the exemption criteria for an item priced on the basis of an established catalog or market price or a price set by law or regulation, the contracting officer shall exempt the item from the requirement for submission of cost or pricing data unless cost or pricing data is determined to be necessary pursuant to 15.804–3(c)(2). Evidence may include recent submissions by offerors or be based on the contracting officer's knowledge of market conditions and prevailing prices. This evidence shall be documented in the contract file. Nevertheless, price analysis must be performed to determine that the price is fair and reasonable. As used in this subpart—

(i) Commercial items mean supplies or services regularly used for other than Government purposes and sold or traded to the general public in the course of normal business operations.

(ii) Customer means any purchaser of an item except for affiliates (see 19.101) of the seller.

(iii) Discontinued commercial item means a commercial item that is no longer sold in substantial quantities to the general public but is still required by the Government.

(iv) Established catalog prices mean prices recorded in a catalog, price list, schedule or machine readable media (disk, tape, etc.) or other verifiable and established record which is regularly maintained by the manufacturer or vendor and:

(A) Is published or otherwise available for customer inspection,

(B) States current or last sales price to a significant number of buyers constituting the general public, and

(C) Explains applicable discount factors.

(v) Established discount factor means a regularly used and recorded discount which is applied to an established catalog price to determine the actual selling price to the customer.

(vi) Established market prices mean prices that:

(A) Are established in the course of ordinary and usual trade between buyers and sellers free to bargain, and

(B) Can be substantiated by data from sources independent of the manufacturer or vendor.

(vii) Sold in substantial quantities means sales of more than a nominal quantity based on the norm of the industry segment which meet the requirements of 15.804(d). For example, ten may be a substantial quantity for a state-of-the-art computer while 1,000 may not be substantial for off-the-shelf bolts. Models, samples, prototypes, or experimental units do not constitute substantial quantities. For services to be sold in substantial quantities, they must also be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained solely or principally to provide the services. Sales may be evidenced by contract, shipment, invoice, or actual recorded sales so long as the method used is consistent.

(viii) The "general public" means buyers other than the U.S. Government or its instrumentalities, including purchases by the U.S. Government on behalf of foreign governments such as for Foreign Military Sales. The general public does not include:

(A) Affiliates of the offerors or

(B) Buyers of items for U.S. Government end use.

(ix) A price is "Based on" price on established catalog or market price if it meets the criteria of 15.804–3(d) and the price is:

(A) The established catalog or market price or a discount from the catalog or market price,

(B) Derived from catalog or market prices or a discount from a catalog or market price for similar items, or

(C) Derived from the catalog or market price or discount from the catalog or market price after consideration of any differences in quantities, terms, conditions, or other factors.

(x) Similiar item includes a supply or service which—

(A) Is modified to meet some Government requirement;

(B) Is otherwise identified differently from its normal commerical counterpart; or

(C) Essentially has the same form, fit, or function. If there is more than 25 percent price difference (after adjustment for comparable quantities, terms, conditions, or other appropriate factors) between a commercial item and similar item, the similarity is suspect.

(2) Even though there is an established catalog or market price of commercial items sold in substantial quantities to the general public, the contracting officer may require cost or pricing data if the contracting officer makes a written finding that the other information available is insufficient for the evaluation of the reasonableness of price and that cost or pricing data are necessary for such evaluation, and approval of the finding is obtained at a level above the contracting officer.

(d) *Granting exemptions for items based on a catalog or market price or a price set by law or regulation.* The criteria in subparagraphs (d)(1) through (d)(4) of this subsection are provided as guidance to determine if an item qualifies for an exemption from the requirement to obtain certified cost or pricing data for an item priced on the basis of a catalog or market price or a law or regulation.

(1) *Catalog item.* The contract price must be based on an established catalog price of a commercial item that is sold in substantial quantities to the general public. Although substantial quantities cannot be precisely defined, the following guideline is provided for assistance of the contracting officer. Sales must be more than nominal (see the definition of "sold in substantial quantities"), and sales at established catalog prices made to the general public must be at least one-third of total sales of the item.

(2) *Market item.* Market sales must be more than nominal (see the definition of "sold in substantial quantities") and the price of the contract item must be based on a market price which is established in the course of ordinary and usual trade between buyers and sellers free to bargain and which can be substantiated by data from sources independent of the offeror. Such data must represent a material portion of the total sales of the item in the market. The market items must be virtually indistinguishable from one another.

(3) *Item prices set by law or regulation.* A price set by law or regulation is exempt from the requirement for submission of certified cost or pricing data. Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to establish a price.

(4) *Exceptional exemptions.* (i) The contracting officer may grant an exemption for an exceptional case even though the case does not strictly meet the criteria for a catalog or market price exemption. Such an exemption should be granted only when the contracting officer determines that the price of the item is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public and that strict application of the criteria in 15.804–3(d) (1) and (2) is inappropriate. For example:

(A) If sales of a catalog item to the general public are less than one-third of total sales during a given sales period because of an unusual level of sales to

the Government, and the item had qualified for an exemption in a recent prior period;

(B) A new item for which sales to the general public have been more than nominal and the contracting officer has reason to believe that these sales will be substantial in the future.

The quantity and prices of actual commercial sales compared with the quantity and prices offered to the Government, or price relationships as influenced by prevailing trade practices, are the important factors for consideration in making these determinations. The Government's need for the item and the prospective contractor's resistance to providing data are not appropriate considerations for granting an exemption.

(ii) If the item is a discontinued commercial item, the offeror may submit a copy of the prior claim and related Government action together with the data that supports how the proposed price is based on the last price for which an exemption was granted. The contracting officer may grant the exemption if the proposed price can be determined reasonable based upon consideration of differences in quantities, terms, conditions, or other appropriate factors in comparison to the last price for which an exemption was granted.

(iii) A prime contractor or higher tier subcontractor may grant an exemption for its subcontractors following the same procedures outlined in subdivisions (d)(4) (i) and (ii) of this subsection for actions under $1,000,000. For actions expected to exceed $1,000,000, contracting officer approval shall be obtained.

(e) *Claiming an exemption*—(1) *Customary method.* An offeror's claim for an exemption shall be in writing and include, unless otherwise provided in the solicitation, for each offer with a total proposed amount exceeding $100,000, a SF 1412, Claim for Exemption from Certified Cost or Pricing Data. The SF 1412 shall provide information on the catalog, market price, or law or regulation item with the highest extended value (not unit price).

(i) For offers containing more than one catalog or market item with a total extended value that exceeds $50,000 each, the offeror must also submit a SF 1412 continuation sheet providing all information requested on the form for each such item.

(ii) For each additional catalog or market item with a total extended value of $50,000 or less, the offeror must submit documentation which identifies the applicable catalog, pertinent terms and conditions and, if requested by the contracting officer, information to establish its qualification for an exemption and to justify the reasonableness of its price (use of sampling techniques is encouraged).

(2) *Streamlined exemptions.* (i) The contracting officer may grant an exemption for a catalog item without requiring a SF 1412 or similar documentation when the offeror executes a Certificate of Commercial Pricing Using Streamlined Procedures, as shown in this subdivision (d)(2)(i), for contracts not expected to exceed a dollar threshold of $10,000,000.

Certificate of Commercial Pricing Using Streamlined Procedures (JUL 1990)

(A) The offeror certifies that offered prices for the items listed in paragraph (C) of this certificate are not higher than the lowest price charged any customer during the most recent regular quarterly or longer period for which sales data are reasonably available.

(B) In addition to the certification in paragraph (A) of this certificate, the offeror certifies that (1) the items listed in paragraph (C) of this certificate meet the criteria in Federal Acquisition Regulation (FAR) 15.804–3(d)(1) for the purpose of qualifying for an exemption from the requirement for submission of certified cost or pricing data based on established catalog price of an item sold in substantial quantities to the general public and (2) a similar claim for exemption involving the same or a similar item has not been denied by the Government within the last three years.

(C) Items.

_____

_____

_____

_____

_____

_____

(Firm)

_____

(Name)

_____

(Title)

_____

(Date)

(End of certificate)

(ii) The contracting officer may rely on the certifications as evidence that the price is fair and reasonable and not perform price analysis unless the contracting officer has information which indicates the prices offered may be unreasonable.

(3) *Prior exemption.* (i) If the U.S. Government has acted favorably on an exemption claim for the same or similar items not included in subdivision (e)(3)(ii) of this subsection within the past three years, the offeror may furnish, and the contracting officer may consider, a copy of the prior claim and related Government action, in lieu of a new SF 1412. The offeror must also submit a statement to the effect that since the prior submission, except as expressly set forth in the statement:

(A) There have been no significant changes in the catalog price or discounts, and

(B) The ratio of sales at catalog price to the general public has not dropped below one-third of total sales.

A significant change is considered to be a change in the offered price by $50,000, or 15 percent, whichever is more. Relief from the submission of a new SF 1412 does not relieve the contracting officer of determining reasonableness of price on the current purchase.

(ii) When acquiring by separate contract an item on an active FSS or IRMS Multiple Award Schedule contract, the contracting officer should grant an exemption and not require an SF 1412 or similar exemption documentation when—

(A) The offeror has provided as proof of the prior exemption a copy of the Certificate of Established Catalog or Market Price that was provided to GSA;

(B) Any actions required by part 39 for items which are on IRMS Schedule contracts, and any actions required by part 8 for items on FSS Schedule contracts, have been accomplished; and

(C) Price analysis has been performed, in accordance with 15.804–3(f) and 15.805–2. Any differences in the quantities, terms, conditions or other appropriate factors between the FSS or IRMS Schedule contract and the instant procurement should be considered in the price analysis. Supporting information may be requested from the contractor as appropriate.

(4) *Repetitive acquisitions.* The contracting officer and offeror may make special arrangements for the submission of exemption claims for repetitive acquisitions of catalog items or market items. These arrangements can take any form as long as the exemption criteria are satisfied. Government approval of the exemption claim shall set forth the effective period, usually not more than one year, and require the contractor to furnish any later information requested by the contracting officer regarding the continuation of the exemption. Such approval may be extended to other Government offices with their concurrence.

(f) *Price analysis.* Even though an item qualifies for exemption from the

requirement for submission of certified cost or pricing data, the contracting officer shall make a price analysis, except under streamlined procedures, to determine the reasonableness of the price and any need for further negotiation. When a contract for a commercial item will be awarded without adequate price competition, the Government should not purchase the item at a price which exceeds the lowest price at which the offeror sells the item unless a price difference is justified due to differences in quantities, terms, conditions, or other appropriate factors. Customer classes are typically established by commercial item sellers to offer different level prices depending on the nature of the buyer. These classes and price lists are sometimes defined considering costs absorbed by some customers but not absorbed by others and they are at other times determined by what the market will bear. Contracting officers should review the circumstances of the acquisition, question the customer category proposed by the offeror if necessary, and determine the price negotiation objective based on their own analysis of the offeror's customer categories and prices. Further, agreement to assign the Government to a particular customer class is not necessary and may delay completion of negotiations. Unless adequate information is available from Government sources, it may be necessary to obtain from the prospective contractor information such as that regarding—

(1) The supplier's marketing system (e.g., use of jobbers, brokers, sales agencies, or distributors);

(2) The services normally provided commercial purchasers (e.g., engineering, financing, or advertising or promotion);

(3) Normal quantity per order;

(4) Annual volume of sales to largest customers;

(5) Prices for comparable products and associated services;

(6) Comparison of other terms and conditions;

(7) Adjustments such as rebates, credits, or trade-ins available commercially but not available or used by the Government; and

(8) Additional sales inducements such as training or extended warranty periods provided to some customers if not provided to the Government.

(g) *Waiver for exceptional cases.* The agency head (or, if the contract is with a foreign government or agency, the head of the contracting activity) may, in exceptional cases, waive the requirement for submission of certified cost or pricing data. The waiver shall be in writing and state the reasons for granting the waiver along with a description of the attempts made to secure the data and the levels within the agency at which such attempts were made. The agency head may delegate this authority. When the agency head or designee has waived the requirement for submission of certified cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data for purposes of 15.804–2(a)(1)(iii). Consequently, award of any lower-tier subcontract expected to exceed $100,000 requires the submission of certified cost or pricing data unless exempt or waived under this subsection 15.804–3.

(h) *Defective catalog pricing.* If after award of a contract where an exemption is granted exceeding $1,000,000, or exceeding $100,000 using the streamlined procedure, the contracting officer learns or suspects that any data or certificate furnished to support:

(1) A claim for exemption from the requirements to submit certified cost or pricing data for a catalog item, or

(2) Price negotiations for a catalog item were defective, the contracting officer should request an audit to evaluate the accuracy, completeness, and currency of the data or certificate. If the audit indicates that the contract price was increased by significant amount because the data or certificate provided by the contractor were defective, and if that data or certificate were relied upon by the contracting officer, then the contract price shall be appropriately reduced. This entitlement is ensured by including in the contract the clauses prescribed in 15.804–8(f). The clause gives the Government the right to a price adjustment for these defects.

* * * * *

9. Section 15.804–6 is amended by revising paragraph (a) to read as follows:

15.804–6 Procedural requirements for submission of cost or pricing data.

(a) The contracting officer shall specify in the solicitation:

(1) Whether or not cost or pricing data are required;

(2) Whether or not certification will be required;

(3) The extent of cost or pricing data required if complete data are not necessary;

(4) The form (see paragraph (b) of this subsection) in which the cost or pricing data shall be submitted; and

(5) That the offeror may submit a request for exemption from the requirement to submit Certified Cost or Pricing Data, in lieu of cost or pricing data when the requirements of 15.804–3 are met.

Even if the solicitation does not so specify, however, the contracting officer is not precluded from requesting data if they are later found necessary.

