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WHO: The Office of the Federal Register.

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

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

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

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WHEN: March 4, at 9:00 a.m.
WHERE: Federal Building,
300 N. Los Angeles St.
Conference Room 8544
Los Angeles, CA
RESERVATIONS: 1–800–726–4995

SAN DIEGO CA

WHEN: March 5, at 9:00 a.m.
WHERE: Federal Building,
880 Front St.
Conference Room 45–13
San Diego, CA
RESERVATIONS: 1–800–726–4995

Contents

Federal Register

Vol. 56, No. 12

Thursday, January 17, 1991

ACTION
NOTICES
Grants and cooperative agreements; availability, etc.:
Student community service project guidelines, 1784

Agency for Health Care Policy and Research
NOTICES
Medical technology assessments:
Cardiac output monitoring by electrical bioimpedance, 1815

Agriculture Department
See also Animal and Plant Health Inspection Service; Forest Service
NOTICES
Agency information collection activities under OMB review, 1787

Air Force Department
RULES
Military personnel:
Military personnel, employees, and dependents available to civilian authorities for trial, 1732
NOTICES
Meetings:
Scientific Advisory Board, 1804

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Intramural research training award program, 1818

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, foreign:
Sandpears from Chile, 1730

Centers for Disease Control
NOTICES
Meetings:
Vital and Health Statistics National Committee, 1815

Children, National Commission
See National Commission on Children

Coast Guard
RULES
Ports and waterways safety:
New York Harbor; vessel traffic service, 1737

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Citrus Associates of New York Cotton Exchange—
Frozen concentrated orange juice; delivery area, 1803
Meetings; Sunshine Act, 1843
(5 documents)

Consumer Product Safety Commission
NOTICES
Meetings:
Cigarette Fire Safety Technical Advisory Group, 1803

Defense Department
See Air Force Department

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Norac Co., Inc., 1824
UpJohn Co., 1824

Economic Regulatory Administration
NOTICES
Consent orders:
Mt. Airy Refining Co. et al., 1804

Employment and Training Administration
NOTICES
Adjustment assistance:
Cytemp Specialty Steel Division et al., 1824
Meetings:
Work-Based Learning National Advisory Commission, 1826
Nonimmigrant aliens temporarily employed as registered nurses; attestations by facilities; list, 1825

Energy Department
See also Economic Regulatory Administration; Hearings and Appeals Office, Energy Department
RULES
Strategic petroleum reserve trespassing, 1908
NOTICES
Meetings:
U.S./U.S.S.R. Fossil Energy Workshop, 1805
Natural gas exportation and importation:
Catamount Natural Gas, Inc., 1805

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 1754
NOTICES
Pesticides; emergency exemptions, etc.:
Benomyl, 1810
Fenpropathrin, 1811

Executive Office of the President
See Management and Budget Office; National Drug Control Policy Office

Federal Aviation Administration
PROPOSED RULES
Airworthiness standards:
Special conditions—
McDonnell Douglas model DC–8–70 series airplanes, 1750

NOTICES
Airport noise compatibility program:
Noise exposure map—
Greater Cincinnati International Airport, KY, 1839
Exemption petitions; summary and disposition, 1840

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 1737
Florida, 1737
Michigan, 1738
(2 documents)
Mississippi, 1738
Missouri, 1739
PROPOSED RULES
Radio stations; table of assignments:
Kansas, 1779
Oregon, 1780
Virginia, 1780

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 1843
(2 documents)

Federal Maritime Commission
NOTICES
Agreements filed, etc., 1812

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 1843

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 1812
Prohibited trade practices:
Kreepy Krauly USA, Inc., 1813

Food and Drug Administration
PROPOSED RULES
Food additives:
Polymers—
Acrylonitrile copolymers, 1753
NOTICES
Meetings:
Advisory committees, panels, etc., 1816
Consumer information exchange, 1817

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Illinois—
Fedders Air Conditioner Plant; room air conditioner manufacturing plant, 1791
New York, 1791
Oregon—
Floating Point Systems, Inc.; computer service operation, 1792

Forest Service
NOTICES
Boundary establishment, descriptions, etc.:
Gifford Pinchot National Forest, WA, 1787
Environmental statements; availability, etc.:
Lake Tahoe Basin; national forest lands, 1788
Mendocino National Forest, CA, 1788
Payette National Forest, ID, 1789
White Mountain National Forest, NH, 1790

General Services Administration
RULES
Acquisition regulations:
Supplies; inspection, testing, and shipment/delivery, 1739

Government Ethics Office
RULES
Outside employment limitations and honoraria prohibitions; confidential reporting of payments to charities in lieu of honoraria, 1721

Health and Human Services Department
See Agency for Health Care Policy and Research; Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; Indian Health Service; National Institutes of Health

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 1806, 1807
(2 documents)
Decisions and orders, 1809

Indian Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
American Indian/Alaska Native tribal organizations; tribal management program, 1817

Interior Department
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Excise taxes:
Retailers; certain luxury items
Hearings, 1754

International Trade Administration
NOTICES
Antidumping:
Animal glue and inedible gelatin from Sweden, 1792
Clear sheet glass from Italy, 1793
Fresh cut flowers from—
Mexico, 1794
Polychloroprene rubber from Japan, 1799
Sheet piling from Canada, 1800
Antidumping and countervailing duties:
Administrative review requests, 1793
Countervailing duties:
Yarn products from Thailand, 1800
Meetings:
Importers and Retailers' Textile Advisory Committee; correction, 1801
Management-Labor Textile Advisory Committee; correction, 1801
Scope rulings; list, 1801

International Trade Commission
NOTICES
Import investigations:
Chrome-plated lug nuts from China and Taiwan, 1822

Power transmission chains, chain assemblies, components, and products containing same, 1822
Sheet piling from Canada, 1823

Interstate Commerce Commission
RULES
Motor carriers:
Interstate buses; smoking prohibition, 1745
PROPOSED RULES
Contracts and exemptions:
Freight car hire compensation practice, 1781
NOTICES
Agency information collection activities under OMB review, 1823
Railroad operation, acquisition, construction, etc.:
Consolidated Grain & Barge Co. et al., 1823
CSX Transportation, Inc., 1824

Justice Department
See Drug Enforcement Administration; Prisons Bureau

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Elko District, NV, 1819
Jurisdictional transfers:
Minnesota, 1819
Land use plans:
Arizona, 1821
Opening of public lands:
Colorado, 1821
Survey plat filings:
Colorado, 1821
Withdrawal and reservation of lands:
Idaho, 1821

Management and Budget Office
NOTICES
Budget rescissions and deferrals
Cumulative reports, 1902

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Southern Ohio Coal Co., 1826

National Commission on Children
NOTICES
Hearings, 1827

National Drug Control Policy Office
NOTICES
Meetings:
President's Drug Advisory Council, 1827

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
General Motors Corp., 1841

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Intramural research training award program, 1818
Meetings:
National Institute of Diabetes and Digestive and Kidney Diseases, 1819

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic mackerel, squid, and butterfish, 1745
NOTICES
Meetings:
Western Pacific Fishery Management Council, 1802

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 1844

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Young, Charles, 1749
NOTICES
Agency information collection activities under OMB review, 1827
Environmental statements; availability, etc.:
Public Service Co. of Colorado, 1828
Meetings:
Reactor Safeguards Advisory Committee, 1829 (2 documents)
Applications, hearings, determinations, etc.:
Southern California Edison Co. et al., 1829

Office of Management and Budget
See Management and Budget Office

Oversight Board
NOTICES
Meetings; regional advisory boards:
Regions 1 and 2, 1831

Prisons Bureau
PROPOSED RULES
Inmate control, custody, care, etc.:
Literacy program (GED standard), 1898

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; Indian Health Service; National Institutes of Health

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 1831
Depository Trust Co., 1832
Intermarket Clearing Corp., 1834
MBS Clearing Corp., 1835
National Association of Securities Dealers, Inc., 1836
Applications, hearings, determinations, etc.:
Merrill Lynch Government Fund Inc., 1836
Merrill Lynch Institutional Fund Inc., 1837
United Financial Group, Inc., 1838

Sentencing Commission, United States
See United States Sentencing Commission

Transportation Department
See also Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration
RULES
Aviation proceedings:
Freely Associated States; essential air transportation, 1732

Treasury Department
See Internal Revenue Service

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy statements for Federal courts, 1846

Veterans Affairs Department
NOTICES
Meetings:
Readjustment Problems of Vietnam Veterans Advisory Committee, 1841

Separate Parts In This Issue

Part II
United States Sentencing Commission, 1846

Part III
Department of Justice, Bureau of Prisons, 1898

Part IV
Office of Management and Budget, 1902

Part V
Department of Energy, 1908

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
2636 1721

7 CFR
319 1730

10 CFR
1048 1908
Proposed Rules:
50 1749

14 CFR
272 1732
Proposed Rules:
21 1750
25 1750

21 CFR
Proposed Rules:
173 1753
175 1753
176 1753
177 1753
178 1753
179 1753
180 1753
181 1753

26 CFR
Proposed Rules:
48 1754

28 CFR
Proposed Rules:
544 1898

32 CFR
884 1732

33 CFR
161 1737

40 CFR
Proposed Rules:
51 1754
52 1754

47 CFR
73 (6 documents) 1737–1739
Proposed Rules:
73 (3 documents) 1779, 1780

48 CFR
523 1739
546 1739
552 1739

49 CFR
1061 1745
Proposed Rules:
1033 1781
1039 1781

50 CFR
655 1745

Rules and Regulations

Federal Register
Vol. 56, No. 12
Thursday, January 17, 1991

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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2636

RIN 3209-AA13

Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria

AGENCY: Office of Government Ethics.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Government Ethics is issuing a new part 2636 of title 5 of the Code of Federal Regulations to implement 5 U.S.C. app. 501 through 505, as added by title VI of the Ethics Reform Act of 1989, and the related reporting requirement contained in 5 U.S.C. app. 102(a)(1)(A), as added by title II of the Reform Act. As applied to the executive branch, section 501(b) prohibits the receipt of any honorarium by any officer or employee, other than a special Government employee. Section 501(c) permits certain payments in lieu of honoraria to be made to qualifying charitable organizations. The officer or employee on whose behalf a payment to a charitable organization is made is required by section 102(a)(1)(A) to file a confidential report identifying the charitable recipients. Section 501(a) and 502 impose a number of additional limitations and restrictions that apply to certain senior-level noncareer officers and employees. These include a per annum limitation on the receipt of outside earned income; compensation and other restrictions applicable to professions which involve a fiduciary relationship; a restriction on receipt of compensation for serving as an officer or member of the board of any association, corporation or other entity; and a requirement to obtain advance authorization to engage in teaching for compensation. These provisions take effect on January 1, 1991. Sections 501 through 505 cease to be effective if the salary increase provisions of section 703 of the Ethics Reform Act of 1989 are repealed.

DATES: Interim regulation effective January 1, 1991, except § 2636.205 which will be effective May 15, 1991, after review and approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act. Comments by agencies and the public are invited and must be received by February 19, 1991.

ADDRESSES: Comments on this interim regulation should be sent to the Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Ms. Wilcox. Any comments on the reporting requirements under § 2636.205 should additionally be filed with the Office of Management and Budget (see the "Paperwork Reduction Act" discussion below).

FOR FURTHER INFORMATION CONTACT: Leslie Wilcox, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION:

A. Summary of Legal Background

This interim rule, published by the Office of Government Ethics following consultation with the Attorney General and Office of Personnel Management, implements the provisions of title V of the Ethics in Government Act of 1978, as amended by title VI of the Ethics Reform Act of 1989 (Pub. L. 101–194, 103 Stat. 1716, as amended by Pub. L. 101–280, 104 Stat. 149) and the related reporting requirement added by title II of the Ethics Reform Act of 1989. Title V amends title 5 of the United States Code to include new appendix sections 501 through 505, which impose prohibitions, limitations and restrictions applicable to personnel in all three branches of Government. Title II amends the financial disclosure provisions of the Ethics in Government Act of 1978 to include a new requirement at 5 U.S.C. app. 102(a)(1)(A) to report donations to charitable organizations in lieu of honoraria. None of these sections apply to special Government employees, to enlisted members of the uniformed services or to individuals whose compensation is disbursed by the Secretary of the Senate. Section 503(2) gives the Office of Government Ethics authority to issue regulations with respect to officers and employees of the executive branch. The provisions of 5 U.S.C. app. 102(a)(1)(A) and 501 through 505 become effective Janaury 1, 1991. Under section 603 of the Ethics Reform Act of 1989, section 501 through 505 cease to be effective if the pay increase provisions of section 703 of that Act are subsequently repealed, in which case the laws in effect before such amendments shall be deemed to be reenacted.

Section 501(b) prohibits an individual from receiving any honorarium while that individual is a Member, officer or employee. The term "honorarium" is defined in section 505 to mean "a payment of money or anything of value for an appearance, speech or article" and to exclude certain actual and necessary travel expenses. The interim rule at § 2636.203 further defines the term "honorarium" and includes definitions of the relevant terms "appearance," "speech," and "article." These definitions are similar but not idential to the definitions contained in the Federal Elections Commission regulations at 11 CFR 110.12 implementing the honoraria restrictions imposed by 2 U.S.C 441i. As amended by the Ethics Reform Act of 1989, 2 U.S.C. 441i will not apply on or after January 1, 1991 to individuals who are subject to this interim rule.

Section 501(c) provides that an honorarium that an officer or employee might receive but for the prohibition in section 501(b) may be paid on his or her behalf to a qualifying charitable organization. An honorarium paid to a charitable organization under this authority is deemed not to have been received by the officer or employee. The interim rule at § 2636.204(b) stresses that a payment may be made to a charitable organization in lieu of an honorarium only if the honorarium is one the employee could accept without violating applicable standards of conduct or any other conflict of interest statute. Thus, an employee who gives a speech as part of his official duties may not, in view of the supplementation of salary prohibition at 18 U.S.C. 209, suggest that an honorarium offered for that speech be given instead to a charitable organization. The interim rule at § 2636.205, effective May 15, 1991, also will implement the reporting requirement of 5 U.S.C. app. 102(a)(1)(A)

applicable to a current or former employee who is required to file a confidential or public financial disclosure report and on whose behalf a payment in lieu of an honorarium is made to a charitable organization. The reason for the delayed effective date of § 2636.205 of the interim rule is to allow time for Office of Management and Budget (OMB) review and approval under the Paperwork Reduction Act of the reporting requirement thereunder. Further, an implementing standard form for reporting payments to charitable organizations in lieu of honoraria will be issued and made available though the General Services Administration (GSA) after the Office of Government Ethics obtains GSA standard form review and approval and OMB Paperwork Reduction Act review and approval of the new form. Since the new law requiring reporting of such payments takes effect January 1, 1991, reports filed on the standard form once § 2636.205 becomes effective must cover the period January 1, 1991, to the date of filing.

Section 501(a) imposes a per annum limitation on outside earned income applicable to certain noncareer officers and employees whose rates of basic pay are equal to or greater than the rate of basic pay in effect for grade GS–16 of the General Schedule. As described more fully in the interim rule at § 2636.304, the per annum limitation is a dollar amount equal to 15 percent of the rate of pay for level II of the Executive Schedule in effect on January 1 of the year in question. For purposes of applying the 15 percent limitation and other restrictions applicable to noncareer officers and employees, the terms "outside earned income" and "compensation" are both defined in the interim rule at § 263.303(b) using concepts similar in some respects to those that had been used to implement the outside earned income limitation earlier imposed by section 210 of the Ethics in Government Act of 1978. Section 210 will be repealed effective January 1, 1991, under the Ethics Reform Act of 1989.

The class of noncareer employees who are subject to the 15 percent outside earned income limitation is defined in the interim rule at § 2636.303(a) to include those paid at or above the triggering rate, currently that for GS–16, step 1, who are appointed by the President to positions under the Executive Schedule, 5 U.S.C. 5312 through 5317, or to positions that, by statute or as a matter of practice, are filled by Presidential appointment, other than positions in the uniformed services and within the foreign service below the level of Assistant Secretary or Chief of Mission. These provisions also apply to all noncareer members of the Senior Executive Service or of other SES-type systems, as well as to employees serving in Schedule C or noncareer executive assignments positions who are paid at or above the triggering rate. Where the pay criterion is met, the class also includes individuals appointed to positions under agency-specific statutes that establish appointment criteria essentially the same as those for Schedule C or noncareer executive assignment positions. The class of employees subject to this limitation includes certain Presidential appointees to full-time noncareer positions who are prohibited from receiving *any* outside earned income by Section 102 of Executive Order 12674, as modified by Executive Order 12731 dated October 17, 1990.

Under the Federal Employees Pay Comparability Act of 1990, Public Law 101–509, General Schedule positions at GS–16, 17 and 18 will be replaced by a new range of rates for positions classified "above GS–15." The pay for these positions may be no less than 120 percent of the rate for GS–15, step 1. When this provision of the Pay Comparability Act takes effect, this minimum rate for positions classified "above GS–15" will replace GS–16, step 1 as the rate that triggers application of the 15 percent outside earned income limitation. For purposes of determining whether an individual's rate of basic pay equals or exceeds the triggering rate, adjustments, such as those for locality pay authorized by the Comparability Act, will be disregarded.

Under section 502, noncareer officers and employees who are subject to the 15 percent outside earned income limitation are also prohibited from receiving compensation for practicing a profession which involves a fiduciary relationship or affiliating with or being employed by a firm or other entity which provides professional services involving a fiduciary relationship. They are also prohibited from allowing their name to be used by any such entity. These restrictions are implemented in the interim rule at § 2636.305. The following excerpt from the report of the Bipartisan Task Force on Ethics that recommended the legislation addresses the meaning of the phrase "profession involving a fiduciary relationship":

> "The task force notes that a 'fiduciary' is generally described as one 'having a duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking' (*Black's Law Dictionary*, 5th Ed. 563). However, the task force intends that the term fiduciary not be applied in a narrow, technical sense and wants to ensure that honoraria not reemerge in various kinds of professional fees from outside interests. The task force intends the ban to reach, for example, services such as legal, real estate, consulting and advising, insurance, medicine, architecture, or financial * * *" 135 Cong. Rec. H9257 (daily ed. November 21, 1989).

The interim rule at § 2636.305(b) adopts an interpretation of the phrase "profession involving a fiduciary relationship" that is intended to carry out the legislative intent to give these restrictions a broad rather than narrow application.

Noncareer officers and employees who are subject to the 15 percent outside earned income limitations are also prohibited by section 502 from receiving compensation for serving as an officer or member of the board of any association, corporation or other entity and from receiving compensation for teaching without the prior notification and approval of the designated agency ethics official. The interim rule at § 2636.306 makes it clear that the former prohibition applies to compensated service with nonprofit as well as for-profit entities and, at § 2636.307, sets forth procedures by which covered noncareer employees may seek advance authorization to engage in teaching for compensation.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to section 553(b) of title 5 of the United States Code, as the Director of the Office of Government Ethics I have found that good cause exists for waiving the general requirements of notice of proposed rulemaking and 30 day delayed effective date (except for interim rule § 2636.205, see below). These requirements are being waived because the provisions of 5 U.S.C. app. 501 through 505 are effective January 1, 1991. Because violation of the prohibitions and limitations imposed by sections 501 and 502 can result in fines of $10,000 or the amount of compensation received for the prohibited conduct, whichever is greater, there is a need for an interim regulation effective January 1, 1991. However, the reporting provisions of § 2636.205 will not become effective until May 15, 1991, in order to allow time for OMB review and approval of the reporting requirement as well as OMB and GSA review and approval of the future implementing standard report form that will actually collect the specified information. Any comments received in response to this interim rule will be considered in formulating a final

rule. Comments are due February 19, 1991.