* * * * *

10. Section 15.804–8 is amended by adding paragraph (f) to read as follows:

15.804–8 Contract clauses.

* * * * *

(f) *Price Reduction for Defective Catalog Price Data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–28, Price Reduction for Defective Catalog Price Data, in solicitations and contracts when an exemption from the requirement to submit certified cost or pricing data for a catalog item is expected or has been granted for the contractor or any subcontractor, and the amount of the exemption exceeds $1,000,000 or $100,000 using the streamlined procedure.

11. Section 15.805–2 is amended by adding paragraph (f) to read as follows:

15.805–2 Price analysis.

* * * * *

(f) Comparison of proposed prices with prices for the same or similar items obtained through market research.

12. Section 15.805–5 is amended by redesignating existing paragraph (a)(2) as (a)(3), and by adding a new paragraph (a)(2) to read as follows:

15.805–5 Field pricing support.

(a) * * *

(2) When the offeror submits a claim for exemption from cost or pricing data based on a catalog or market price, the contracting officer shall obtain field pricing (which may include an audit review by the cognizant contract audit activity) verification of data submitted by the offeror when the total proposed dollar value of the items claimed in the exemption exceeds $500,000, unless information available to the contracting officer is considered adequate. When available data are considered adequate, the contracting officer shall document the contract file to reflect the basis of the determination of their adequacy.

* * * * *

15.806–1 [Amended]

13. Section 15.806–1 is amended in paragraph (b) by removing at the end of the second sentence the reference "15.804–3(i)" and inserting in its place the reference "15.804–3(g)".

14. Section 15.812–1 is amended by revising paragraph (b) to read as follows:

15.812–1 General.

* * * * *

(b) However, the policy in paragraph (a) of this subsection does not apply to any Department of Defense (DoD) or National Aeronautics and Space Administration (NASA) contract or subcontract item of supply for which the price is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public. (see 15.804–3(c)).

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

15. Section 31.205–26 is amended by revising paragraphs (e) (1) and (2) to read as follows:

31.205–26 Material costs.

* * * * *

(e) * * *

(1) Is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with 15.804, or

(2) Is based on "adequate price competition" in accordance with 15.804.

* * * * *

PART 52—SOLICITATION PROVISION AND CONTRACT CLAUSES

16. Section 52.215–2 is amended in the title of the clause by removing the date "(DEC 1989)" and inserting in its place "(JUL 1990)"; by redesignating existing paragraphs (c), (d), (e), and (f) as (d), (e), (f), and (g); by removing in the introductory text of new paragraph (e) the words "paragraph (a) and (b) above" and inserting in their place the words "paragraphs (a), (b), and (c) of this clause"; by adding new paragraph (c); and by revising new paragraph (g) to read as follows:

52.215–2 Audit—Negotiation.

* * * * *

(c) *Data related to established catalog prices.* If, in connection with pricing this contract or any modification to this contract, the Contractor has claimed and been granted an exemption from submission of certified cost or pricing data for a catalog item, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit the contractor's records (regardless of form) of sales and related documents, including contract terms and conditions, necessary to determine the accuracy, completeness and currency of the price support data and data in support of a claim, in any form, for exemption from submission of certified cost of pricing data or, if submitted, the contractor's Certificate of Commercial Pricing Using the Streamlined Method. Access does not extend to cost or profit information or other data relevant solely to the contractor's determination of the prices to be offered in the catalog.

* * * * *

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts over the small purchase limitation (see Subpart 13.000) under this contract, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

* * * * *

17. Section 52.215–16 is amended in the title of the provision by removing the date "(APR 1985)" and inserting in its place "(JUL 1990)"; and by revising paragraph (f) to read as follows:

52.215–16 Contract Award.

* * * * *

(f) Neither financial data submitted with an offer, nor representation concerning facilities or financing, will form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data or a clause providing for price reduction for defective catalog price data, the contract price will be subject to reduction if the data or certificate furnished is incomplete, inaccurate, or not current.

* * * * *

18. Section 52.215–26 is amended in the title of the clause by removing the date "(APR 1987)" and inserting in its place "(JUL 1990)"; and by revising paragraphs (b) and (c) to read as follows:

52.215–26 Integrity of Unit Price.

* * * * *

(b) The requirement in paragraph (a) of this clause does not apply to any Department of Defense (DOD) or National Aeronautics and Space Administration (NASA) contract or subcontract item of supply for which the price is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public.

(c) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value when requested by the contracting officer. However, for DOD and NASA contracts, the information shall not be required for commercial items sold in substantial quantities to the general public when the price is based on established catalog or market prices.

* * * * *

19. Section 52.215–28 is added to read as follows:

52.215–28 Price Reduction for Defective Catalog Price Data.

As prescribed in 15.804–8(f), insert the following clause:

Price Reduction for Defective Catalog Price Data (JUL 1990)

If any price negotiated in connection with this contract, or any cost reimbursement under this contract, was increased by any significant amount because the Government relied on a submission by the Contractor, subcontractor, or prospective subcontractor of price support data and data in support of a claim, in any form, for exemption from submission of certified cost or pricing data, or relied on a Certificate of Commercial Pricing Using the Streamlined Procedures for a catalog item that was not complete, accurate, and current as of the date of its submission, then the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(End of clause)

PART 53—FORMS

52.215–2 [Amended]

20. Section 53.215–2 is amended in paragraph (b) by removing the date "(10/83)" and inserting in its place "(7/90)".

21. Section 53.301–1412 is amended in Section III on the front of the SF 1412 by revising the block "Representation"; and by revising the instructions on the reverse of the SF 1412 to read as follows:

(Note: SF 1412 will be published in its entirety when this proposed rule is published as a final rule)

53.301–1412 Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data.

* * * * *

REPRESENTATION (See Instructions for Item 14 on reverse.)

The offeror represents that all data provided above and on attachments submitted are (i) current, accurate, and complete; (ii) for the purpose of claiming exemption from requirements for submitting certified cost or pricing data; and (iii) in accordance with the instructions printed on the back of this form. The offeror also represents that, except as stated in an attachment, a similar claim for exemption involving the same of a similar item has not been denied by the Government within the last 3 years. By submitting this proposal, the offeror, if selected for negotiation, grants the contracting officer or an authorized representative the right to examine at any time before award, those books, records, documents, and other supporting data that will permit verification of the claim and an adequate evaluation of the proposed price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

* * * * *

Instructions to Offerors Submitting Claim for Exemption From Submission of Certified Cost or Pricing Data

The offeror may use the SF 1412 to submit a claim for exemption from the submission of certified cost or pricing data. The offeror shall attach all supporting information described below to the SF 1412. Complete section I, Items 7 through 11, if you are proposing a catalog price. Complete section II, Item 12, if you are proposing a market price. Complete section III, Item 13, if you are proposing a price set by law or regulation.

Item 1–3. Self-explanatory.

Item 4–7. Provide information identified in the applicable block for each item for which an exemption is claimed.

Item 7–11. Provide the following additional information for the catalog item with the highest extended value (not unit price), for each catalog item with an extended value exceeding $50,000, or for items as requested by the contracting officer.

Item 7. Established catalog price and established discount factor are defined at FAR 15.804–3(c)(4). Attach a copy of the catalog, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made. Provide a copy or describe all discount policies and price lists (published or unpublished) applicable to each class of customer. Show rebates, discounts applicable to multiple quantities or cumulative orders, and volume discounts applicable to the combination of supplies or services into one order. If the proposed price of a catalog item was determined on the basis of assignment of the Government to a particular customer class, identify the customer class and state the reasons for selecting that customer class. To justify a catalog price exemption for the Government item, the catalog item and the offered item must be the same or similar. Similar item is defined at FAR 15.804–3(c). For similar items, a statement must be attached identifying the specific differences and explaining, by price analysis of the differences (see FAR 15.805–2), how the proposed price is derived from the catalog price.

Item 8. This period should include the most recent regular quarterly or longer period for which sales data are reasonably available and should extend back only far enough to provide a total period representative of average sales. You may also attach sales data for a prior representative period if for any reason recent sales are abnormal and the prior period is sufficiently recent to support the proposed price for the Government item. In the latter case, you must explain, by price analysis only, how the proposed price is derived from the sales made at catalog price for the prior period.

Item 9. (a) Identify the amount of all sales of the catalog item at catalog prices, or at an established discount from the catalog price, to the general public as defined in FAR 15.804–3(c)(1). (b) Identify the total amount of sales of the catalog item to all customers.

Item 11. Insert the following information on sales made during the most recent regular quarterly or longer period for which sales data are available:

On line 1, insert information on the lowest price at which sales of the offered item were made to any customer during the period, regardless of quantity.

On line 2, insert the lowest price at which any sales of the offered item were made at comparable quantities to any customer.

On line 3, if the proposed price of the catalog item was determined on the basis of assignment of the Government to a particular customer class, insert the lowest price at which sales of the offered item were made at comparable quantities to any customer in that class.

Attach a complete explanation if the price proposed is not the lowest price at which a sale was made to any customer during the period for the same or similar items.

Item 12. Market price is defined in FAR 15.804–3(c)(1). There must be a sufficient number of commercial buyers so that their purchases establish an ascertainable current market price for the item or service. The nature of this market should be described. To justify a market-price exemption, the item or service being purchased must be the same as or similar to the commercial item or service. Similar item is defined in FAR 15.804–3(c)(1). For similar items, a statement must be attached identifying the specific differences and explaining, by price analysis of the differences (see FAR 15.804–3(f)), how the proposed price is derived from the market price.

Item 13. Identify the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

Item 14. Insert the name and title of the person authorized by the offeror to sign this form.

[FR Doc. 90–20908 Filed 9–5–90; 8:45 am]

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Federal Register

Thursday
September 6, 1990

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 3 et al.

Federal Acquisition Regulation (FAR); Procurement Integrity; Interim Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 4, 9, 14, 15, 37, 52, and 53

[Federal Acquisition Circular 84-60]

RIN 9000-AD01

Federal Acquisition Regulation (FAR); Procurement Integrity

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: On November 17, 1988, section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988 amended the OFPP Act by adding section 27, Procurement Integrity, codified at section 423 of title 41 of the United States Code, herein referred to as "the Act." An interim rule was published on May 11, 1989, in the Federal Register (54 FR 20488) followed by a 60-day public comment period. In November 1989, section 27 was amended by section 814 of Pub. L. 101-189 and subsequently suspended by section 507 of the Ethics Reform Act of 1989, Pub. L. 101-194, for the period December 1, 1989, through November 30, 1990. This interim rule replaces the coverage previously promulgated in FAC 84-47 and incorporates coverage resulting from the public comment period for FAC 84-47, changes to the public law, and the suspension of section 27.

The Act prohibits certain activities by competing contractors, Government procurement officials and other individuals during the conduct of a Federal agency procurement. In general, these prohibited activities involve soliciting or discussing post-Government employment, offering or accepting a gratuity, or soliciting or disclosing proprietary or source selection information.

The Act also contains certification and disclosure provisions for both contractors and Government officers and employees, imposes post-employment restrictions on Government officers and employees, and provides for criminal and civil penalties and administrative and contractual remedies for violations of the Act.

DATES: *Effective Date:* September 6, 1990.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 6, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to:
General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAC 84-60 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon A. Kiser, FAR Secretariat, Office of Federal Acquisition Policy, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 84-60.

SUPPLEMENTARY INFORMATION:

A. Background

Approximately 200 comments were received from 50 different commenters regarding the interim rule (FAC 84-47) implementing section 27 of the OFPP Act as originally enacted. While the FAR Council was developing a final rule which would consider the public comments, Public Law 101-189 made changes to section 27. Those changes were so significant that it is now necessary to publish another interim rule incorporating the statutory changes and addressing the public comments. In addition, the suspension of section 27 and the new statutory definition of procurement official require a more specific treatment of the applicability of section 27 as originally enacted and as amended.

The most frequent public comments were in the following areas: source selection and proprietary information; employment restrictions; the meaning of "personal and substantial"; commencement of a procurement; contractor certifications; and the definitions of "competing contractor," "procurement official," and "possible violation." In response to those comments, this interim rule makes changes in each of those areas.

Examples of changes stemming from the public comments include—the definition of "source selection information," the requirements for marking information as source selection information, and the definitions of "competing contractor," "proprietary information," and "procurement official" have been revised; a definition of "possible violation" has been added; the regulations dealing with the processing of violations have been significantly revised, including an identification of the individuals authorized to take actions; contractor certification requirements have been simplified as a "best knowledge and belief" standard added; an optional form for obtaining ethics training certifications required of procurement officials has been added; and conforming changes to other FAR parts have been made.

The significant statutory changes are—commencement of a procurement is tied to specific actions; the definition of "procurement official" has been redefined in terms of certain specific activities; the definition of "gratuity, or other thing of value" is no longer tied to agency standards of conduct regulations and includes a governmentwide monetary standard; provisions for recusal from participation in a procurement have been added; employment restrictions with regard to subcontractors have been clarified; provisions for ethics advisory opinions for present or former Government officers or employees who are or were procurement officials have been added; and the scope of the ethics training certifications required from procurement officials has been expanded. The new statutory certification provision will require agencies to obtain new certifications for individuals who will be performing procurment official activities on or after December 1, 1990.

In addition, because the law was suspended for the period December 1, 1989, through November 30, 1990, and the definition of procurement official was statutorily changed, the interim rule was modified to emphasize the impact of the changes in law and the law's suspension on the prohibitions and restrictions applicable to procurement officials. For example—(1) the post-employment restrictions under section 27 as originally enacted only attach to individuals who perform activities during the period July 16, 1989, through November 30, 1989; (2) activities performed during the suspension period have no impact on post-employment rights; and (3) the post-employment restrictions under section 27 as amended apply on or after December 1, 1990, and may also apply as well to an individual who was a procurement official under section 27 as originally enacted and whose activities prior to December 1, 1989, would meet the definition of a procurement official under section 27, as amended.