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

Paperwork Reduction Act

This OGE interim rule to be codified at 5 CFR 2636.205 contains an information collection requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). The annual public reporting burden for this collection is estimated to be 200 hours, based on an estimated 400 non-Federal employee (terminee) filers per year with an average response time for each report form of one half hour (see also the discussion of the future implementing standard report form below). As required by the Paperwork Reduction Act, the Office of Government Ethics is submitting to the Office of Management and Budget (OMB) a request that it approve this information collection requirement. Agencies, organizations or individuals desiring to submit comments for consideration by OMB on this information collection requirement should address them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Mr. Joseph Lackey.

In addition, the future implementing standard report form referred to in § 2636.205 will actually collect the information from some private citizens (former agency employees who file termination reports after leaving Government service, see estimate above), as well as primarily from current Federal executive branch officials (incumbents and those about to leave Government). Thus, OGE will also submit the proposed standard form (which will be adopted separately from, and subsequently to, this rulemaking) to the Office of Management and Budget for paperwork reduction review and approval. In addition, OGE will submit the form to the General Services Administration for standard form review and approval.

List of Subjects in 5 CFR Part 2636

Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: January 10, 1991.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble and pursuant to its authority under the Ethics in Government Act of 1978, as amended by the Ethics Reform Act of 1989, and under Executive Order 12674, as modified by E.O. 12731, the Office of Government Ethics is adding a new part 2636 to 5 CFR to read as follows:

PART 2636—LIMITATIONS ON OUTSIDE EMPLOYMENT AND PROHIBITION OF HONORARIA; CONFIDENTIAL REPORTING OF PAYMENTS TO CHARITIES IN LIEU OF HONORARIA

Subpart A—General Provisions

Sec.

2636.101 Purpose.
2636.102 Definitions.
2636.103 Advisory opinions.
2636.104 Civil, disciplinary and other action.

Subpart B—The Honorarium Prohibition; Confidential Reporting of Payments to Charities in Lieu of Honoraria

2636.201 General Standard.
2636.202 Relationship to other laws and regulations.
2636.203 Definitions.
2636.204 Payments to charitable organizations in lieu of honoraria.
2636.205 Reporting payments to charitable organizations in lieu of honoraria.

Subpart C—Outside Earned Income Limitation and Employment and Affiliation Restrictions Applicable to Certain Noncareer Employees

2636.301 General standards.
2636.302 Relationship to other laws and regulations.
2636.303 Definitions.
2636.304 The 15 percent limitation on outside earned income.
2636.305 Compensation and other restrictions relating to professions involving a fiduciary relationship.
2636.306 Compensation restriction applicable to service as an officer or member of a board.
2636.307 Requirement for advance authorization to engage in teaching for compensation.

Authority: 5 U.S.C. appendix 102(a)(1)(A), appendix IV and appendix 501–505; E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547.

Subpart A—General Provisions

§ 2636.101 Purpose.

This part is issued under authority contained in titles II and VI of the Ethics Reform Act of 1989 (Pub. L. 101–194, as amended), amending the Ethics in Government Act of 1978, and contains regulations that implement the following:

(a) The prohibition at 5 U.S.C. app. 501(b) against receipt of honoraria and the provisions of 5 U.S.C. app. 501(c) whereby payments may be made to charitable organizations in lieu of honoraria;

(b) The confidential reporting requirement at 5 U.S.C. app. 102(a)(1)(A) applicable to payments made to charitable organizations in lieu of honoraria; and

(c) The 15 percent outside earned income limitation at 5 U.S.C. app. 501(a) and the limitations at 5 U.S.C. app. 502 on outside employment and affiliation applicable to certain noncareer employees.

§ 2636.102 Definitions.

The definitions listed below are of general applicability to this part. Additional definitions of narrower applicability appear in the subparts or sections of subparts to which they apply. For purposes of this part:

(a) *Agency ethics official* refers to the designated agency ethics official and to any deputy ethics official described in § 2638.204 of this subchapter to whom authority to issue advisory opinions under § 2636.103 of this part or to receive and review reports of honoraria recipients under § 2636.204 of this part has been delegated by the designated agency ethics official.

(b) *Designated agency ethics official* refers to the official described in § 2638.201 of this subchapter.

(c) *Employee* means any officer or employee of the executive branch, other than a special Government employee as defined in 18 U.S.C. 202. It includes officers but not enlisted members of the uniformed services as defined in 5 U.S.C. 2101(3). It does not include the President or Vice President.

(d) *Executive branch* includes each executive agency as defined in 5 U.S.C. 105 and any other entity or administrative unit in the executive branch. However, it does not include any agency that is defined by 5 U.S.C. app. 109(11) as within the legislative branch.

(e) The terms *he, his,* and *him* include "she," "hers" and "her."

§ 2636.103 Advisory opinions.

(a) *Request for an advisory opinion.* (1) An employee may request an advisory opinion from an agency ethics official as to whether specific conduct which has not yet occurred would

violate any provision contained in this part.

(2) An advisory opinion may not be obtained for the purpose of establishing:

(i) Whether a particular entity qualifies as a charitable organization to which an honorarium may be paid pursuant to § 2636.204 of this part; or

(ii) Whether a noncareer employee who is subject to the restrictions in subpart C of this part may receive compensation for teaching. An advisory opinion issued under this section may not be substituted for the advance written approval required by § 2636.307 of this part.

(3) The employee's request for an advisory opinion shall be submitted in writing, shall be dated and signed, and shall include all information reasonably available to the employee that is relevant to the inquiry. Where, in the opinion of the agency ethics official, complete information has not been provided, that official may request the employee to furnish additional information necessary to issue an opinion.

(b) *Issuance of advisory opinion.* As soon as practicable after receipt of all necessary information, the agency ethics official shall issue a written opinion as to whether the conduct in issue would violate any provision contained in this part. Where conduct which would not violate this part would violate another statute relating to conflicts of interest or applicable standards of conduct, the advisory opinion shall so state and shall caution the employee against engaging in the conduct.

(1) For the purpose of issuing an advisory opinion, the agency ethics official may request additional information from agency sources, including the requesting employee's supervisor, and may rely upon the accuracy of information furnished by the requester or any agency source unless he has reason to believe that the information is fraudulent, misleading or otherwise incorrect.

(2) A copy of the request and advisory opinion shall be retained for a period of 6 years.

(c) *Good faith reliance on an advisory opinion.* An employee who engages in conduct in good faith reliance upon an advisory opinion issued to him under this section shall not be subject to civil or disciplinary action for having violated this part. Where an employee engages in conduct in good faith reliance upon an advisory opinion issued by an ethics official of his agency to another, neither the Office of Government Ethics nor the employing agency shall initiate civil or disciplinary action under this part for conduct that is indistinguishable in all material aspects from the conduct described in the advisory opinion. However, an advisory opinion issued under this section shall not insulate the employee from other civil or disciplinary action if his conduct violates any other laws, rule, regulation or lawful management policy or directive. Where an employee has actual knowledge or reason to believe that the opinion is based on fraudulent, misleading, or otherwise incorrect information, the employee's reliance on the opinion will not be deemed to be in good faith.

(d) *Revision of an ethics opinion.* Nothing in this section prohibits an agency ethics official from revising an ethics opinion on a prospective basis where he determines that the ethics opinion previously issued is incorrect, either as a matter of law or because it is based on erroneous information.

§ 2636.104 Civil, disciplinary and other action.

(a) *Civil action.* Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103 of this subpart, an employee who accepts an honorarium or engages in any other conduct in violation of the prohibitions, limitations and restrictions contained in this part may be subject to civil action under 5 U.S.C. app. 504(a) and a civil penalty of not more than $10,000 or the amount of compensation the individual received for the prohibited conduct, whichever is greater. Knowing and willful failure to file the report required by § 2636.205 of this part or falsification of information thereon may subject an employee to a civil penalty of not more than $10,000 under 5 U.S.C. app. 104(a).

(b) *Disciplinary and corrective action.* An agency may initiate disciplinary or corrective action against an employee who violates any provision of this part, which may be in addition to any civil penalty prescribed by law. When an employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103 of this subpart, an agency may not initiate disciplinary or corrective action for violation of this part. Disciplinary action includes reprimand, suspension, demotion and removal. Corrective action includes any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution or termination of an activity. It is the responsibility of the employing agency to initiate disciplinary or corrective action in appropriate cases. However, the Director of the Office of Government Ethics may order corrective action or recommend disciplinary action under the procedures at part 2638 of this subchapter. The imposition of disciplinary action is at the discretion of the employing agency.

(c) *Late Filing Fee.* An employee may be assessed a late filing fee of $200 under 5 U.S.C. app. 104(d) for any report of payments to charitable organizations in lieu of honoraria required by § 2636.205 of this part that is filed more than 30 days after the date the report is due.

(d) *Criminal penalties.* An employee who knowingly and willfully falsifies information on a report of payments to charitable organizations in lieu of honoraria required by § 2636.205 of this part may be subject to criminal prosecution and sentencing under 18 U.S.C. 1001 and 3571.