B. Coordination With the Director, Office of Government Ethics

Effective June 1, 1990, the Director of the Office of Government Ethics became responsible for issuing regulations implementing subsections 27 (a)(1),

(a)(2), (b)(1), (b)(2), (c), (f), and (k) of the OFPP Act. Those regulations are required to be issued in the FAR in coordination with the FAR Council. The provisions for which the Office of Government Ethics is responsible relate to gratuities, seeking employment, recusal, post employment, and ethics advisory opinions. Pertinent provisions of the interim rule were developed by the Office of Government Ethics in coordination with the FAR Council. The interim rule is issued by the FAR Council in coordination with the Office of Government Ethics.

C. Determination to Issue an Interim Rule

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in FAC 84–60 as an interim rule. This action is necessary to implement Public Law 100–679 in the FAR. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

D. Regulatory Flexibility Act

The interim change (FAC 84–60) to the FAR may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The impact is likely to occur because, in connection with contract awards, extensions, and modifications in excess of $100,000, offerors will be required to gather and provide to the Government certain information regarding the activities of the offeror during the conduct of the procurement. Therefore, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be sent to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will also be considered. Such comments must be submitted separately and cite FAR Case 90–610 (FAR Case 89–23) in correspondence.

E. Paperwork Reduction Act

The information collection requirements in this interim rule are being resubmitted for approval under OMB Control Number 9000–0103, as required by 44 U.S.C. 3501, et seq. Annual reporting burden: The annual reporting burden is estimated as follows: Respondents, 20,000; responses per respondent, 20; total annual responses, 400,000; hours per response, 5 minutes; and total response burden hours, 33,333. Annual recordkeeping burden: The annual recordkeeping burden with respect to incorporating the training requirement into training programs is estimated as follows: Respondents, 20,000; responses per respondent, 20; total annual responses, 400,000; hours per response, 20 minutes; and total response burden hours, 13,333. Any public comments concerning the information collection requirements should be submitted to the Office of Management and Budget (OMB), Mr. Stephen Holden, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

List of Subjects in 48 CFR Parts 3, 4, 9, 14, 15, 37, 52, and 53

Government procurement.

Dated: August 31, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

[Number 84–60]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–60 is effective September 6, 1990.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

Richard H. Hopf,

Associate Administrator for Acquisition Policy.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

The Administrator of the Office of Federal Procurement Policy, Office of Management and Budget, and the Director, Office of Government Ethics, concur.

Allan V. Burman,

Administrator, Office of Federal Procurement Policy.

Dated: August 27, 1990.

Stephen D. Potts,

Director, Office of Government Ethics.

Federal Acquisition Circular (FAC) 84–60 amends the Federal Acquisition Regulation as specified below:

Item—procurement Integrity

On November 17, 1988, section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988 amended the OFPP Act by adding section 27, Procurement Integrity, codified at section 423 of title 41 of the United States Code. An interim rule was published on May 11, 1989, in the **Federal Register** (54 FR 29488) followed by a 60–day public comment period. In November 1989, section 27 was amended by section 814 of Pub. L. 101–189 and subsequently suspended by section 507 of the Ethics Reform Act of 1989, Pub. L. 101–194, for the period December 1, 1989, through November 30, 1990. This interim rule replaces the coverage previously promulgated in FAC 84–47 and incorporates coverage resulting from public comments, the public law, and the suspension of section 27.

The Act prohibits certain activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement. In general, these prohibited activities involve soliciting or dicussing post-Government employment, offering or accepting a gratuity, or soliciting or disclosing proprietary or source selection information.

The Act also contains certification and disclosure provisions for both contractors and Government officers, imposes post-employment restrictions on Government officers and employees, and provides for criminal and civil penalties, and administrative, and contractual remedies for violations of the Act.

Section 814 of Public Law 101–189 amended the procurement official certification provisions in section 27 of the Act. The amendment will require agencies to obtain new certifications from individuals who will be performing procurement official activities on or after December 1, 1990.

Solicitations issued for which contract award is expected on or after December 1, 1990, shall incorporate the solicitation provisions and contract clauses required by 3.104–10 of this interim rule. Contract award may not be made on or after December 1, 1990, unless the offeror and contracting officer have completed the certification required by 3.104–9 (b) and (c), respectively.

Solicitations contemplating contract award prior to December 1, 1990, are not required to incorporate the provisions and contract clauses required by 3.104–10. The statutory requirements of the OFPP Act as amended and this interim rule do not apply to such procurements.

However, if an award contemplated to be made before December 1, 1990, is not made by November 30, 1990, the contracting officer shall:

(1) For sealed bid procurements, if bids have not been opened, amend the solicitation;

(2) For procurements using other than sealed bidding procedures, or for sealed

bid procurements, where bids have been opened, the apparent successful offeror shall be required to complete the certification required by 3.104–9. The clauses at 52.203–9 and 52.203–10 and, if applicable, the clause at 52.203–13, shall be incorporated into any resultant contract prior to contract award.

FAR 3.104–1 through 3.104–12, 4.802(e), 9.106(b), 14.211(a), 15.413–1, 15.508(b), 15.509 (d) and (f)(9), 15.610, 15.612(e), 15.805–5(k), 37.207, the provision at 52.203–8, the clauses at 52.203–9 and 52.203–10, and 53.203 are revised; 37.208 and the clause at 52.239–9 are removed; 15.413, 15.413(f)(6), 15.608(b)(5), 37.103(c), the clause at 52.203–13, and the Optional Form 333 in 53.302–333 are added. The form has been authorized for local reproduction. A copy of the form is provided in the looseleaf edition for the user to reproduce as required.

Therefore, 48 CFR parts 3, 4, 9, 14, 15, 37, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR parts 3, 4, 9, 14, 15, 37, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Sections 3.104 and 3.104–1 through 3.104–12 are revised to read as follows:

3.104 Procurement integrity.

3.104–1 General.

(a) Section 3.104 implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as amended by section 814 of Public Law 101–189 (hereinafter referred to as "the Act"). Agency supplementation of 3.104 and any clauses required by 3.104 must be approved at a level not lower than the Senior Procurement Executive of the agency, unless a higher level of approval is required by law for that agency.

(b) Agency employees are reminded that much of the conduct prohibited by the Act is also prohibited by other statutes and regulations. For example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201, 10 U.S.C. 2207, 5 U.S.C. 7353, and 5 CFR parts 735 and 2635;

(2) Employment discussions are covered by 18 U.S.C. 208, which precludes a Government employee from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is negotiating for employment;

(3) Post-employment restrictions are covered by 18 U.S.C. 207, which prohibits certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract on which the former employee worked while employed by the Government; and

(4) FAR parts 14 and 15, which place restrictions on the release of information related to procurements and other contractor information which must be protected under 18 U.S.C. 1905. In addition, 5 CFR part 735 protects non-public Government information.

3.104–2 Applicability.

This subsection implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (OFPP Act) as amended by section 814 of Public Law 104–189. Conduct and procurement activities on or after July 16, 1989, are subject to the prohibitions and restrictions of section 27 as follows:

(a) Conduct and procurement activities occurring during the period from July 16, 1989 through November 30, 1989, are subject to the prohibitions and restrictions in section 27 of the Office of Federal Procurement Policy Act as originally enacted on November 17, 1988, and as implemented by Federal Acquisition Circular 84–47 (see 48 CFR 3.104 through 3.104–12, 4.802(e), 9.105–3(c), 9.106–3(b), 15.805–5 (l) and (m), 37.207(f), 37.208, 43.106, 52.203–8 through 52.203–10 and 52.237–9, October 1, 1989 edition). In addition, the performance of procurement activities during the period from July 16, 1989 through November 30, 1989, may subject an individual to prohibitions and restrictions applicable after December 1, 1990, as provided in subparagraphs (c)(1) and (c)(2) of this subsection.

(b) Section 27 of the OFPP Act was suspended from December 1, 1989, through November 30, 1990. The prohibitions and restrictions under section 27, either as originally enacted or as amended, do not apply during the suspension period. In addition, an individual does not become a procurement official under section 27 as originally enacted or as amended if the individual's participation in a procurement was solely during the suspension period. The suspension does not interrupt the running of the 2-year period of any post-employment restriction that attached during the period from July 16, 1989, through November 30, 1989.

(c) Conduct and procurement activities occurring on or after December 1, 1990, are subject to section 27 of the amended law. In addition:

(1) For procurements begun prior to December 1, 1989, which have not been completed by November 30, 1990, the prohibitions on gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information under subsections 27 (b) and (d), of the amended law, apply on or after December 1, 1990, to an individual who was a procurement official under section 27, as originally enacted, and whose activities prior to December 1, 1989, would meet the definition of a procurement official under section 27, of the amended law.

(2) The post-employment restrictions of subsection 27(f), of the amended law, apply on or after December 1, 1990, to an individual who was a procurement official under section 27, as originally enacted, and whose activities prior to December 1, 1989, would meet the definition of a procurement official under section 27, of the amended law, provided that the 2-year period of the restrictions has not expired.

3.104–3 Statutory prohibitions and restrictions.

As provided in section 27 of the Act, the following conduct is prohibited:

(a) *Prohibited conduct by competing contractors (subsection 27(a) of the Act).* During the conduct of any Federal agency procurement of property or services, no competing contractor or any officer, employee, representative, agent, or consultant of any competing contractor shall knowingly—

(1) Make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency, except as provided in 3.104–6(b);

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official of such agency; or

(3) Solicit or obtain, directly or indirectly, from any officer or employee of such agency, prior to the award of a contract any proprietary or source selection information regarding such procurement.

(b) *Prohibited conduct by procurement officials (subsection 27(b) of the Act).* During the conduct of any Federal agency procurement of property or services, no procurement official of such agency shall knowingly—

(1) Solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or

consultant of a competing contractor, except as provided in 3.104–6(a);

(2) Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing contractor for such procurement; or

(3) Disclose any proprietary or source selection information regarding such procurement directly or indirectly to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(c) *Disclosure to unauthorized persons (subsection 27(d) of the Act).* During the conduct of any Federal agency procurement of property or services, no person who is given authorized or unauthorized access to proprietary or source selection information regarding such procurement, shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(d) *Restrictions resulting from procurement activities of Government officers or employees who are or were procurement officials (subsection 27(f) of the Act).* (1) No individual who, while serving as an officer or employee of the Government or member of the Armed Forces, was a procurement official with respect to a particular procurement may knowingly—

(i) Participate in any manner, as an officer, employee, agent, or representative of a competing contractor, in any negotiations leading to the award, modification, or extension of a contract for such procurement; or

(ii) Participate personally and substantially on behalf of the competing contractor in the performance of such contract.

The restrictions in subdivisions (d)(1)(i) and (d)(1)(ii) of this subsection apply during the period ending 2 years after the last date such individual participated personally and substantially in the conduct of such procurement or personally reviewed and approved the award, modification, or extension of any contract for such procurement.

(2) This subsection does not apply to any participation referred to in subdivisions (d)(1)(i) and (d)(1)(ii) of this subsection with respect to a subcontractor who is a competing contractor unless—

(i) The subcontractor is a first or second tier subcontractor and the subcontract is for an amount that is in excess of $100,000; or

(ii) The subcontractor significantly assisted the prime contractor with respect to negotiation of the prime contract; or

(iii) The procurement official involved in the award, modification, or extension of the prime contract personally directed or recommended the particular subcontractor to the prime contractor as a source for the subcontract; or

(iv) The procurement official personally reviewed and approved the award, modification, or extension of the subcontract.

3.104–4 Definitions.

As used in this subsection—

(a) *Agency ethics official* means the designated agency ethics official described in 5 CFR 2638.201 and any other person, including deputy ethics officials described in 5 CFR 2638.201, to whom authority under 3.104–6(f) and 3.104–8(e) has been delegated by the designated agency ethics official.

(b)(1) *Competing contractor,* with respect to any procurement (including any procurement using procedures other than competitive procedures) of property or services means any entity (such as an individual, partnership, corporation, educational institution, nonprofit or not for profit organization, or business unit) legally capable of entering into a contract or subcontract in its own name that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement, and includes any other person acting on behalf of such an entity.

(2) The term "competing contractor" includes the incumbent contractor in the case of a contract modification.

(3) An entity shall not be considered a competing contractor whenever, by action of the Government or the entity, it is clear that the entity will not, or will no longer, participate in a particular procurement.

(4) For purposes of subsections 27(a) and 27(b) of the Act, the phrase "representative, agent, or consultant of a competing contractor" means any entity, other than an officer or employee of a competing contractor, acting on behalf of, or providing advice to, a competing contractor with regard to a particular Federal agency procurement.

(c)(1) *During the conduct of any Federal agency procurement of property or services* means, except for broad agency announcements, small business innovative research programs, and unsolicited proposals (see subparagraphs (c)(3) and (c)(4) of this subsection), the period beginning on the earliest date upon which an identifiable, specific action is taken for the particular procurement and concluding upon the award or modification of a contract or the cancellation of the procurement; provided, however, that in no event shall the conduct of the procurement be deemed to have begun prior to the decision by an authorized agency official to satisfy a specific agency need or requirement by procurement. These actions are—

(i) Drafting a specification or a statement of work;

(ii) Review and approval of a specification;

(iii) Requirements computation at an inventory control point;

(iv) Development of procurement or purchase requests;

(v) Preparation or issuance of a solicitation;

(vi) Evaluation of bids or proposals;

(vii) Selection of sources;

(viii) Conduct of negotiations; or

(ix) Review and approval of the award of a contract or contract modification.