Subpart B—The Honorarium Prohibition; Confidential Reporting of Payments to Charities in Lieu of Honoraria

§ 2636.201 General standard.

An individual may not receive any honorarium while that individual is an employee.

§ 2636.202 Relationship to other laws and regulations.

The honorarium prohibition described in this subpart is in addition to any restriction on appearances, speaking or writing or the receipt of compensation therefor to which an employee is subject under applicable standards of conduct or by reason of any statute or regulation relating to conflicts of interests. Even though compensation for an activity is not prohibited by this subpart, an employee should accept compensation, including travel expenses, or engage in the activity for which compensation is offered, only after determining that it is not prohibited by the following:

(a) An employee is prohibited by criminal statute and by the standards of conduct at part 735 of this title and agency implementing regulations from accepting compensation for an appearance or speech made or an article written in his official capacity or as part of his official duties. Unless specifically authorized by a statute, such as 5 U.S.C. 4111, 5 U.S.C. 7342, or 31 U.S.C. 1353, this prohibition applies to the acceptance of travel expenses paid other than by the United States Government.

(b) An employee is prohibited by the standards of conduct from receiving compensation, including travel expenses, for speaking or writing on subject matter that focuses specifically on his official duties or on the

responsibilities, policies and programs of his employing agency.

(c) As described in subpart C of this part, certain noncareer employees are subject to limitations on their receipt of outside earned income and may not engage in compensated teaching activities without advance approval under § 2636.307 of that subpart.

§ 2636.203 Definitions.

For purposes of this subpart:

(a) *Honorarium* means a payment of money or anything of value for an appearance, speech or article. The term does not include:

(1) Items that may be accepted under applicable standards of conduct gift regulations if they were offered by a prohibited source;

(2) Meals or other incidents of attendance, such as waiver of attendance fees or course materials furnished as part of the event at which an appearance or speech is made;

(3) Copies of publication containing articles, reprints of articles, tapes of appearances or speeches, and similar items that provide a record of the appearance, speech or article;

(4) Actual and necessary travel expenses for the employee and one relative incurred in connection with an appearance or speech or the writing or publication of an article. Such travel expenses, when paid, reimbursed or provided in kind by another, shall not be counted as part of an honorarium. Where such expenses are not paid or reimbursed, the amount of an honorarium shall be determined by subtracting the actual and necessary travel expenses incurred in connection with the appearance or speech or the writing or publication of the article;

(5) Actual expenses in the nature of typing, editing and reproduction costs incurred in connection with the making of an appearance or speech or the writing or publication of an article, when paid or reimbursed by another;

(6) Compensation for goods or services other than appearing, speaking or writing, even though making an appearance or speech or writing an article may be an incidental task associated with provision of the goods or services;

(7) Salary, wages and other compensation pursuant to an employer's usual employee compensation plan when paid by the employer for services on a continuing basis that involve appearing, speaking or writing. For these purposes, the term "employment" refers to services rendered in the context of an employer-employee relationship. It does not include any arrangement entered into by the employee or another as an independent contractor or with an agent, speakers bureau or similar entity that facilitates appearances or speaking or writing opportunities;

(8) Compensation for teaching a course involving multiple presentations by the employee offered as part of a program of education or training sponsored and funded by the Federal government or by a state or local government;

(9) Compensation for teaching a course involving multiple presentations by the employee offered as part of the regularly established curriculum of an institution of higher education as defined at 20 U.S.C. 1141(a);

(10) An award for artistic, literary or oratorical achievement made on a competitive basis under established criteria;

(11) Witness fees credited under 5 U.S.C. 5515 against compensation payable by the United States; or

(12) Compensation received for any appearance or speech made or article accepted for publication prior to January 1, 1991, or for any appearance or speech made or article written in satisfaction of the employee's obligation under a contract entered into prior to January 1, 1991.

Example 1. An employee of the Department of Agriculture has entered into a contract to develop a complex software package for a private company. The contract, which is for a single fee for all work to be provided under the contract, requires the employee to provide 2 hours of oral instruction on use of the program. He may accept the entire fee for performance under the contract. No part of the fee is an honorarium since the 2 hours of instruction is only incidental to his development and delivery of the software package. He could not, however, receive a fee specifically for 2 hours of oral instruction on the use of a program he had earlier provided under a contract that required only his development of a program.

Example 2. A management trainee employed by the Bureau of Indian Affairs is employed two nights a week as a reporter on a local newspaper. He may receive a salary for his continuing employment even though it is in a profession characterized by the writing of articles. He may not, however, accept compensation for newspaper or magazine articles written on a freelance basis or pursuant to a contract to furnish 5 articles over a one year period.

Example 3. An economist employed by the Department of the Treasury has entered into an agreement with a speakers bureau to deliver ten after-dinner speeches to be arranged by the speakers bureau over a 6 month period. The employee may not receive the contract fee of $10,000.

Example 4. An attorney employed by the Department of the Air Force may not accept compensation for teaching a two-day seminar on Federal procurement law presented by a publishing company under the sponsorship of an accredited law school. He may, however, accept compensation for teaching procurement law as part of the law school's regular curriculum of courses.

Example 5. An air traffic controller employed by the Federal Aviation Administration has entered into a contract with a magazine publisher to write an article on sheep ranching in New Zealand. In addition to a fee of $500 for the article, the contract provides that the publisher will provide expenses for the employee to travel to New Zealand to conduct research on sheep ranching. The employee may accept the travel expenses, but not the $500 fee. In lieu of the $500 fee, he could not accept expenses to travel to and stay for a weekend in Sydney, Australia after the completion of his research.

Example 6. An employee of the National Transportation Safety Board may accept the Pulitzer prize for a series of articles she has written on white collar crime.

(b) *Appearance* means attendance at a public or private conference, convention, meeting, hearing, event or other gathering and the incidental conversation or remarks made at that time. Unless the opportunity was extended to the employee wholly or in part because of his official position, the term does not include performances using an artistic, athletic or other such skill or talent or primarily for the purpose of demonstration or display.

Example 1. Because the fee is for an "appearance", an employee of the Securities and Exchange Commission who was responsible for a major securities fraud investigation may not accept a fee for standing in the reception line at the premier of a movie entitled "Junk Bond Scandal."

Example 2. A staff member of the National Security Council does not make an "appearance" by playing the piano and singing at a wedding reception and may accept a fee for his performance.

Example 3. An employee of the Forest Service does not make an "appearance" by modeling in a fashion show and may accept a modeling fee.

(c) *Speech* means an address, oration, or other form of oral presentation, whether made in person, recorded or broadcast. Unless the opportunity was extended to the employee wholly or in part because of his official position, the term does not include the recitation of scripted material, as for a live or recorded theatrical production, or any oral presentation that is an incident of any performance that is excluded from the definition of an *appearance* in paragraph (b) of this section. It does not include the conduct of worship services or religious ceremonies.

Example 1. An attorney employed by the Department of Justice may not receive a $50 honorarium for her informal talk to a local gardening club on how to design and grow a

Victorian rose garden. Her talk, though informal, is a "speech."

Example 2. A nutritionist employed by the National Institutes of Health who is a stand-up comedian by avocation may accept a fee for performing a comedy routine at a dinner theater. His oral remarks do not constitute a speech because they are an incident of his performance using his talent as a comedian. He could not, however, accept compensation for a speech simply because he tells an introductory joke or otherwise amuses his audience.

Example 3. A statistician employed by the Department of Labor who is a lay minister may accept a gratuitous payment of $50 for performing a funeral service since it involves his conduct of a religious ceremony. However, he may not accept a payment for a talk on theology given to other ministers, for offering a prayer at the opening of a convention or for delivering a sermon during a worship service conducted by another minister. He could accept payment for his own conduct of worship services.

Example 4. A price analyst employed by the Defense Fuel Supply Agency may accept a fee of $100 for writing a speech to be delivered by another. The term "speech" includes only oral presentations and does not include writing a speech to be delivered by someone other than the employee. Moreover, the text of a speech is not an article.

Example 5. The stage portrayal of Hamlet by an employee of the Department of State does not involve the making of a "speech." He may be paid for his role in the Shakespearean production.

(d) *Article* means a writing, other than a book or a chapter of a book, which has been or is intended to be published or republished in a journal, newspaper, magazine or similar collection of writings. The term does not include works of fiction, poetry, lyrics, or script.

Example 1. An employee of the Office of Personnel Management who has reviewed a new book about the New York Yankees may not accept a $50 honorarium from the publisher of a sports magazine. The book review is an "article."

Example 2. The lyrics and music for a college song written by two Department of the Navy attorneys does not constitute an "article." The attorneys could each accept a gratuitous payment of $50 if the song were selected by their alma mater for publication in its compendium of college songs.

Example 3. An engineer employed by the National Aeronautics and Space Administration has entered into a contract with an association of electrical component manufacturers to proofread and edit articles submitted by members of the association for publication in its monthly newsletter. The employee may accept the contract fee since the compensation is not for the writing of articles.

Example 4. An accountant employed by the Federal Deposit Insurance Corporation may accept compensation for writing a chapter of a textbook on corporate accounting. A chapter of a book is not an "article."

(e) *Receive* means that there is actual or constructive receipt of the honorarium by the employee so that the employee has a right to exercise dominion and control over the honorarium and direct its subsequent use. For purposes of this subpart, an honorarium is received while an employee if it is for an appearance or speech made or any article submitted for publication by that individual while he was an employee. Except when it is paid to a charitable organization in accordance with § 2636.204 of this subpart, an honorarium is received by an employee:

(1) If it is paid to another person on the basis of designation, recommendation or other specification by the employee; or

(2) If, with the employee's knowledge and acquiescence, it is paid to his parent, sibling, spouse, child or dependent relative.