(2) Each contract award and each contract modification constitutes a separate procurement action, i.e., a separate period to which the prohibitions and the requirements of the Act apply.

(3) For broad agency announcements and small business innovative research programs, each proposal received by an agency shall constitute a separate procurement for purposes of the Act. The conduct of each procurement shall be deemed to have begun upon the date a Commerce Business Daily announcement was made regarding the availability of the broad agency announcement or the date a solicitation was released for the small business innovative research program. The conduct of the procurement shall end upon the award of a contract or contract modification incident to each proposal or the written rejection of each specific proposal.

(4) Each unsolicited proposal shall be considered a separate procurement for purposes of the Act. For unsolicited proposals, the conduct of the procurement shall be deemed to have begun upon the publication date of a general statement of agency needs (see 15.503(d)), or if an agency does not publicize a general statement of agency needs, upon the provision of advance guidance related to agency needs (see 15.504(a)(1)) or the receipt of the unsolicited proposal, whichever is earlier. The conduct of the procurement shall end upon the award of a contract

or contract modification or the rejection of the proposal.

(d) *Government officer or employee* means a person who is employed by a Federal agency (see subpart 2.1) and who is in such status during the period July 16, 1989 through November 30, 1989, or on or after December 1, 1990. This includes—

(1) A member of the uniformed services as defined in section 101(3) of title 37, United States Code;

(2) A person who is appointed to a position in the Federal Government under title 5, United States Code, or any other title authorizing such appointments, including a person under a temporary appointment; and

(3) A special Government employee as defined in section 202 of title 18, United States Code.

(e) *Modification* means the addition of new work to a contract, or the extension of a contract, which requires a justification and approval (see subpart 6.3). It does not include an option where all the terms of the option, including option prices, are set forth in the contract and all requirements for option exercise have been satisfied, change orders, administrative changes, or any other contract changes that are within the scope of the contract.

(f)(1) *Gratuity or other thing of value* includes any gift, favor, entertainment, or other item having monetary value. The phrase includes services, conference fees, vendor promotional training, transportation, lodgings and meals, as well as discounts not available to the general public and loans extended by anyone other than a bank or financial institution. The phrase does not include—

(i) Anything for which market value is paid by the procurement official, or on his behalf, by someone other than a competing contractor, or a representative, agent, or consultant of the competing contractor;

(ii) Anything which is paid for by the Government, secured under Government contract, or accepted by the Government under specific statutory authority;

(iii) Plaques or certificates having no intrinsic value; or

(iv) Any unsolicited item, other than money, having a market value of $10 or less per event or presentation.

For these purposes, market value means the retail cost the procurement official would incur to purchase the item and, in the case of items such as tickets, refers to their face value. A thing of value given or received or otherwise offered or sought "directly or indirectly" includes a thing of value directed to a person other than a procurement official, such as a spouse or child, solely because of that person's relationship to the procurement official or on the basis of designation, recommendation, or suggestion by the procurement official.

(2) Promotional vendor training does not include training provided by a vendor when a vendor's products are furnished under contract to the Government and the training is to facilitate the use of those products.

(g) *Participated personally and substantially* means active and significant involvement of the individual in activities directly related to the procurement. To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the supervisor in the matter. To participate "substantially" means that the employee's involvement must be of significance to the matter. For example, the review of procurement documents solely to determine compliance with applicable regulatory, administrative, or budgetary requirements or procedures does not constitute substantial participation in a procurement. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial.

(h)(1) *Procurement official* means any civilian or military official or employee of an agency who has participated personally and substantially in any of the following activities for a particular procurement—

(i) Drafting a specification or a statement of work for that procurement;

(ii) Review and approval of a specification or statement of work developed for that procurement;

(iii) Preparaton or development of procurement or purchase requests for that procurement;

(iv) The preparation or issuance of a solicitation for that procurement;

(v) Evaluation of bids or proposals for that procurement;

(vi) Selection of sources for that procurement;

(vii) Negotiations to establish the price or terms and conditions of a particular contract or contract modification; or

(viii) Review and approval of the award of a contract or contract modification.

(2) For purposes of 3.104–4(h), the term "employee of an agency" includes a contractor, subcontractor, consultant, expert, or advisor (other than a competing contractor) acting on behalf of, or providing advice to, the agency with respect to any phase of the agency procurement concerned.

(3) Generally, an individual will not become a procurement official solely by participating in the following activities—

(i) Federal advisory committees that are established and function in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, unless the Federal advisory committee is established or used for the purpose of performing a function listed in subparagraph (h)(1) of this subsection and the individual member's participation in that function is personal and substantial;

(ii) Agency level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency level missions or objectives;

(iii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement;

(iv) Clerical functions supporting the conduct of a particular procurement; and

(v) For procurements to be conducted under the procedures of OMB Circular A–76, participation in management studies, preparation of in-house cost estimates, preparation of "most efficient organization" analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

(4) An employee of an agency does not become a procurement official for a particular procurement until the onset of the employee's personal and substantial participation in that particular procurement.

(i) *Property* means supplies as defined in 2.101.

(j)(1) *Proprietary information* means information contained in a bid or proposal or otherwise submitted to the Government by a competing contractor in response to the conduct of a particular Federal agency procurement, or in an unsolicited proposal, that has been marked by the competing

contractors as proprietary information in accordance with applicable law and regulation.

(2) Information shall be considered proprietary information, for purposes of section 27 of the Act, only when—

(i) An attached transmittal document, such as a cover page or the label of a magnetic media storage container, is clearly marked with a restrictive legend; and

(ii) The specific portions of the information whose disclosure the competing contractor desires to restrict are clearly and separately marked.

(3) Proprietary information does not include information—

(i) That is otherwise available without restrictions to the Government, another competing contractor, or the public;

(ii) Contained in bid documents following bid opening (but see 14.404–4); or

(iii) That the contracting officer determines to release in accordance with 3.104–5(d).

(k)(1) *Source selection information* is information, including information stored in electronic, magnetic, audio or video formats, which is prepared or developed for use by the Government to conduct a particular procurement and—

(i) The disclosure of which to a competing contractor would jeopardize the integrity or successful completion of the procurement concerned; and

(ii) Is required by statute, regulation, or order to be secured in a source selection file or other facility to prevent disclosure.

(2) Source selection information is limited to—

(i) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices prior to public bid opening;

(ii) Proposed costs or prices submitted in response to a Federal agency solicitation (for other than sealed bids), or lists of those proposed costs or prices;

(iii) Source selection plans;

(iv) Technical evaluation plans;

(v) Technical evaluations of proposals;

(vi) Cost or price evaluations of proposals;

(vii) Competitive range determinations which identify proposals that have a reasonable chance of being selected for award of a contract;

(viii) Rankings of bids, proposals, or competitors;

(ix) The reports and evaluations of source selection panels or boards or advisory councils; or

(x) Other information marked as "SOURCE SELECTION INFORMATION—SEE FAR 3.104" based upon a case-by-case determination by the Head of the Agency, his designee, or the contracting officer that the information meets the standards in subdivisions (k)(1) (i) and (ii) of this subsection.

(l) *Possible violation* means, for purposes of the certification requirements under 3.104–9, specifically identified or documented circumstances that provide a reasonable basis to believe that a violation of the Act may have occurred. Rumor and hearsay are not, by themselves, a reasonable basis to conclude that a possible violation exists.

3.104–5 Disclosure, protection, and marking of proprietary and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose proprietary or source selection information to any person other than a person authorized by the Head of the Agency to receive such information. A person or entity who does not know if information is proprietary or source selection information, or does not know if the person or entity may disclose or receive such information, shall make the inquiries prescribed at 3.104–6(d).

(b)(1) Proprietary and source selection information shall be protected from unauthorized disclosure in accordance with 14.401, 15.411, 15.413, applicable law, and agency regulations.

(2) Information contained in a bid or proposal that bears the legend required by 3.104–4(j)(2) shall be considered to be proprietary information for purposes of the Act. However, information contained in a bid or proposal that does not bear that legend shall remain subject to the restrictions on disclosure contained in 15.413, 15.509, 24.202, or as otherwise required by law.

(c) In determining whether particular information is source selection information under 3.104–4(k)(2)(x), the originator shall assure that the information meets the criteria in 3.104–4(k)(1) and consult with agency officials as appropriate. Individuals responsible for preparing material that may include information designated as source selection information in accordance with 3.104–4 (k)(2)(x) shall mark the cover page and each page that contains source selection information with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104." Although the material described in 3.104–4(k)(2) (i) through (ix) is considered to be source selection information whether or not marked, all reasonable efforts shall be made to mark such material with this legend.

(d)(1) The head of the agency, or his or her designee, or the contracting officer, has the authority, in accordance with applicable agency regulations or procedures, to authorize persons, or classes of persons, to receive proprietary or source selection information when necessary to the conduct of the procurement.

(2) For contracts and contract modifications in excess of $100,000, the head of the agency, or his or her designee, shall establish procedures to assure that the names of all persons, identification of the classes of persons and, to the maximum extent practicable the names of all individuals within a class of persons, authorized access to proprietary or source selection information at the contracting activity are listed in the contract file.

(3) For contracts and contract modifications expected to exceed $100,000, if proprietary or source selection information is authorized to be released to Government activities outside the contracting activity responsible for the conduct of the procurement, the head of the office receiving the information, or his or her designee, shall maintain a list of persons, a list of classes of persons and, to the maximum extent practicable, the names of all individuals within classes of persons, who have been authorized access to the proprietary or source selection information. The list shall be forwarded to the contracting office responsible for the conduct of the procurement to be included in the contract file.

(4) For release to other than Government employees, see 15.413–2. The names of those individuals shall also be listed in the contract file when the contract or contract modification is expected to exceed $100,000.

(5) The lists prescribed by this subsection shall be forwarded to the contracting officer for inclusion in the contract file within the time specified by the contracting officer.

(e)(1) Except as provided in subparagraph (e)(4) of this subsection, if the contracting officer believes that information marked as proprietary (see 3.104–4(j)) is not proprietary, the competing contractor that has affixed the marking shall be notified in writing and given an opportunity to justify the proprietary marking. If the competing contractor agrees that the material is not proprietary information, or does not respond within the time specified in the notice, the contracting officer may remove the proprietary marking and the information may be released.

(2) After reviewing any justification submitted by the competing contractor, if the contracting officer determines that the proprietary marking is not justified, the contracting officer shall so notify the competing contractor in writing.

(3) Information marked by the competing contractor as proprietary shall not be released until—

(i) The review of the contractor's justification has been completed; or

(ii) The period specified for the contractor's response has elapsed, whichever is earlier.

Thereafter, the contracting officer may release the information.

(4) With respect to technical data that are marked proprietary by a competing contractor, the contracting officer shall generally follow the procedures in 27.404(h).

(f) Nothing in 3.104 prohibits competing contractors from disclosing or authorizing the Government to disclose their company-specific proprietary information to any other person or entity where not otherwise prohibited by law.

(g) Proprietary markings under 3.104 do not limit the Government's use of technical data to which the Government has rights.

(h) Source selection or proprietary information that is properly in the possession of a competing contractor as a result of a prior disclosure that was not prohibited by the Act shall not be considered to have been solicited or obtained, directly or indirectly, in violation of the Act.

(i) Nothing in 3.104 shall be construed to authorize the withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, any board of contract appeals of a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any such release which contains proprietary or source selection information shall clearly notify the recipient that the information or portions thereof are proprietary or source selection information related to the conduct of a Federal agency procurement whose disclosure is restricted by section 27 of the Act.

3.104-6 Restrictions on employment or business opportunity discussions between competing contractors and procurement officials.

(a) *Applicability to procurement officials.* During the conduct of a Federal agency procurement, subsection 27(b)(1) of the Act prohibits an individual who has become a procurement official from knowingly, directly or indirectly, soliciting or accepting from or discussing with any officer, employee, representative, agent, or consultant of a competing contractor, future employment or business opportunity. Subsection 27(b)(1) of the Act also applies to individuals acting as procurement officials on behalf of the procuring agency who are, or are employed by, contractors, subcontractors, consultants, experts, or advisors (other than employees of a competing contractor). The prohibition in subsection 27(b)(1) does not apply to a procurement official—

(1) After the contract has been awarded, the procurement canceled, or the contract modification has been executed;

(2) After the procurement official leaves Government service;

(3) Who is, or is employed by, a contractor, subcontractor, consultant, expert, or advisor, after such procurement official ceases to act on behalf of, or provide advice to, the procuring agency concerning the procurement;

(4) Described in paragraph (c) of this subsection who has received written authorization for recusal from further participation in a procurement, and who has in fact discontinued participation in the procurement.

(5) Whose only communication with a competing contractor is for the purpose of—

(i) Rejecting an unsolicited offer of employment or business opportunity; or

(ii) Advising the competing contractor that he or she must seek recusal in accordance with paragraph (d) of this subsection prior to any discussions regarding the unsolicited offer. A procurement official who wishes to conduct such discussions with the competing contractor shall promptly submit a recusal proposal.

(b) *Applicability to competing contractors.* During the conduct of a Federal agency procurement, subsection 27(a)(1) of the Act prohibits a competing contractor from knowingly, directly or indirectly, offering or promising to, or discussing with, a procurement official any future business or employment opportunity. The prohibition does not apply to—

(1) An initial contact for the sole purpose of determining whether an individual or other entity is able to engage in discussions concerning future employment or business opportunity either because the individual or entity has been recused or is not a procurement official.

(2) A contact or discussion with an individual or other entity who may engage in such contact or discussion under subparagraphs (a)(1) through (a)(4) of this subsection.