Example 1. At the suggestion of the Army officer who authored an article selected for publication in a popular magazine, the publisher paid the amount of its usual honorarium to the officer's husband. The officer has "received" an honorarium.

Example 2. An employee of the Department of Housing and Urban Development has been offered a $500 honorarium for a speech to be given during the week before his scheduled date of retirement from Federal service. Since it is for a speech to be made while he is an employee, he will have "received" the offered honorarium while an employee even though actual payment may not occur until after his retirement.

(f) *Charitable organization* means an organization which is qualified with respect to deductible charitable contributions under 26 U.S.C. 170(c) because it is organized or operated exclusively for religious, charitable, scientific, literary, educational or another specified purpose. It includes, but is not limited to, an organization exempt from Federal taxation under the authority of 26 U.S.C. 501(c)(3).

(g) *Travel expenses* means the actual and necessary cost of transportation, lodging and meals incurred while away from the employee's residence or principal place of employment in connection with an appearance, speech or article. Where the lodgings and meals portion of travel expenses are paid or reimbursed by another in the form of a per diem or subsistence expense allowance, that allowance shall be treated as actual and necessary travel expenses if the allowance is no more than that customarily paid by the payor to its own officers or employees, provided the employee in fact incurs costs for commercial meals and lodgings on each day for which the allowance is received.

§ 2636.204 Payment to charitable organizations in lieu of honoraria.

(a) *Effect of payment to a charitable organization.* An honorarium which, but for this subpart, could be paid to an employee but is paid instead on behalf of the employee to a charitable organization is deemed not to be received by the employee. An employee may suggest that an honorarium that he is prohibited from receiving solely by application of this subpart be paid in his name to a charitable organization. An honorarium received and later donated to a charitable organization by the employee does not qualify as a payment to a charitable organization in lieu of an honorarium made in accordance with this section.

Note: An employee on whose behalf a payment in lieu of an honorarium has been made to a charitable organization may not take a tax deduction on account of the payment under any provision of the Internal Revenue Code or under any tax law of a State or political subdivision thereof.

(b) *Nonqualifying payments to charitable organizations.* No payment may be made to a charitable organization pursuant to this section:

(1) If the employee would be prohibited from receiving and retaining the honorarium by any conflict of interest statute or regulation or applicable standards of conduct other than this subpart. Honoraria that the employee is prohibited from receiving and retaining would include, for example, any honorarium that is for:

(i) An appearance or speech made or article written by the employee in an official capacity or as part of his official duties; or

(ii) A speech or article, the subject matter of which focuses specifically on agency responsibilities, policies or programs.

(2) In an amount in excess of $2,000 per appearance, speech, or article; or

(3) If the employee, the employee's parent, sibling, spouse, child, or dependent relative derives any direct financial benefit from the charitable organization that is separate from and beyond any general benefit conferred by the organization's activities.

Example 1. An Assistant U.S. Attorney who has successfully prosecuted an espionage case may not suggest that an honorarium offered for his speech about the prosecution be given to his law school. Because the topic of the speech relates to his official duties, he is prohibited from accepting any compensation by applicable standards of conduct. He could, however, suggest that an honorarium offered for his speech on training sheepdogs, be paid to his school.

Example 2. A personnel specialist employed by the Department of Labor whose

spouse is employed by the Red Cross may not suggest that an honorarium for his speech about his vacation spent bicycling through China be donated in his name to the Red Cross.

Example 3. A claims examiner employed by the Department of Veterans Affairs whose mother suffers from Parkinson's Disease may suggest that an honorarium for her article on historic preservation be donated to a charitable organization that funds research seeking a cure for Parkinson's Disease. She may not suggest, however, that it be donated to a charitable organization that provides her mother with in-home nursing services.

§ 2636.205 Reporting payments to charitable organizations in lieu of honoraria.

(a) *Who must file.* A current or former employee, other than a new entrant, who is required to file a financial disclosure report, either on a confidential or public basis, shall at the same time file a confidential report of payments to charitable organizations in lieu of honoraria if:

(1) Payments in lieu of honoraria aggregating more than $200 were made on his behalf by any one source to one or more charitable organizations during the reporting period covered by the financial disclosure statement; or

(2) In the case of an individual filing a termination report, there is an understanding between the reporting individual and any other person that payments in lieu of honoraria will be made on his behalf for an appearance or speech made or article submitted for publication while the individual was a Government employee which, together with any payments in lieu of honoraria made by that source during the reporting period, will aggregate more than $200.

This reporting requirement is in addition to any other requirement to disclose on a public or confidential financial disclosure report the source, date and amount of an honorarium paid to a charitable organization on the employee's behalf. It does not apply to any payment in lieu of an honorarium made to a charitable organization on behalf of the current or former employee's spouse or dependent child.

(b) *Where and when to file.* The report required by this section shall be filed with the agency ethics official by the date the current or former employee is required to file a confidential or public financial disclosure report. Any grant of an extension to file a financial disclosure report shall automatically extend the date for filing the report of payments to charitable organizations in lieu of honoraria and the agency ethics official may, for good cause shown by the employee, grant a separate extension of the date for filing the report required by this section. The total of all extensions for filing the report required by this section shall not exceed 90 days.

(c) *Reporting period.* The report of payments to charitable organizations in lieu of honoraria shall cover the same period that applies to the confidential or public financial disclosure report the individual is required to file. For employees filing annual financial disclosure reports, the reporting period is the preceding calendar year or, if the employee commenced Government service during that year, the portion of the preceding calendar year beginning with the date the employee entered on duty. For those filing termination reports, the reporting period is the portion of the calendar year in which he terminated Government service up to the date of termination and, if he has not yet filed an annual financial disclosure report covering that period, the preceding calendar year or other period required for the annual report.

(d) *What to report.* Each report shall be filed on the standard form prescribed by the Office of Government Ethics and made available through the General Services Administration. Each report filed shall include the following information for each payment to a charitable organization in lieu of an honorarium, regardless of amount, made on the employee's behalf by any source from whom such payments made during the reporting period aggregate more than $200:

(1) The date of the payment (if payment has been made);

(2) The date of the appearance or speech for which the honorarium was paid or, where the honorarium is for an article, the date the article was submitted by the employee for publication;

(3) The name of the person or entity making the payment to the charitable organization;

(4) The name and the tax status of charitable purpose of the recipient;

(5) The subject matter of the speech or article or, where the honorarium is for an appearance, the reason for the appearance; and

(6) The amount of the payment;

An individual filing a termination report who is reporting with respect to payments which have not yet been made should write "Not Applicable" in the space provided for the date of payment and should provide the remainder of the information required on the basis of his best knowledge and belief as to payments which he understands will be made to charitable organizations on his behalf.

(e) *Effect of signing the form.* By signing the form the employee certifies that the information he has reported is true, complete and correct to the best of his knowledge and that neither he nor his parent, sibling, spouse, child or dependent relative receives from the recipient charitable organization a benefit that is separate and distinct from any general benefit conferred by the organization's activities.

(f) *Review of reports.* Within 60 days after receipt, the agency ethics official shall review each report of payments to charitable organizations in lieu of honoraria to determine that the reporting requirements of this section have been met and that each payment reported meets the standards at § 2636.204 of this subpart.

(1) The agency ethics official need not audit the report to ascertain whether the disclosures are correct; disclosures are to be taken at face value unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report.

(2) If the agency ethics official determines that the report is complete and that each payment is proper, he shall sign and date the report.

(3) If the agency ethics official determines that the form is not complete, he shall request that the employee complete the form by a specific date and annotate each addition or change with the employee's signature and the date the annotation was made. The 60 day period for review shall run from the date the completed form is filed.

(4) If the agency ethics official determines that additional information is needed to determine whether a payment to a charitable organization meets the standards at § 2636.204 of this subpart, he shall request that the employee furnish such information by a specific date and shall date and append to the report any information obtained in writing or annotate the report to reflect any information obtained other than in writing and the date it was furnished. The 60 day period for review shall run from the date the additional information is furnished.

(5) If the agency ethics official determines that the employee has failed to file a report or a complete report or has received an honorarium in violation of § 2636.201 of this subpart because a reported payment does not meet the standards at § 2636.204 of this subpart, he shall give the individual written notice of the deficiency and 10 days in which to submit a written response and, therafter, shall refer the case for appropriate action as described in

§ 2636.104 of this subpart and annotate the report to reflect that referral.

(g) *Filing of reports with the Office of Government Ethics.* On August 15 of each year, the designated agency ethics official shall forward to the Office of Government Ethics all reports reviewed within his agency during the preceding one-year period.

(h) *Review of reports by the Office of Government Ethics.* Within 60 days after receiving the reports forwarded under paragraph (g) of this section, reports of payments to charitable organizations in lieu of honoraria filed by individuals whose public financial disclosure reports are required to be filed with the Director of the Office of Government shall be reviewed and signed by the Director.

(i) *Retention of reports.* Reports of payments to charitable organizations in lieu of honoraria shall be retained by the Office of Government Ethics for a period of 6 years. Unless needed in an ongoing investigation, the reports shall be destroyed after 6 years.

(j) *Confidentiality of reports.* Reports of payments to charitable organization in lieu of honoraria filed pursuant to this section are not available to members of the public and are to be treated with the confidentiality afforded confidential financial disclosure reports.

Subpart C—Outside Earned Income Limitation and Employment and Affiliation Restrictions Applicable to Certain Noncareer Employees

§ 2636.301 General standards.