(c) *Eligibility for recusal.* An individual or other entity who is a procurement official may be eligible for recusal if the individual or entity has not participated personally and substantially in—

(1) The evaluation of bids or proposals, the selection of sources, or the conduct of negotiations in connection with such solicitation or contract during the period beginning with the issuance of a procurement solicitation and ending with the award of a contract or cancellation of a procurement; or

(2) The evaluation of a proposed modification, or the conduct of negotiations during the period beginning with the negotiation of a modification of a contract and ending with an agreement to modify the contract or a decision not to modify the contract.

(d) *Recusal proposal.* An eligible procurement official who wishes to discuss future employment or business opportunities with a competing contractor during the conduct of a procurement shall submit to the Head of the Contracting Activity (HCA), or his or her designee, prior to initiating or engaging in such discussions, a written proposal of disqualification from further participation in the procurement which relates to that competing contractor. Concurrent copies of the written proposal shall be submitted to the contracting officer, the Source Selection Authority if the contracting officer is not the Source Selection Authority, and the procurement official's immediate supervisor. As a minimum, the proposal shall—

(1) Identify the procurement involved;

(2) Describe the nature of the procurement official's participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the competing contractor and describe its interest in the procurement.

(e) *Suspension from participation in a procurement.* The contracting officer, or the Source Selection Authority if the contracting officer is not the Source Selection Authority, may suspend the individual's or entity's participation in the procurement pending evaluation of the recusal proposal. Notwithstanding submission of a recusal proposal or suspension from participation in a procurement, an individual or entity snall not solicit or engage in discussions of employment or business opportunity until authorized in writing by the HCA or his or her designee.

(f) *Evaluation of recusal proposal.* (1) If the HCA or his or her designee determines that the procurement official's further participation is not essential to the activity's conduct of the procurement and that recusal will not jeopardize the integrity of the procurement process, the HCA may, after consulting with the agency ethics official, grant written approval of the recusal proposal. In evaluating the recusal proposal, the HCA or his or her designee may consider any relevant factors, including—

(i) The importance of the procurement official's role to the completion of the procurement action;

(ii) The procurement official's prior participation in key procurement decisions and actions;

(iii) The timing of the proposal in relation to significant procurement milestones; and

(iv) Potential disruption to the procurement schedule as a result of the procurement official's recusal.

(2) The HCA or his or her designee may request that any person, including the procurement official, the Source Selection Authority, the contracting officer or the procurement official's immediate supervisor, provide any additional information necessary to evaluate the recusal proposal.

(3) Any rejection of the recusal proposal shall be in writing and shall state the basis for rejection. A determination by the HCA or his or her designee to reject a recusal proposal shall be final. Rejection of a Government officer's or employee's recusal proposal shall not be deemed to be an adverse personnel action or be subject to agency or negotiated grievance procedures.

(g) *Duration of recusal.* A procurement official whose recusal proposal has been approved shall be disqualified—

(1) As a minimum, for any period during which future employment or business opportunities with the competing contractor have not been rejected by either the procurement official or the competing contractor; or

(2) For the period the procurement official and competing contractor have an employment or business relationship or an arrangement concerning future employment or business relationships.

(h) *Reinstatement to participation in a procurement.* Subsequent to a period of disqualification, if an agency wishes to reinstate the procurement official to participation in the procurement, the HCA or his or her designee may authorize immediate reinstatement or, in his or her discretion, may authorize reinstatement following whatever additional period of disqualification he or she determines is necessary to ensure the integrity of the procurement process. It is within the discretion of the HCA, or his or her designee, to determine that the procurement official shall not be reinstated to participation in the procurement. In determining that any additional period of disqualification is necessary, the HCA or his or her designee shall consider any factors that might give rise to an appearance that the procurement official acted without complete impartiality with respect to issues involved in the procurement.

3.104–7 Postemployment restrictions applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.

(a) Subsection 27(e)(4) of the Act provides that if a procurement official leaves the Government during the conduct of a procurement expected to result in a contract or modification in excess of $100,000, such official shall certify to the contracting officer that he or she understands the continuing obligation, during the conduct of the procurement, not to disclose propriety or source selection information related to such agency procurement. This certification requirement also applies to individuals acting as procurement officials on behalf of the procuring activity who are, or are employed by, contractors, subcontractors, consultants, experts, or advisors other than employees of the competing contractor when such individuals, during the conduct of the procurement, cease to function as procurement officials for the procurement.

(b) Subsection 27(f)(1)(A) of the Act prohibits a current or former Government officer or employee, as defined in 3.104–4(d), who was a procurement official with respect to a particular procurement, from knowingly participating in any manner in negotiations as an officer, employee, representative, agent, or consultant of a competing contractor leading to the award or modification of the contract for such procurement. This restriction not only includes representing the competing contractor in negotiations with the contracting activity, but also includes providing advice or information for the specific purpose of influencing negotiation strategies. For purposes of this restriction, "negotiation strategies" mean the contractor's approach to the preparation and presentation of its offer or the conduct of negotiations with the Government. This restriction does not apply to providing scientific, technical, or other advice that is unrelated to negotiation strategies. This restriction lasts for 2 years from the date of the individual's last personal and substantial participation in the Federa' agency procurement.

(c) Subsection 27(f)(1)(B) of the Act prohibits a current or former Government officer or employee, as defined in 3.104–4(d), who was a procurement official with respect to a particular procurement, from knowingly participating personally and substantially on behalf of the competing contractor in performance of the contract. To participate "personally and substantially" requires the presence of both direct and significant involvement in the performance of the specific contract. The performance of general engineering, scientific or technical work, or providing general budgetary or policy advice, shall not be considered personal and substantial participation on behalf of a competing contractor in the performance of the contract for which the Government officer or employee is or was a procurement official. Where participation is on behalf of a competing contractor who is a subcontractor, the significance of that participation will be determined in relation to the prime contract. This restriction lasts for 2 years from the date of the last personal and substantial participation in the Federal agency procurement.

(d) The restrictions in paragraphs (b) and (c) of this subsection do not apply to—

(1) Individuals acting as procurement officials on behalf of the procuring agency who are or were, or who are or were employed by, contractors, subcontractors, consultants, experts, or advisors and who are not Government officers or employees as defined in 3.104–4(d).

(2) Participation in the negotiation or performance of any other contract of the competing contractor.

(3) General scientific and technical work on an independent research and development project, unless such work involves the negotiation or performance of a specific contract that the individual worked on as a Government employee.

(4) Participation with respect to a subcontractor who is a competing contractor unless—

(i) The subcontractor is a first or second tier subcontractor and the subcontract is for an amount that is in excess of $100,000; or

(ii) The subcontractor significantly assisted the prime contractor with respect to negotiation of the prime contract; or

(iii) The procurement official involved in the award or modification of the prime contract personally directed or recommended the particular subcontractor as a source for the subcontract; or

(iv) The procurement official personally reviewed and approved the award or modification of the subcontract. A contracting officer's consent, in accordance with part 44, to the placement of a subcontract or, with respect to architect-engineer contracts, the substitution of a subcontractor, associate, or consultant, does not constitute approval of the subcontract, subcontractor, associate, or consultant. Similarly, approval of a contractor's purchasing system does not constitute approval of a particular subcontract or subcontractor.

(5) An individual who has been granted a waiver by the President in accordance with subsection 27(f)(3) of the Act. Waivers under that subsection may be granted only to a civilian officer or employee of the Executive Office of the President who, after his or her Federal Government employment is terminated, is or will be engaged in activities at a Government-owned, contractor-operated entity at which he or she served as an officer or employee immediatley before his or her Federal Government employment began.

(6) An individual whose only personal and substantial participation in the procurement occurred during the period December 1, 1989, through November 30, 1990.

3.104–8 Knowing violations, duty to inquire, and ethics advisory opinions.

(a) *Knowing violations.* Neither a procurement official nor a competing contractor violates the restrictions set forth in 3.104–3 unless the prohibited conduct is engaged in knowingly. For these purposes, conduct is not "knowing" when—

(1) A competing contractor engages in specific conduct after having satisfied the duty to inquire under paragraphs (b), (c), and (d) of this subsection, or when the competing contractor engages in conduct based upon good faith reliance on an agency ethics advisory opinion issued to a current or former procurement official under paragraph (e) of this subsection.

(2) A procurement official engages in specific conduct after having satisfied the duty to inquire under paragraphs (b), (c), and (d) of this subsection or has acted in good faith reliance on an ethics advisory opinion obtained under paragraph (e) of this subsection.

(b) *Duty to inquire—general.* (1) For some procurements, neither competing contractors nor all procurement officials will have knowledge as to when the conduct of a particular procurement has begun. However, certain conduct and activities that are prohibited by the Act would be inappropriate at any time. There are prohibitions on the receipt of gratuities from agency contractors that apply without regard to whether an employee is involved in the conduct of a particular procurement. Similarly, potential contractors should not solicit, and agency personnel should not offer, proprietary or source selection information at any time. However, potential contractors may offer, and Government employees may solicit, employment except as prohibited by law.

(2) Agency personnel shall be presumed to know the procurements for which they are procurement officials. Contractor personnel are presumed to know the procurements for which the organization they represent is reasonably likely to be competing. Individuals who do not know whether they are procurement officials, or whether the organization they represent is or is reasonably likely to become a competing contractor, should defer any discussions regarding employment until these questions are resolved by consulting appropriate parties within their respective organizations. Agency personnel who cannot ascertain, after discussions with the contracting officer, or the Source Selection Authority if the contracting officer is not the Source Selection Authority, whether they are procurement officials, may request an ethics advisory opinion under paragraph (e) of this subsection for purposes of determining their status.

(b) *Duty to inquire—employment discussions.* (1) A contractor who wishes to discuss employment opportunities with an individual whose duties and functions may make that individual a procurement official (see 3.104-4(h)) should ask if that individual is a procurement official for a procurement for which the contractor is a competing contractor or is likely to become a competing contractor before conducting any discussion related to employment. A competing contractor shall not be considered to have knowingly violated the prohibitions set forth in subsection 27(a)(1) of the Act (see 3.104–3(a)(1)) if the contractor has made an inquiry in good faith of the possible procurement official and has been advised that the individual is not a procurement official for any procurement for which the contractor is or is reasonably likely to become a competing contractor, or is advised that the procurement official has been recused from participation in the procurement in accordance with 3.104–6.

(2) A procurement official may not solicit or engage in employment or business opportunity discussions with a competing contractor or a contractor who is reasonably likely to become a competing contractor unless the procurement official has been recused from participation in the procurement in accordance with the procurements at 3.104–6.

(3) A procurement official who wishes to solicit employment from, or discuss employment with, a contractor and does not know if the contractor is or is reasonably likely to become a competing contractor should ask whether the contractor is or is reasonably likely to become a competing contractor on any procurement for which the individual is serving as a procurement official. The procurement official—

(i) May rely on the contractor's representation that it is not or is not likely to become a competing contractor, and enter into employment or business opportunity dicussions with that contractor; or

(ii) Shall not, if the contractor represents that it is or is reasonably likely to become a competing contractor, enter into employment or business opportunity dicussions with that contractor. If the procurement official is an eligible procurement official as defined at 3.104–6(c), and desires to pursue dicussions with that contractor, the procurement official must first seek and obtain written authorization for recusal in accordance with the procedures at 3.104–6 before entering into further dicussions with that contractor.

(4) A procurement official shall not be considered to have knowingly violated the prohibitions set forth in subsection 27(b)(1) of the Act (see 3.104–3(b)(1)) if—

(i) The procurement official has made inquiry in good faith of the potential contractor, and has been advised that the contractor is not or will not be a competing contractor on a procurement under the responsibility of the procurement official; or

(ii) The procurement official has been recused from participation in the procurement.

(d) *Duty to inquire-propritetary and source selection information.* (1) A competing contractor shall not be considered to have knowingly violated the prohibitions in subsection 27(a)(3) of the Act (see 3.104–3(a)(3)) if, before proprietary or source selection information was solicited or obtained, the contractor—

(i) Had made an inquiry in good faith of the contracting officer (or, if a contracting officer has not been appointed, the Head of the Agency or his or her designee) regarding whether information was proprietary or source selection information; and

(ii) Had been advised by such official that the information was not proprietary or source selection information.

(2) A procurement official shall not be considered to have knowingly violated the prohibitions in subsection 27(b)(3) of the Act (see 3.104–3(b)(3)) if, prior to disclosing information, the procurement official had made an inquiry in good faith of the contracting officer (or, if a contracting officer has not been appointed, the Head of the Agency or his or her designee) and had been advised that—

(i) The information was not proprietary or source selection information; or

(ii) The information is proprietary or source selection information and the individual to whom the procurement official wishes to disclose the information has been authorized access to such information by the Head of the Agency or the contracting officer.

(3) No person who is given authorized or unauthorized access to proprietary or source selection information shall be considered to have knowingly violated the prohibition in subsection 27(d) or the Act (see 3.104–3(c)) if, before disclosing such information, the person:

(i) Had made an inquiry in good faith of the contracting officer (or, if a contracting officer has not been appointed, the Head of the Agency or his or her designee) as to whether or not the individual to whom he seeks to diclose the proprietary or source selection information has been authorized access to such information by the Head of the Agency or the contracting officer; and

(ii) Had been adivsed by such official that such individual has been so authorized.