A covered noncareer employee shall not:

(a) Receive outside earned income in excess of the 15 percent limitation described in § 2636.304 of this subpart;

(b) Receive compensation or allow the use of his name in violation of the restrictions relating to professions involving a fiduciary relationship described in § 2636.305 of this subpart;

(c) Receive compensation for serving as an officer or board member in violation of the restriction described in § 2636.306 of this subpart; or

(d) Receive compensation for teaching without having first obtained advance authorization as required by § 2636.307 of this subpart.

§ 2636.302 Relationship to other laws and regulations.

The limitations and restrictions contained in this section are in addition to any limitations and restrictions imposed upon an employee by applicable standards of conduct or by reason of any statute or regulation relating to conflicts of interest. Even though conduct or the receipt of compensation is not prohibited by this subpart, an employee should accept compensation or engage in the activity for which compensation is offered only after determining that it is otherwise permissible. In particular, a covered noncareer employee should accept compensation only after determining that its receipt does not violate the following prohibitions:

(a) A covered noncareer employee who is a Presidential appointee to a full-time noncareer position is prohibited by section 102 of Executive Order 12674, as amended, from receiving any outside earned income for outside employment or any other activity performed during that Presidential appointment.

(b) An individual is prohibited from receiving any honorarium while he is an employee. The honoraria prohibition, described in subpart B of this part, applies to any compensation for an appearance or speech made or article submitted for publication while the individual is an employee.

§ 2636.303 Definitions.

For purposes of this section:

(a) *Covered noncareer employee* means an employee, other than a special Government employee as defined in 18 U.S.C. 202, whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for GS–16, step 1 of the General Schedule under 5 U.S.C. 5332 and who is:

(1) Appointed by the President to a position described in the Executive Schedule, 5 U.S.C. 5312 through 5317, or to a position that, by statute or as a matter of practice, is filled by Presidential appointment, other than:

(i) A position within the uniformed services; or

(ii) A position within the foreign service below the level of Assistant Secretary or Chief of Mission;

(2) A noncareer member of the Senior Executive Service or of another SES-type system, such as the Senior Foreign Service;

(3) Appointed to a Schedule C position or to a position under an agency-specific statute that establishes appointment criteria essentially the same as those set forth in § 213.3301 of this title for Schedule C positions; or

(4) Appointed to a noncareer executive assignment position or to a position under an agency-specific statute that establishes appointment criteria essentially the same as those set forth in § 305.601 of this title for noncareer executive assignment positions.

For purposes of applying this definition to an individual who holds a General Schedule or other position that provides several rates of pay or steps per grade, his rate of basic pay shall be the rate of pay for the lowest step of the grade at which he is employed.

Example 1. A Schedule C appointee to a position with the United States Information Agency who holds a GS–15 position and who is compensated at the rate for GS–15, Step 9 is not a covered noncareer employee even though the pay he receives in a calendar year exceeds the annual pay for GS–16, Step 1. Notwithstanding that he is compensated at Step 9, the basic rate of pay for the GS–15 position he holds is the rate in effect for GS–15, Step 1 of the General Schedule, which is lower than the rate for GS–16, Step 1.

Example 2. An employee of the Environmental Protection Agency who has been a career GS–15 employee for 10 years and who is offered a non-career SES position with the Federal Aviation Administration will, if he accepts the offer, become a covered noncareer employee by reason of that appointment, regardless of his former status.

Example 3. A Department of Justice employee who holds a Schedule A appointment is not a covered noncareer employee even though he does not have competitive status within the meaning of § 212.301 of this title.

(b) *Outside earned income* and *compensation* both mean wages, salaries, honoraria, commissions, professional fees and any other form of compensation for services other than salary, benefits and allowances paid by the United States Government. Neither term includes:

(1) Items that may be accepted under applicable standards of conduct gift regulations if they were offered by a prohibited source;

(2) Income attributable to service with the military reserves or national guard;

(3) Income from pensions and other continuing benefits attributable to previous employment or services;

(4) Income from investment activities where the individual's services are not a material factor in the production of income;

(5) Copyright royalties, fees, and their functional equivalent, from the use or sale of copyright, patent and similar forms of intellectual property rights, when received from established users or purchasers of those rights;

(6) Actual and necessary expenses incurred by the employee in connection with an outside activity. Where such expenses are paid or reimbursed by another person, the amount of any such payment shall not be counted as compensation or outside earned income. Where such expenses are not paid or reimbursed, the amount of compensation or earned income shall be determined by subtracting the actual and necessary

expenses incurred by the employee from any payment received for the activity;

(7) An honorarium paid to a charitable organization pursuant to § 2636.204 of this part; or

(8) Compensation for:

(i) Services rendered prior to January 1, 1991, or prior to becoming a covered noncareer employee;

(ii) Services rendered in satisfaction of a covered noncareer employee's obligation under a contract entered into prior to January 1, 1991; or

(iii) Services which the covered noncareer employee first undertook to provide prior to January 1, 1991, where the standards of the applicable profession require the employee to complete the case or other undertaking.

Example 1. A covered noncareer employee is a limited partner in a partnership that invests in commercial real estate. Because he does not take an active role in the management of the partnership, his share of the partnership income is neither "outside earned income" nor "compensation."

Example 2. A covered noncareer employee of the Civil Rights Commission serves without compensation as a member of the Board of Visitors for a university. The roundtrip airfare and hotel expenses paid by the university to permit him to attend quarterly meetings of the Board are neither "outside earned income" or "compensation."

Example 3. Where a covered noncareer employee pays for transcripts of a hearing in which he is providing pro bono legal representation, reimbursements for those expenses by a legal aid organization are neither "outside earned income" nor "compensation."

Example 4. During the term of his appointment, a Deputy Assistant Secretary of Labor enters into a contract to write a book of fictional short stories. Royalties based on actual sales of the book after publication are investment income attributable to the property interest he retains in the book and, as such, are neither "outside earned income" nor "compensation."

(c) *Receive* means that the employee has the right to exercise dominion and control over the compensation or outside earned income and direct its subsequent use. Compensation or outside earned income is received by an employee if it is for his conduct and:

(1) If it is paid to any other person on the basis of designation, recommendaiton or other specification by the employee; or

(2) If, with the employee's knowledge and acquiescence, it is paid to his parent, sibling, spouse, child or dependent relative.

Compensation that is prohibited by § 2636.305 through § 2636.307 of this subpart is received while an individual is an employee if it is for conduct by him that occurs while an employee, even though actual payment may be deferred until after Federal employment has terminated. Payments made to charitable organizations in lieu of honoraria under § 2636.204 of this part are not compensation or outside earned income and thus are not received in violation of any of the limitations contained in his subpart. However, other compensation or outside earned income donated to a charitable organization is received by the employee.

§ 2636.304 The 15 percent limitation on outside earned income.

(a) *Limitation applicable to individuals who are covered noncareer employees on January 1 of any calendar year.* A covered noncareer employee may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under 5 U.S.C. 5313, as in effect on January 1 of such calendar year. The effective date of a change in the rate for level II of the Executive Schedule shall be the date on which a new rate of basic pay for level II first becomes applicable to any level II position.

Note: Notwithstanding the 15 percent limitation described in this section, a covered noncareer employee who is a Presidential appointee to a full-time noncareer position is prohibited by section 102 of Executive Order 12674, as amended, from receiving *any* outside earned income for outside employment or any other activity performed during that Presidential appointment.

Example 1. Notwithstanding that the compensation he will receive would not exceed 15 percent of the rate for level II of the Executive Schedule, a covered noncareer employee of the Department of Energy may not receive any compensation for teaching a university course unless he first receives the authorization required by § 2636.307 of this subpart.

(b) *Limitation applicable to individuals who become covered noncareer employees after January 1 of any calendar year.* The outside earned income limitation that applies to an individual who becomes a covered noncareer employee during a calendar year shall be determined on a pro rata basis. His outside earned income while so employed in that calendar year shall not exceed 15 percent of the annual rate of basic pay for level II of the Executive Schedule in effect on January 1 of the calendar year divided by 365 and multiplied by the number of days during that calendar year that he holds the covered noncareer position.

Example 1. A former college professor received an appointment to a noncareer Senior Executive Service position on November 1, 1991. The rate of basic pay in effect for Executive Level II on January 1, 1991 was $125,100. For the 61 day period from November 1, 1991 through December 31, 1991, the amount of outside income he may earn is limited to $3,129. That amount is determined as follows:

Step 1. The rate of basic pay for Executive Level II as in effect on January 1 of that year ($125,100) is divided by 365. That quotient is $342;

Step 2. The dollar amount determined by Step 1 ($342) is then multiplied by the 61 days the employee held the covered noncareer position. That product is $20,862;

Step 3. The dollar amount determined by Step 2 ($20,862) is multiplied by .15 or 15 percent. The product ($3,129) is the maximum outside earned income the employee may have in the particular year attributable to the period of his service in a covered noncareer position.

(c) *Computation principle.* For purposes of any computation required by this section, any amount of $.50 or more shall be rounded up to the next full dollar and any amount less than $.50 shall be rounded down to the next full dollar.

(d) *Year to which outside earned income is attributable.* Regardless of when it is paid, outside earned income is attributable to the calendar year in which the services for which it is paid were provided.

§ 2636.305 Compensation and other restrictions relating to professions involving a fiduciary relationship.

(a) *Applicable restrictions.* A covered noncareer employee shall not:

(1) Receive compensation for:

(i) Practicing a profession which involves a fiduciary relationship; or

(ii) Affiliating with or being employed to perform professional duties by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship; or

(2) Permit his name to be used by any firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship.

Example 1. A covered noncareer employee of the White House Office who is an attorney may not receive compensation for drafting a will for her friend. She may, however, participate in her bar association's pro bono program by providing free legal services for the elderly, provided her participation in the program is otherwise proper. For example, 18 U.S.C. 205 would prohibit her from representing her pro bono client in a hearing before the Social Security Administration.

Example 2. An accountant named C.B. Debit who is offered a covered noncareer appointment must terminate his partnership in the accounting firm of Delight, Waterhose and Debit upon appointment. Because his deceased father, J.R. Debit, was the founding partner for whom the firm is named, the name

Debit need not be deleted from the firm's name. However, the name C.B. Debit may not appear on the firm's letterhead after the individual enters on duty as a covered noncareer employee.

(b) *Definitons.* For purposes of this section:

(1) *Profession* means a calling requiring specalized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical or scholarly principles underlying such skills and methods. It is characteristic of a profession that those in the profession, through force of organization or concerted opinion, establish and maintain high standards of achievement and conduct, and commit its practitioners to continued study of the field. Consulting and advising with respect to subject matter that is generally regarded as the province of practitioners of a profession shall be considered a profession.

(2) *Profession which involves a fiduciary relationship* means a profession in which the nature of the services provided causes the recipient of those services to place a substantial degree of trust and confidence in the integrity, fidelity and specalized knowledge of the practitioner. Such professions are not limited to those whose practitioners are legally defined as fiduciaries and include practitioners in such areas as law, insurance, medicine, architecture, financial services and accounting. A covered noncareer employee who is uncertain whether a particular field of endeavor is a profession which involves a fiduciary relationship may request an advisory opinion under § 2636.103.

Example 1. In view of the standards of the profession which require a licensed real estate broker to act in the best interests of his clients, the selling of real estate by a licensed broker involves the practice of a profession involving a fiduciary relationship.

Example 2. A covered noncareer employee may receive the customary fee for serving as the executor of his mother's estate, provided he does not violate the applicable limitation on the amount of outside earned income he may receive. Although the executor of an estate has fiduciary obligations, serving as an executor in these circumstances does not involve the practice of a profession and, therefore, is not prohibited. He could not, however, serve for compensation as attorney for the estate.

§ 2636.306 Compensation restriction applicable to service as an officer or member of a board.

(a) *Applicable restriction.* A covered noncareer employee shall not receive compensation for serving as an officer or member of the board of any association, corporation or other entity. Nothing in this section prohibits uncompensated service with any entity.

(b) *Definition.* For purposes of this section, the phrase "association, corporation or other entity" is not limited to for-profit entities, but includes nonprofit entities, such as charitable organizations and professional associations, as well as any unit of state or local government.

Example 1. A covered noncareer employee of the Environmental Protection Agency may not serve with compensation on the board of directors of his sister's closely-held computer software corporation.

Example 2. A covered noncareer employee of the Department of the Navy may serve without compensation as an officer of a charitable organization that operates a hospice.

Example 3. A covered noncareer employee of the Coast Guard appointed to serve as a member of the board of education of the county in which she is a resident may not receive compensation for that service.

§ 2636.307 Requirement for advance authorization to engage in teaching for compensation.

(a) *Authorization requirement.* A covered noncareer employee may receive compensation for teaching only when specifically authorized in advance by the designated agency ethics official.

(b) *Definition.* For purposes of this section "teaching" means any activity that involves oral presentation or personal interaction, the primary function of which is to instruct or otherwise impart knowledge or skill. It is not limited to teaching that occurs in a formal setting, such as a classroom, but extends to instruction on an individual basis or in an informal setting.

(c) *Request for authorization.* An employee may request authorization to engage in compensated teaching activities by forwarding a written request to the designated agency ethics official. The request shall describe the employee's official duties, the subject matter of the teaching activity, the entity sponsoring the course, and the student, class or audience to be taught. In addition, it shall set forth the terms of the compensation arrangement and identify the source of the payment. The request shall be accompanied by any contract or employment agreement and any literature describing, publicizing or otherwise promoting the class, classes or course.

(d) *Standard for authorization.* Compensated teaching may be approved by the designated agency ethics official only when:

(1) The teaching will not interfere with the performance of the employee's official duties or give rise to an appearance that the teaching opportunity was extended to the employee principally because of his official position;

(2) The employee's receipt of compensation does not violate any of the limitations and prohibitions on honoraria, compensation or outside earned income contained in this part; and

(3) Neither the teaching activity nor the employee's receipt of compensation therefor will violate applicable standards of conduct or any statute or regulation related to conflicts of interests.

(e) *Determination and authorization.* The determination by the designated agency ethics official to grant or deny authorization to engage in teaching for compensation shall be in writing and shall be final. The authority of the designated agency ethics official to authorize compensated teaching may not be delegated to any person other than the alternate designated agency ethics official described in § 2638.202(b).

[FR Doc. 91-1063 Filed 1-16-91; 8:45 am]
BILLING CODE 6345-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 90-233]

Importation of Sandpears from Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations by specifying definite areas (Provinces) in Chile which the Administrator of the Animal and Plant Health Inspection Service has determined to be free from certain injurious insect pests and from which sandpears (*Pyrus pyrifolia*) may be imported without treatment for these pests. This change will allow the importation in accordance with the regulations of this fruit from the specified definite areas.

EFFECTIVE DATE: January 11, 1991.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6799.

SUPPLEMENTARY INFORMATION: The Fruits and Vegetables regulations in 7

CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed within and throughout the United States.

On November 16, 1990 we published in the **Federal Register** (55 FR 47884–47885, Docket No. 90–187), a proposal to amend the regulations by allowing the importation of sandpears from certain designated areas of Chile. These areas were to be certified as free from Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) (*Wiedemann*). The Minister of Agriculture of Chile had requested that we consider allowing the entry of sandpears from these areas in Chile without Medfly treatment.

Section 319.56–2 (e)(4) and (f) of title 7, Code of Federal Regulations, provides requirements for importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet criteria designed to ensure that it is free from all or certain injurious insects, and other criteria.

As explained in the proposed rule, the areas in Chile to be designated as definite areas meet these criteria in that they are free from the insect pest Medfly, and any other insect pests detected by inspection are eliminated in accordance with 7 CFR part 319. Further, the plant protection service of Chile has established procedures for preventing the movement of Medflies into the designated areas.

We therefore proposed to allow the importation of sandpears from all Provinces in Chile except Africa, Iquique, and Parinacota without treatment for Medfly. We proposed to continue to require treatment for Medfly, in accordance with § 319.56–2d or § 319.56–2n, for sandpears imported from Arica, Iquique, and Parinacota.

Comments on the proposed rule were required to be received on or before December 3, 1990. We did not receive any comments by this date. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule which relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for sandpears begins January 15 and ends at the close of February. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature.

Executive Order 12291 and Regulatory Flexibility Act

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

We are changing the regulations to allow the importation of sandpears from certain provinces in Chile, without treatment for the Mediterranean fruit fly. Although there are no published U.S. production statistics, most sandpears are grown in California, and production is very limited. Rough estimates from officials of that State indicate that between 2,300 and 4,500 tons are currently produced per year. With allowed exportation of Chilean sandpears to the United States, estimates from the government of Chile indicate that approximately 900 tons will be sent during the first growing season.

While these figures represent 20% to 40% of U.S. sandpear production per growing season, Chilean sandpears will be exported to the United States from mid-January through the end of February. U.S. production occurs from August to October. Since there is no overlap in production seasons, U.S. sandpear growers will probably be unaffected by this change. Chilean sandpear exports could substantially increase the quantity of sandpears imported to the United States during the winter months. These exports represent less than 0.1% of total U.S. pear production. It is unlikely that this regulatory change will significantly affect the U.S. pear industry.

It is also unlikely that there will be an impact on U.S. producers of other fruits (e.g., apples and citrus fruits) since the quantity of sandpears to be imported from Chile is minuscule in comparison with U.S. production. Sandpears are also considerably more expensive than apples and most citrus fruits and will probably appeal to a limited number of consumers. Thus, newly imported sandpears will not act as direct substitutes for traditional fruits.

Therefore, there appear to be few, if any, adverse effects on U.S. producers of sandpears, other pears, or other fruits. U.S. consumers will benefit from this action, as will U.S. sandpear importers, since a greater quantity will be available at a time of year when there is no domestically produced supply.

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

Paperwork Reduction Act

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we are amending 7 CFR part 319 as follows:

1. The authority citation for 7 CFR part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.56–2, a new paragraph (j) is added to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(j) The Administrator has determined that all Provinces in Chile except Arica, Iquique, and Parinacota meet the criteria of § 319.56–2 (e) and (f) with regard to the insect pest Mediterranean fruit fly

(Medfly) (*Ceratitis capitata*) (Wiedemann). Sandpears may be imported from these areas without treatment for Medfly. Sandpears from Arica, Iquique, and Parinacota may be imported only if they are treated for Medfly in accordance with § 319.56–2d or § 319.56–2n.

Done in Washington, DC, this 11th day of January 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–1140 Filed 1–16–91; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 272

[Docket No. 42721; Amdt. 272–2]

RIN 2105–AB72

Essential Air Transportation to the Freely Associated States

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: DOT amends its existing regulations on essential air transportation to the Freely Associated States in the western Pacific Ocean to implement new legislation extending the program. This amendment ensures essential air transportation, with subsidy if necessary, between the United States and the Federated States of Micronesia and the Marshall Islands unitl October 1, 1998.

EFFECTIVE DATE: This amendment becomes effective January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, (202) 366–9154.