(e) *Ethics advisory opinions.* (1) An employee or former employee of an agency who is or was a procurement official may request an ethics advisory opinion from the agency ethics official as to whether specific conduct which has not yet occurred woudl violate section 27 of the Act. An individual who cannot determine, after dicussions with the contracting officer (see subparagraph (b)(2) of this subsection), if he or she is or was a procurement official may request an ethics advisory opionion for the purpose of determining his or her status. Ethics advisory opinions may not be obtained, however, for the purpose of establishing whether—

(i) Prior to bid opening or receipt of proposals, a particular contractor is a competing contractor;

(ii) Items of information constitute proprietary or source selection information as defined in 3.104–4; or

(iii) Proprietary or source selection information may be disclosed.

Questions regarding proprietary and source selection information shall be referred to the contracting officer or, if a contracting officer has not been appointed, the Head of the Agency or his or her designee (se subparagraphs (d)(1) through (d)(3) of this subsection). Questions regarding a contractor's status as a competing contractor shall be resolved in accordance with subparagraph (c)(3) of this subsection.

(2) The request for an advisory opinion shall be submitted in writing, shall be dated and signed, and shall include all information reasonably available to the procurement official or former procurement official that is relevant to the inquiry. As a minimum, the request shall include—

(i) Information about the procurement in which the individual was or is involved, including contract or solicitation numbers, dates of solictation or award, and a description of the goods or services procured or to be procured;

(ii) Information about the individual's participation in the procurement, including the dates or time periods of that participation, and the nature of the individual's duties or responsibilities;

(iii) Information about the competing contractor who would be a party to the proposed conduct, and the nature of the competing contractor's interest in the procurement.

(iv) A description of the possible gratuity or other thing of value if the request concerns conduct that might violate the prohibition of subsection 27(b)(2) of the Act. It shall be the responsibility of the individual requesting an advisory opinion to furnish an appraisal or good faith estimate of market value where the value of an item is in question.

(v) Specific information about the particular duties to be performed on behalf of the competing contractor if the request concerns conduct that might violate either or both of the prohibitions of subsection 27(f) of the Act. Where the issue concerns whether employment with a subcontractor is permissible under subsection 27(f)(2), the request shall include information about the subcontract level and dollar amount, the subcontractor's role in assisting the prime contractor in negotiating the prime contract, and the individual's role in directing or recommending the subcontractor to the prime contractor as a source for the subcontract or reviewing and approving the award or modification of the subcontract.

(3) Within 30 days after the date a request containing complete information is received, or as soon thereafter as practicable, the agency ethics official shall issue an opinion as to whether proposed conduct is proper or would violate section 27 of the Act.

(i) Where complete information is not included in the request, the agency ethics official may ask the requester to provide any information reasonably available to that person, and the 30-day period will run from the date that additional information is received. Additional information may also be requested from other persons, including the Source Selection Authority, the contracting officer, or the requester's immediate supervisor.

(ii) Where the opinion cannot be issued within 30 days, the reason for the delay will be documented in the file. Acceptable reasons for delay include, but are not limited to, the necessity for the agency ethics official to independently develop information not reasonable available to the requester, or to verify questionably information furnished by the requester.

(iii) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(4) A copy of the request and ethics advisory opinion shall be retained for a period of 6 years. Agencies shall not provide copies of the advisory opinions to any person other than the requester, except with the express authorization of the requester or where release is otherwise permitted by law.

(5) Where the requester engages in conduct in good faith reliance upon an ethics advisory opinion, or a competing contractor engages in conduct based upon good faith reliance on the requester's ethics advisory opinion, neither the requester nor the competing contractor shall be found to have knowingly violated the restriction in issue. Where the requester or the competing contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information provided by the requester, their reliance upon the opinion will not be deemed to be in good faith.

3.104-9 Certification requirements.

(a) *Applicability.* Subsection 27(e) of the Act requires certifications, prior to the award of a Federal agency contract or contract modification for property or services in excess of $100,000 awarded or executed on or after December 1, 1990, by the officer or employee of the contractor responsible for the offer or bid for that particular contract or contract modification for property or services, and by the contracting officer for that procurement.

(b) *Competing contractor certification.* (1) Except as provided in 3.104-9(f), contracting officers shall require the competing contractor to—

(i) Certify in writing to the contracting officer responsible for the procurement that, to the best of his or her knowledge and belief, such officer or employee of the competing contractor has no information concerning a violation or possible violation of subsections 27 (a), (b), (d), or (f) of the Act (see 3.104-3) as implemented in the FAR; or

(ii) Disclose to such contracting officer any and all such information, and certify in writing to such contracting officer that any and all such information has been disclosed; and

(iii) Certify in writing to such contracting officer that, to the best of his or her knowledge and belief, each officer, employee, agent, representative, and consultant of such competing contractor who, on or after December 1, 1990, has participated personally and substantially in the preparation or submission of such bid or offer, or in a modification of a contract, as the case may be, has certified in writing to such competing contractor that he or she—

(A) Is familiar with, and will comply with, the requirements of subsection 27(a) of the Act (see 3.104-3) as implemented in the FAR; and

(B) Will report immediately to the officer or employee of the competing contractor responsible for the offer or bid for any contract or the modification of a contract, as the case may be, any information concerning a violation or possible violation of subsections 27 (a), (b), or (f) of the Act (see 3.104-3), occuring on or after December 1, 1990, as implemented in the FAR.

(2) Subcontractors are not required to submit the certificate required by subsection 27(e)(1) of the Act. However, nothing in 3.104 precludes a competing contractor from requesting certifications from its subcontractors.

(3) The signed certifications prescribed in 3.104-10 shall be submitted as follows:

(i) *Procurements exceeding $100,000 using sealed bidding procedures:* (A) For procurements using sealed bidding procedures, the signed certifications shall be submitted by each bidder with the bid submission, except for procurements using two-step sealed bidding procedures (see subpart 14.5). For those procurements, the certifications shall be submitted with submission of the step two sealed bids. A certificate is not required for indefinite delivery contracts (see subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed $100,000.

(B) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract or contract modification and all options (see 3.104-4(e)) exceeds $100,000.

(C) Failure of a bidder to submit the signed certificate with its bid render the bid nonresponsive.

(ii) *Procurements exceeding $100,000 using other than sealed bidding procedures:* (A) For procurements, including contract modifications, made using procedures other than sealed bidding, the signed certifications shall be submitted by the successful offeror to the contracting officer within the time period specified by the contracting officer when requesting the certificates, except as provided in subdivisions (b)(3)(ii) (B) through (F) of this subsection. In no event shall the certificate be submitted subsequent to award of a contract or execution of a contract modification.

(B) For letter contracts, other unpriced contracts, or unpriced contract modifications, whether or not the unpriced contract or modification contains a maximum or not to exceed price, the signed certifications shall be submitted prior to the award of the letter contract, unpriced contract, or unpriced contract modification, and prior to the definitization of the letter contract or the establishment of the price of the unpriced contract or unpriced contract modification. The second certification shall apply only to the period between award of the letter contract and execution of the document definitizing the letter contract, or award of the unpriced contract or unpriced contract modification and execution of the document establishing the definitive price of such unpriced contract or unpriced contract modification.

(C) For basic ordering agreements—prior to the execution of a priced order; prior to the execution of an unpriced order, whether or not the unpriced order contains a maximum or not to exceed price; and prior to establishing the price of an unpriced order. The second certificate to be submitted for unpriced orders shall apply only to the period between award of the unpriced order and execution of the document establishing the definitive price for such order.

(D) A certificate is not required for indefinite delivery contracts (see subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed $100,000.

(E) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract or contract modification and all options exceeds $100,000.

(F) For purposes of contracts entered into under section 8(a) of the SBA, the business entity with whom the SBA contracts, and not the SBA, shall be required to comply with the certification requirements of subsection 27(e). The SBA shall obtain the signed certificate from the business entity, and forward the certificate to the contracting officer prior to the award of a contract to the SBA.

(G) Failure of an offeror to submit the signed certificate within the time prescribed by the contracting officer is a failure to comply with a material requirement of the solicitation and shall cause the offer to be rejected.

(c) *Contracting officer certifications.* (1) In accordance with subsection 27(e)(2) of the Act, a Federal agency may not award a contract for the procurement of property or services, or agree to a modification of any contract, if the contract or contract modification exceeds $100,000, unless the contracting officer responsible for such procurement—

(i) Certifies in writing to the head of such agency that, to the best of his or her knowledge and belief, the contracting officer has no information concerning a violation or possible violation of subsections 27 (a), (b), (d), or (f) of the Act (see 3.104-3), as implemented in the FAR, pertaining to such procurement; or

(ii) Discloses to the head of such agency any and all such information and certifies in writing that any and all such information has been disclosed.

(2) Immediately prior to contract award or execution of a contract modification, the contracting officer shall execute the following certificate and maintain the completed certificate in the contract file:

Contracting Officer Certificate of Procurement Integrity

1. I, [*Name of contracting officer*], hereby certify that, to the best of my knowledge and

belief, with the exception of any information described in this certificate, have no information concerning a violation or possible violation of subsection (a), (b), (d), or (f) of section 27 of the Office of Federal Procurement Policy Act* (41 U.S.C. 423), as implemented in the FAR, occurring during the conduct of this procurement (contract/modification number).

2. Violations or possible violations:
(Continue on plain bond paper if necessary, and label Contracting Officer Certificate of Procurement Integrity (Continuation Sheet), ENTER "NONE" IF NONE EXISTS.)

(Signature of contracting officer and date)

*Section 27, as amended, became effective on December 1, 1990. THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.
(End of certification)

(d) *Additional certifications.* (1) Subsection 27(e)(3) of the Act provides that the head of a Federal agency may require any procurement official or any competing contractor, at any time during the conduct of any Federal agency procurement of property or services—

(i) To certify in writing that, to the best of his or her knowledge and belief, such procurement official or the officer or employee of the competing contractor responsible for the offer or bid for a contract or the modification of a contract, has no information concerning a violation or possible violation of subsections 27 (a), (b), (d), and (f) of the Act (see 3.104–3), as implemented in the FAR, occurring during the procurement; or

(ii) To disclose any and all such information and to certify in writing that any and all such information has been disclosed.

(2) In addition to the Head of the Agency, additional certifications may be required only by the HCA or his or her designee, provided that the designee is an individual of General Officer, Flag, SES or equivalent rank and is at least one organizational level above the contracting officer.

(3) Any additional certifications shall be submitted to the contracting officer unless another person is specified by the individual requiring the additional certifications.

(4) Each procurement official or competing contractor shall be afforded a reasonable time to comply with the additional certification requirements.

(5) A competing contractor's failure to submit any additional certifications that may be required shall cause the competing contractor's offer to be rejected.

(e) *Recordkeeping requirements.* (1) In accordance with subsections 27(e)(5) (A) and (B) and 27(e)(7)(A) of the Act, the contracting officer responsible for the award or modification of a contract in excess of $100,000 shall maintain, as part of the contract file—

(i) All competing contractor, contracting officer, and procurement official certifications required by subsections 27 (e)(1), (e)(2), and (e)(4) of the Act, and any additional certifications required by subsection 27(e)(3) of the Act for that particular procurement.

(ii) All certifications required by subsection 27(l) of the Act (see 3.104–12) from individuals acting as procurement officials on behalf of the procuring agency, who are, or are employed by, contractors, subcontractors, consultants, experts, or advisors (other than competing contractors).

(iii) A record of all persons who have been authorized by the Head of the Agency or the contracting officer to have access to proprietary or source selection information regarding the procurement. When classes of persons have been authorized, this record shall identify the class of persons so authorized and, to the maximum extent practicable, the names of the individuals within the class.

(2) Certifications obtained from Government officers or employees (see 3.104–4(d)) who are required to submit a certification under subsection 27(l) of the Act shall be maintained in accordance with agency procedures.

(3) Ethics advisory opinions shall be retained, in accordance with agency procedures, for a period of 6 years.

(f) *Exceptions to certification requirements.* Pursuant to subsection 27(e)(7)(B) of the Act, certification requirements set forth in 3.104–9 do not apply—

(1) To contracts with a foreign government or an international organization that are not required to be awarded using competitive procedures pursuant to section 303(c)(4) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(4)), or section 2304(c)(4) of title 10, United States Code; or

(2) In an exceptional case, when the Head of the Agency concerned determines in writing that the certification requirement should be waived. This authority may not be delegated. The contracting officer shall submit the request for waiver in accordance with agency procedures. The request shall clearly identify the procurement or class of procurements and provide the rationale for the requested waiver. The decision of the agency head shall state the reasons for approving or disapproving the waiver. The agency head shall promptly notify Congress in writing of each waiver approved. Procurements for which a waiver may be appropriate include—

(i) Where prices are set by law or regulation;

(ii) Where terms and conditions of a contract are specified by an agreement with a foreign government or governments;

(iii) Where supplies or services are provided by foreign nationals to United States facilities overseas for use outside the United States;

(iv) Where a foreign government specifies a particular U.S. contractor to satisfy its requirements (see 6.302–4(b)(1)).

3.104–10 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at 52.203–8, Requirement for Certificate of Procurement Integrity, in all solicitations where the resultant contract award is expected to exceed $100,000, unless, pursuant to 3.104–9(f), a certification is not required or a waiver has been granted. For procurements using other than sealed bidding procedures, the contracting officer shall substitute Alternate I for paragraph (c) of that provision.

(b) The contracting officer shall insert the clause at 52.203–9, Requirement for Certificate of Procurement Integrity-Modification, in all solicitations where the resultant contract award is expected to exceed $100,000, all contracts in excess of $100,000, and modifications to contracts which do not already contain the clause when the modification is expected to exceed $100,000, unless, pursuant to 3.104–9(f), a certificate is not required or a waiver has been granted.

(c) The contracting officer shall insert the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, in all solicitations where the resultant contract award is expected to exceed the small purchase limitation (see 13.000) and all contracts and modifications to contracts exceeding that limitation which do not already contain the clause when the modification is expected to exceed that limitation.

(d) The contracting officer shall insert the clause at 52.203–13, Procurement Integrity-Service Contracting, in all solicitations and contracts where the Government is procuring or may order the services of contractor employees to

serve as procurement officials for another agency procurement. In addition, the contracting officer shall insert the provisions and clauses at 52.203–8, 52.203–9, and 52.203–10 in such solicitations and contracts as prescribed in this subsection.

3.104–11 Processing violations or possible violations.

(a) If the contracting officer makes or receives a disclosure of information pursuant to subsection 27(e) of the Act or otherwise receives or obtains information of a violation or possible violation of subsections 27 (a), (b), (d), or (f) of the Act (see 3.104–3), the contracting officer shall determine whether the reported violation or possible violation has any impact on the pending award or selection of the source therefor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer shall forward the information concerning the violation or possible violation, accompanied by appropriate documentation supporting that conclusion, to an individual designated in accordance with agency procedures. With the concurrence of that individual, the contracting officer shall, without further approval, proceed with the procurement. The individual concurring with that conclusion shall forward all information relating to the violation or possible violation to the HCA, or his or her designee, to satisfy the disclosure requirements of subsection 27(e)(2) of the Act.

(2) If the individual reviewing the contracting officer's conclusion does not agree with that conclusion, he or she shall advise the contracting officer to withhold award and shall promptly forward the information and documentation to the HCA or his or her designee.

(3) If the contracting officer determines that the violation or possible violation impacts the procurement, the contracting officer shall promptly forward the information to the HCA or his or her designee.

(b) The HCA or his or her designee receiving any information describing an actual or possible violation of subsection 27 (a), (b), (d), or (f) of the Act, shall review all information available and take appropriate action in accordance with agency procedures, such as—

(1) Advising the contracting officer to continue with the procurement;

(2) Causing an investigation to be conducted;

(3) Referring the information disclosed to appropriate criminal investigative agencies;

(4) Determining that a violation occurred.

(c) Prior to determining that a competing contractor (see 3.104–4(b)) has violated the Act, the HCA or his or her designee may request information from appropriate parties regarding the violation or possible violation when considered in the best interests of the Government.

(d) If the HCA or his or her designee determines that the prohibitions of section 27 of the Act have been violated, then the HCA or his or her designee may direct the contracting officer to—

(1) If a contract has not been awarded, or a contract modification has not been executed—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded or a contract modification has been executed—

(i) Effect appropriate contractual remedies, including profit recapture as provided for in the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity;

(ii) Void or rescind the contract, or contract modification; or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspension and debarment official.

(e) The HCA or his or her designee shall, in his or her best judgment, recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA or his or her designee receiving information concerning a violation or possible violation determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of the Government, he or she may authorize the contracting officer to award the contract or execute the contract modification after notification to the Head of the Agency in accordance with agency procedures.

(g) The designee of the HCA referenced in paragraphs (a), (b), (c), (d), and (e) of this subsection must be an individual at least one organizational level above the contracting officer and be of General Officer, Flag, SES or equivalent rank.

3.104–12 Ethics program training requirements.

(a) Subsection 27(l) of the Act provides that the head of each Federal agency shall establish a procurement ethics training program for its procurement officials. The program shall, as a minimum—

(1) Provide for the distribution of a written explanation of subsections 27 (a) through (f) of the Act to such procurement officials; and

(2) Require each such procurement official, as a condition of serving as a procurement official, to certify in writing that he or she is familiar with the provisions of subsections 27 (b), (c), and (e) of the Act and will not engage in any conduct prohibited by such subsections, and will report immediately to the contracting officer any information concerning a violation or possible violation of subsection 27 (a), (b), (d), or (f) of the Act as implemented in the FAR.

(3) Certification made under section 27 as originally enacted and implemented in the FAR do not satisfy the certification requirements of subparagraph (a)(2) of this subsection. Agencies may use Optional Form 333 at 53.302–333 to obtain the certifications required by subparagraph (a)(2) of this subsection.

(b) Contractors, subcontractors, consultants, experts, or advisors (other than competing contractors) are responsible for establishing a procurement ethics training program for individuals in their employ who may serve as procurement officials on behalf of a Federal agency. The program shall, as a minimum, comply with subparagraphs (a)(1) and (a)(2) of this subsection.

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.802 is amended by revising paragraph (e) to read as follows:

4.802 Contract files.

* * * * *

(e) Contents of contract files that are proprietary or source selection information as defined in 3.104–4 shall be protected from disclosure to unauthorized persons (see 3.104–5).

4. Section 4.803 is amended by adding paragraphs (a)(42) and (a)(43) to read as follows:

4.803 Contents of contract files.

(a) * * *

(42) All certifications required by 3.104–9(e)(1).

(43) For contracts and contract modifications in excess of $100,000, a

record of all persons or classes of persons authorized to have access to proprietary or source selection information and, to the maximum extent practicable, the names of all individuals within the class.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

5. Section 9.106–3 is amended by revising paragraph (b) to read as follows:

9.106–3 Interagency preaward surveys.

* * * * *

(b) For contracts or contract modifications expected to exceed $100,000, the surveying activity shall furnish with its report a list of all persons, classes of persons, and to the maximum extent practicable, the names of all individuals within the class, who have been provided access to the proprietary or source selection information (see 3.104–5(d)) at or by the surveying activity.

PART 14—SEALED BIDDING

6. Section 14.211 is amended in paragraph (a) by adding a fourth sentence to read as follows:

14.211 Release of acquisition information.

(a) * * * See 3.104 regarding requirements for proprietary and source selection information including access to and disclosure thereof.

* * * * *

7. Section 14.404–2 is amended by adding paragraph (m) to read as follows:

14.404–2 Rejection of individual bids.

* * * * *

(m) A bid shall be rendered nonresponsive and rejected if the bidder fails to submit the signed certificate (see 3.104–9) required by section 27 of the Office of Federal Procurement Policy Act, as amended (42 U.S.C. 423), with its bid.

PART 15—CONTRACTING BY NEGOTIATION

8. Section 15.413 is added to read as follows:

15.413 Disclosure and use of information before award.

See 3.104 for statutory and regulatory requirements related to the disclosure of proprietary and source selection information.

15.413–1 [Amended]

9. Section 15.413–1 is amended in paragraph (a) by removing the words "not having a legitimate interest" and inserting in their place "except as otherwise authorized in accordance with 3.104 (for procedures regarding requests for information from Members of Congress, see 5.403)"; and in paragraph (c) by removing the reference "15.407(c)(8)" and inserting in its place "3.104".

10. Section 15.413–2 is amended by adding paragraph (f)(6) to read as follows:

15.413–2 Alternate II.

* * * * *

(f) * * *

(6) Prior to release of a proposal, the contracting officer obtains from the evaluator the certificate(s) required by 3.104–12.

* * * * *

15.508 [Amended]

11. Section 15.508 is amended in paragraph (b) by removing the reference "(see 15.509)" and inserting in its place "(see 15.509 and 3.104)".

12. Section 15.509 is amended in paragraph (d) by revising the first sentence under "Unsolicited Proposal, Use of Data Limited"; by revising paragraph (f)(4); and in paragraph (h) by revising the second sentence to read as follows:

15.509 Limited use of data.

* * * * *

(d) * * *

Unsolicited Proposal, Use of Data Limited

All Government personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data in accordance with 3.104, and is not duplicated, used, or disclosed in whole or in part for any pupose other than evaluation of the proposal, without the written permission of the offeror. * * *

* * * * *

(f) * * *

(4) Require any non-Government evaluator to give a written agreement stating that data in the proposal will not be disclosed to others outside the Government, and to complete the certification required by 3.104–9.

* * * * *

(h) * * * The coordinating office shall—

(1) Clearly mark the cover sheet with the legend in 15.509(d) or as modified in 15.509(f);

(2) Obtain a written agreement from any non-Government evaluator stating that data in the proposal will not be disclosed to persons outside the Government; and

(3) Obtain the certifications required by 3.104–9 and a listing of all persons authorized access to proprietary information by the activity performing the evaluation.

13. Section 15.608 is amended by adding paragraph (b)(5) to read as follows:

15.608 Proposal evaluation.

* * * * *

(b) * * *

(5) A violation or possible violation of section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), has occurred (see 3.104).

* * * * *

14. Section 15.610 is amended by adding new paragraph (e); by removing paragraph (d) introductory text and paragraph (d)(1); by redesignating existing paragraphs (d)(2) and (d)(3) as new paragraphs (e)(1) and (e)(2); and by adding new paragraph (d) to read as follows:

15.610 Written or oral discussion.

* * * * *

(d) The contracting officer and other Government personnel involved shall not engage in technical leveling (i.e., helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal).

(e) The following conduct may constitute prohibited conduct under section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), and subpart 3.104 to which civil and criminal penalties and administrative remedies apply.

* * * * *

15. Section 15.612 is amended by revising paragraph (e) to read as follows:

15.612 Formal source selection.

* * * * *

(e) *Safeguarding information.* Consistent with part 24 and subpart 3.104, agencies shall exercise particular care to protect source selection information.

(1) During the source selection process, disclosure of proprietary or source selection information shall be governed by 3.104–5 and applicable agency regulations. After the source selection, releasing authority shall be as prescribed in agency procedures. In all cases, agency procedures should prescribe the releasing authority.

(2) Government personnel shall not contact or visit a contractor regarding a proposal under source selection evaluation, without the prior approval of

the source selection authority (see 3.104 for additional restrictions).

* * * * *

16. Section 15.805–5 is amended by revising paragraph (k) to read as follows:

15.805–5 Field pricing support.

* * * * *

(k) For contracts and contract modifications expected to exceed $100,000, activities submitting field pricing reports, including audit and technical reports, shall furnish with each report a list of all persons, or classes of persons, and, to the maximum extent practicable, the names of the individuals within the class, who have been provided access to the proprietary or source selection information (see 3.104–5(d)) at or by the activity.

PART 37—SERVICE CONTRACTING

17. Section 37.103 is amended by adding paragraph (c) to read as follows:

37.103 Contracting officer responsibility.

* * * * *

(c) Verify that the contract file contains the certifications required of contractor employees serving as Government procurement officials (see 3.104–9).

37.207 [Amended]

18. Section 37.207 is amended by inserting at the end of paragraph (d) after the semicolon, and word "and"; by removing at the end of paragraph (e) "; and" and inserting a period; and by removing paragraph (f).

37.208 [Removed]

19. Section 37.208 is removed.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

20. Section 37.203–8 is revised to read as follows:

52.203–8 Requirement for Certificate of Procurement Integrity.

As prescribed in 3.104–10(a), insert the following provision:

Requirement for Certificate of Procurement Integrity (SEP 1990)

(a) *Definitions.* The definitions at FAR 3.104–4 are hereby incorporated in this provision.

(b) *Certifications.* As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:

Certificate of Procurement Integrity

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation of possible violation of subsection 27(a), (d), or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (solicitation number).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [Name of Offeror] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations:
(Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet), ENTER NONE IF NONE EXIST)

_____

_____

_____

_____

(4) I agree that, if awarded a contract under this solicitation, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this provision.

[Signature of the officer or employee responsible for the offer and date]

[Typed name of the officer or employee responsible for the offer]

*The Act became effective on December 1, 1990.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(c)(1) For procurements using sealed bidding procedures, the signed certifications shall be submitted by each bidder with the bid submission except for procurements using two-step sealed bidding procedures (see subpart 14.5). For those procurements, the certifications shall be submitted with submission of the step two sealed bids. A certificate is not required for indefinite delivery contracts (see subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed $100,000.

(2) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract and contract modification and all options (see 3.104–4(e)) exceeds $100,000.

(3) Failure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive.

(d) Pursuant to FAR 3.104–9(d), the Offeror may be requested to execute additional certifications at the request of the Government. Failure of an Offeror to submit the additional certifications shall cause its offer to be rejected.

(e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of an award under this solicitation. However, the Government, after evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interests of the Government, such as disqualification of the Offeror.

(f) In making the certification in subparagraph (b)(2) of the certificate, the officer or employee of the competing contractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing contractor, supplemented by periodic training. These certifications shall be maintained by the Contractor for 6 years from the date a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

(g) Certifications under paragraphs (b) and (d) of this provision are material representations of fact upon which reliance will be placed in awarding a contract.

(End of provision)

Alternate I (Sep. 1990). Procurements using other than sealed bidding procedures:

(c) For procurements, including contract modifications, in excess of $100,000 made using procedures other than sealed bidding, the signed certifications shall be submitted by the successful Offeror to the Contracting Officer within the time period specified by the Contracting Officer when requesting the certificates except as provided in subparagraphs (c)(1) through (c)(5) of this clause. In no event shall the certificate be submitted subsequent to award of a contract or execution of a contract modification:

(1) For letter contracts, other unpriced contracts, or unpriced contract modifications, whether or not the unpriced contract or modification contains a maximum or not to exceed price, the signed certifications shall be submitted prior to the award of the letter contract, unpriced contract, or unpriced contract modification, and prior to the definitization of the letter contract or the establishment of the price of the unpriced contract or unpriced contract modification. The second certification shall apply only to the period between award of the letter contract and execution of the document definitizing the letter contract, or award of the unpriced contract or unpriced contract modification and execution of the document establishing the definitive price of such unpriced contract or unpriced contract modification.

(2) For basic ordering agreements, prior to the execution of a priced order; prior to the execution of an unpriced order, whether or not the unpriced order contains a maximum or not to exceed price; and, prior to establishing the price of an unpriced order. The second certificate to be submitted for

unpriced orders shall apply only to the period between award of the unpriced order and execution of the document establishing the definitive price for such order.

(3) A certificate is not required for indefinite delivery contracts (see subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed $100,000.

(4) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract or contract modification and all options (see 3.104–4(e)) exceeds $100,000.

(5) For purposes of contracts entered into under section 8(a) of the SBA, the business entity with whom the SBA contracts, and not the SBA, shall be required to comply with the certification requirements of subsection 27(e). The SBA shall obtain the signed certificate from the business entity and forward the certificate to the Contracting Officer prior to the award of a contract to the SBA.

(6) Failure of an Offeror to submit the signed certificate within the time prescribed by the Contracting Officer shall cause the offer to be rejected.

21. Section 52.203–9 is revised to read as follows:

52.203–9 Requirement for Certificate of Procurement Integrity—Modification

As prescribed in 3.104–10(b), insert the following clause:

Requirement for Certificate of Procurement Integrity—Modification (Sep. 1990)

(a) *Definitions.* The definitions set forth in FAR 3.104–4 are hereby incorporated in this clause.

(b) The Contractor agrees that it will execute the certification set forth in paragraph (c) of this clause when requested by the Contracting Officer in connection with the execution of any modification of this contract.

(c) *Certification.* As required in paragraph (b) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification:

Certificate of Procurement Integrity—Modification (Sep. 1990)

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended * (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (contract and modification number).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [Name of Offeror] who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations:
(Continue on plain bond paper if necessary and label Certificate of Procurement Integrity—Modification (Continuation Sheet), enter NONE if none exists)

_____

_____

_____

[Signature of the officer or employee responsible for the modification proposal and date]

[Typed name of the officer or employee responsible for the modification proposal]

* The Act became effective on December 1, 1990.

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(End of certification)

(d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing Contractor responsible for the offer or bid, may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the contractor.

(e) The certification required by paragraph (c) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

(End of clause)

22. Section 52.203–10 is revised to read as follows:

52.203–10 Price or Fee Adjustment for Illegal or Improper Activity.

As prescribed in 3.104–10(c) insert the following clause:

Price or Fee Adjustment for Illegal or Improper Activity (SEP 1990)

(a) The Government, at its election, may reduce the price of a fixed-price type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b)(5) of this clause.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be—

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee conrtracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.

(3) For cost-plus-award-fee contracts—

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

23. Sections 52.203–13 is added to read as follows:

52.203–13 Procurement Integrity-Service Contracting.

As prescribed in 3.104–10(d), insert the following clause:

Procurement Integrity—Service Contracting (Sep 1990)

(a) *Definitions.* The definitions in FAR 3.104–4 are hereby incorporated in this clause.

(b) The Contractor shall establish a procurement ethics training program for its employees serving as procurement officials. The program shall, as a minimum—

(1) Provide for the distribution of written explanations of the provisions of section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR to such employees; and

(2) Require each such employee, as a condition of serving as a procurement officials, to certify to the Contracting Officer that he or she is familiar with the provisions of the Act, as implemented in the FAR, and will not engage in any conduct prohibited by subsection 27 (a), (b), (d), or (f) of the Act, as implemented in the FAR, and will report immediately to the Contracting Officer any information concerning a violation or possible violation of the prohibitions.

(c) Pursuant to FAR 3.104–9(d), a Contractor employee who is serving as a procurement official may be requested to execute additional certifications.

(d) If a Contractor employee serving as a procurement official ceases performance of these duties during the conduct of such procurement expected to result in a contract or contract modifications in excess of $100,000, such employee shall certify to the Contracting Officer that he or she understands the continuing obligation, during the conduct of the agency procurement, not to disclose proprietary or source selection information related to such agency procurement.

(End of clause)

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52.237–9 [Removed and Reserved]

24. Section 52.237–9 is removed and reserved.

PART 53—FORMS

25. Section 53.203 is amended by revising the title and by adding paragraph (b) to read as follows:

53.203 Improper business practices and personnel conflicts of interest.

* * * * *

(b) *OF 333 (9/90), Procurement Integrity Certification for Procurement Officials.* OF 333 is prescribed for use, as specified in 3.104–12(a)(3).

26. Section 53.302–333 is added to read as follows:

§ 53.302-333 Procurement Integrity Certification for Procurement Officials.

PROCUREMENT INTEGRITY CERTIFICATION FOR PROCUREMENT OFFICIALS

As a condition of serving as a procurement official, I _____
(typed or printed name)
_____ hereby certify that I am familiar with the provisions of subsections 27(b), (c), and (e) of the Office of Federal Procurement Policy Act (41 USC 423) as amended by section 814 of Public Law 101-189. I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act and applicable implementing regulations. A written explanation of subsections 27(a) through (f) has been made available to me. I understand that, should I leave the Government during the conduct of a procurement for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to that procurement and a requirement to so certify.

SIGNATURE OF PROCUREMENT OFFICIAL	DATE
DEPARTMENT OR AGENCY	OFFICE TELEPHONE NUMBER

This form is authorized for use and local reproduction through December 31, 1990.

OPTIONAL FORM 333 (9-90)
Prescribed by GSA - FAR (48 CFR) 53.203(h)

[FR Doc. 90-21008 Filed 9-5-90; 8:45 am]
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Reader Aids

Federal Register

Vol. 55, No. 173

Thursday, September 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 hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

35885-36256.....4
36257-36596.....5
36597-36800.....6

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6174.....36597
Administrative Orders:
Memorandums:
August 29, 1990.....36257

7 CFR

29.....35885
403.....35886
405.....35886
406.....35886
409.....35886, 35888
416.....35886
422.....35886, 35888
425.....35886
430.....35886
435.....35886
437.....35886
441.....35886
443.....35886
445.....35886
446.....35886
447.....35886
450.....35886
451.....35886
454.....35886
455.....35886
456.....35886
910.....35889, 36599
932.....35891
944.....35891
958.....36600
965.....36601
967.....35893
981.....36602
985.....36605
989.....36607
1076.....35894
1922.....35895
1930.....35895
1944.....35895
Proposed Rules:
907.....36653
1965.....35907

8 CFR

212.....36259

9 CFR

381.....36608

12 CFR

1400.....36609
Proposed Rules:
225.....36282

13 CFR

Proposed Rules:
121.....35908

14 CFR

21.....36259
23.....36259
39.....36264-36270
Proposed Rules:
39.....36284
91.....36592

15 CFR

775.....35896, 36610
776.....36271

17 CFR

140.....35897

20 CFR

Proposed Rules:
404.....36656

21 CFR

522.....36751
Proposed Rules:
197.....36289
882.....36578

22 CFR

1102.....35898

23 CFR

140.....35903
Proposed Rules:
635.....36289

24 CFR

511.....36611

25 CFR

286.....36272

26 CFR

1.....36274
52.....36612
602.....36612
Proposed Rules:
1.....36290, 36657, 36751
52.....36659
602.....36659

30 CFR

Proposed Rules:
901.....36660
935.....36661

31 CFR

Proposed Rules:
103.....36663

32 CFR

651.....35904
807.....36631

33 CFR

126.....36248
151.....35986
154.....36248
155.....35986, 36248
156.....36248
158.....35986
165.....36278

Proposed Rules:

117.....36666
127.....35983
154.....35983
167.....36666

40 CFR

52.....36632-36635
716.....36638

Proposed Rules:

51.....36458
52.....36290, 36458
81.....36290
171.....36297

42 CFR

412.....35990, 36754
413.....35990

43 CFR

Proposed Rules:

4.....36669

44 CFR

64.....36278

46 CFR

25.....35986
540.....35983

Proposed Rules:

25.....35983
32.....35983
34.....35983
50.....35983
52.....35983
53.....35983
54.....35983
55.....35983
56.....35983
57.....35983
58.....35983
59.....35983
71.....35983
76.....35983
91.....35983
92.....35983
95.....35983
107.....35983
108.....35983
150.....35983
153.....35983, 36670
162.....35983
163.....35983
169.....35983
170.....35983
174.....35983
182.....35983
189.....35983
190.....35983
193.....35983

47 CFR

1.....36640
73.....35905, 36279

Proposed Rules:

1.....35909
61.....36672
73.....35909, 35910, 36297-36299

48 CFR

3.....36782
4.....36782
9.....36782
14.....36782
15.....36782
37.....36782
52.....36782
53.....36782

Proposed Rules:

8.....36774
15.....36774
31.....36774
52.....36774
53.....36774

50 CFR

17.....36641
32.....35906, 36647
33.....36647
661.....36280
672.....36651
675.....36652

Proposed Rules:

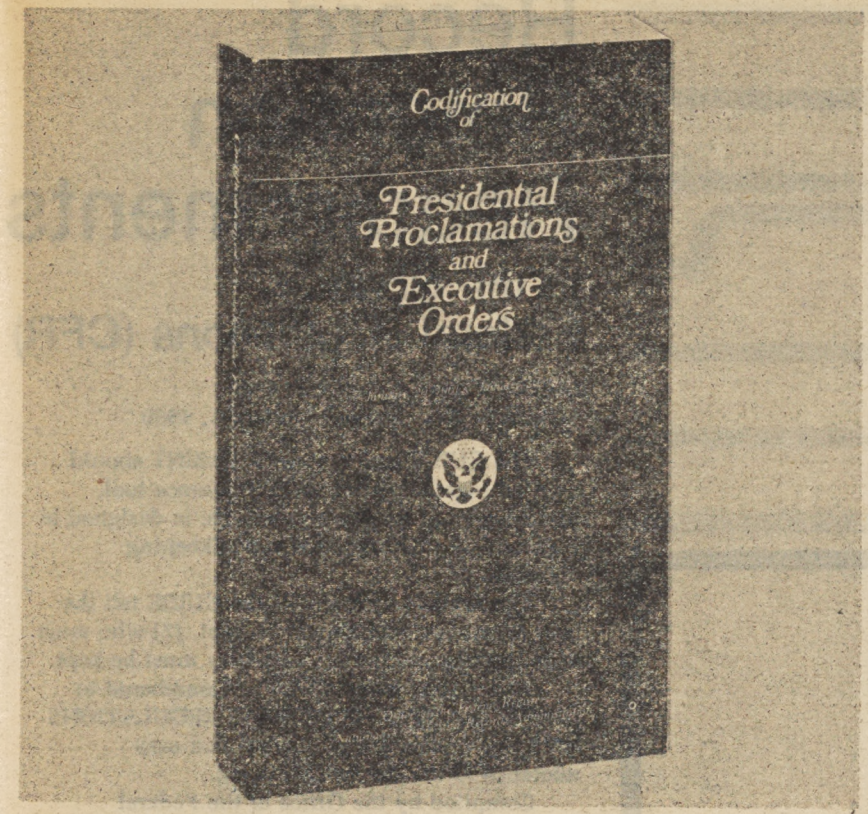
227.....36751

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 August 22, 1990

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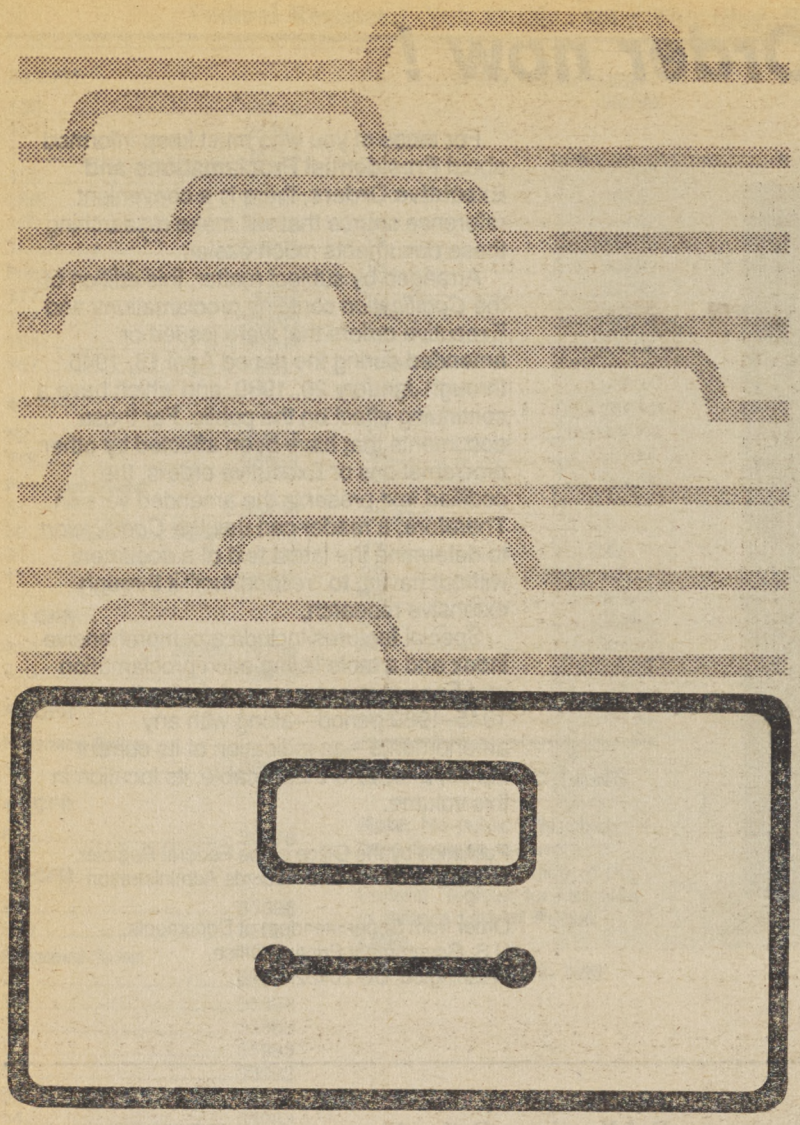
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