SUPPLEMENTARY INFORMATION: Compacts of Free Association were entered into between the United States and two former island governments in the Trust Territory of the Pacific Islands, the Federated States of Micronesia and the Marshall Islands. Supplementing each Compact is the Federal Program and Services Agreement, under Article IV of which the United States guarantees essential air transportation, with subsidy if necessary, between the United States and certain points in the Federated States and the Marshall Islands. To implement this agreement, DOT published this part 272 (52 FR 5440; February 23, 1987). The Congress has recently extended these agreements until October 1, 1998 (section 110, Pub. L. 101–219; December 12, 1989). This amendment merely makes conforming changes to reflect this new termination date.

As written, part 272 can also apply to the island government of Palau once its Compact of Free Association and related United States legislation take effect. That has not yet happened; until it does, essential air transportation for Palau continues to be governed by section 419, Federal Aviation Act (49 App. U.S.C. 1389), the essential air transportation legislation applicable to the United States, including its territories.

Because this amendment merely implements an Act of Congress that provides for no discretion, notice and public comment on it are not necessary (5 U.S.C. 553(b)(B)), and it may be made effective in fewer than thirty days after publication in the **Federal Register** (5 U.S.C. 553(d)(3)).

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979. Since it is a technical change, the rule's economic impact is expected to be minimal and regulatory evaluation is unnecessary. I certify that this rule will not have a significant economic impact on a substantial number of small entities. It also will not impose any reporting or paperwork requirements under the Paperwork Reduction Act. This action has been reviewed under Executive Order 12612 on Federalism and the Department has determined that this action does not have implications for principles of federalism that warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 272

Air carriers, Essential air service, Freely Associated States, Grant programs—transportation.

In accordance with the above, DOT amends 14 CFR part 272 as follows:

PART 272—[AMENDED]

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

Authority: 49 U.S.C. 1324, 1372, 1386, 1482 and 1502; Sec. 221(a)(5) of the Compact of Free Association, and Paragraph 5 of Article IX of the Federal Programs and Services Agreement in implementation of that Compact (Pub. L. 99–239; Pub. L. 99–658); Pub. L. 101–219.

2. Section 272.12 is revised to read as follows:

§ 272.12 Termination.

These provisions shall terminate on October 1, 1998, unless the program of essential air transportation to the Federated States of Micronesia, the Marshall Islands, and Palau is specifically extended by Congress.

This amendment is issued under the authority of 49 CFR 1.57(1).

Issued in Washington, DC, on January 8, 1991.

Rosalind A. Knapp,

Acting General Counsel.

[FR Doc. 91–833 Filed 1–16–91; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 884

RIN 0701–AA32

Making Military Personnel, Employees, and Dependents Available to Civilian Authorities for Trial

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force revised the regulation on Making Military Personnel, Employees, and Dependents Available to Civilian Authorities for Trial. This part sets forth the authority, policy, and procedures for making Air Force military and civilian personnel available to U.S. civil authorities for trial or specified court appearances. This revision incorporates the policies contained in DoD Directive 5525.9, dated 27 December 1988 (32 CFR part 146). It makes its provisions applicable to all DAF civilian employees, including nonappropriated fund, and all military dependents. It authorizes an installation commander to delegate approval authority for delivery of Air Force members to a commander of a combat support, air base group, mission support squadron, or equivalent. It removes the distinction between a member charged with an offense carrying a maximum punishment of confinement for one year or more, and an offense carrying a maximum punishment of less than one year confinement, when the request is from authorities of the state where the member requested is located. It delineates standards for return of civilian employees and dependents; requires all refusals of requests for return of overseas members charged with an offense punishable by imprisonment for over one year and

offenses involving the unlawful taking of a child to be approved by Assistant Secretary of Defense (Force Management and Personnel (ASD (FM&P)). It provides that a member's assignment unit at AFMPC will be notified whenever a member is released on bail or recognizance and reports to a designated Air Force unit, activity or recruiting office. The purpose of this notice is to inform the public of these changes.

EFFECTIVE DATE: February 19, 1991.

FOR FURTHER INFORMATION CONTACT: Captain T.M. Radwan, HQ USAF/JAJM, building 5683, Bolling AFB, DC 20332-6128, telephone (202) 767-1539.

SUPPLEMENTARY INFORMATION: This part implements a public law and higher level directives and, therefore, is published as a final rule. The Department of the Air Force has determined that this part is not a major rule as defined by Executive Order 12291, does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980, (Pub. L. 96-511), does not require a Regulatory Analysis under the Regulatory Flexibility Act (5 U.S.C. 601-611), and does not require an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

List of Subjects in 32 CFR Part 884

Intergovernmental relations, law enforcement, military and civilian personnel, and dependents.

Therefore, 32 CFR part 884 is revised to read as follows:

PART 884—MAKING MILITARY PERSONNEL, EMPLOYEES, AND DEPENDENTS AVAILABLE TO CIVILIAN AUTHORITIES FOR TRIAL

Sec.

884.0 Purpose.

Subpart A—General Provisions

884.1 Authority for delivery of Air Force military personnel.
884.2 Requests under the Interstate Agreement on Detainers Act.
884.3 Release on bail or recognizance.
884.4 Placing member under restraint pending delivery.
884.5 Returning members, employees, and dependents from overseas who fail to comply with court orders or custody decrees or who are sought for parental kidnapping.

Subpart B—Requests by Authorities for Military Personnel Stationed Within the United States and its Possessions

884.6 Policy on delivery.
884.7 Delivery to federal authorities.
884.8 Requests by authorities of the state in which the member requested is located.
884.9 Request for delivery by authorities of any state in which the member requested is not located.

Subpart C—Requests for Custody of Members Stationed Outside the United States

884.10 Air Force policy.
884.11 Assigned responsibilities.
884.12 Procedures for return of an Air Force member to the United States.
884.13 Delays in returning members of the United States.
884.14 Denials of a request for return of a member to the United States.

Subpart D—Compliance with Court Orders by Civilian Employees and Dependents

884.15 Policy on complying.
884.16 Procedure involving a request by federal or state authorities for custody of an overseas civilian employee or a command sponsored dependent.
884.17 Reporting requests for assistance and action.
884.18 Format letter.

Authority: 10 U.S.C. 814; 10 U.S.C. 8013; Sec. 721(a), Pub. L. 100-456, 102 Stat. 2001.

§ 884.0 Purpose.

This part sets forth the authority, policy, and procedures for making Air Force military and civilian personnel as well as dependents available to U.S. civil authorities for trial, or specified court appearances. It implements 32 CFR part 146. It applies to all Air Force military personnel, including Reserve members while on active or inactive duty training, and Air National Guard members while in federal status under title 10, United States Code (U.S.C.), all Department of the Air Force (DAF) civilian employees (including nonappropriated fund (NAF) employees), and all dependents. This part establishes the policy that Air Force members, civilian employees, and dependents are expected to comply with valid orders of federal or state courts of competent jurisdiction. It is not applicable where a state, having jurisdiction for the purpose of executing criminal process, proceeds by service of process to take custody of a military member, employee or dependent without making a formal request for the individual's delivery. This part is not intended to confer any rights, benefits, privileges or form of due process procedure upon any individuals.

Subpart A—General Provisions

§ 884.1 Authority for delivery of Air Force military personnel.

Under Uniform Code of Military Justice, Article 14 (10 U.S.C. 814); Public Law 100-456, section 721(a); and the policy expressed in 32 CFR part 146 (DOD Directive 5525.9), a commander exercising general court-martial jurisdiction, or an installation or support group commander when authorized by the officer exercising general court-martial jurisdiction, may authorize delivery of a member of his or her command to the civil authorities of the United States or of a state of the United States under the conditions prescribed in this part. An installation commander given authority to approve requests made pursuant to this part may delegate such approval authority to a commander of a combat support group, air base group, mission support squadron, or equivalent.

§ 884.2 Requests under the Interstate Agreement on Detainers Act.

The Interstate Agreement on Detainers Act (Act), 18 U.S.C. App. section 1 *et seq.*, is a compact entered into by most of the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and the United States. The Act applies to military prisoners and is implemented by this section. The purpose of the Act is to encourage the expeditions and orderly disposition of charges outstanding against a prisoner and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The Act provides a way for the prisoner to be tried on charges pending before state courts, either at the prisoner's request or at the request of the state where the charges are pending. When a request under the Act is received from either the prisoner or state authorities, the procedures set out in 18 U.S.C. App. section 1 *et seq.*, should be followed. The Act applies only to "a person who has entered upon a term of imprisonment in a penal or correctional institution" and is therefore inapplicable to members in pretrial confinement.

§ 884.3 Release on bail or recognizance.

The civil authority to whom a military member is delivered under this part may release the member on bail or on the member's own recognizance before final disposition of the charges. In the event of such a release, the commander authorized to deliver the member, or his or her designee, must, before delivery, direct the member in writing to report to a designated Air Force unit, activity or recruiting office for further instructions (see § 884.18). If the civil authorities to whom delivery was authorized are in the immediate vicinity of the member's base, the activity designated ordinarily will be the member's unit. The Air Force unit, activity, or recruiting office designated will be advised of this action by the commander taking this action.

The authority to whom the member reports must communicate, by the fastest practicable means, the member's name, rank, SSN, organization, and other pertinent information to, and request disposition instructions from, the commander who authorized the delivery of the member to civil authorities, with an information copy to the HQ AFMPC assignment office responsible for the member's Air Force Specialty Code (AFSC), as listed in Air Force Regulation 36–20 [1] or Air Force Regulation 39–11. If contact with such commander is not feasible, instructions must be obtained from HQ AFMPC/DPMARS or DPMRPP2.

§ 884.4 Placing member under restraint pending delivery.

A member may be placed under restraint (see Manual for Courts-Martial (MCM) 1984, Rule for Court-Martial (R.C.M.) 304, as to types of restraint available) by military authorities pending delivery to state or federal authorities. Such restraint may be imposed upon receipt of information establishing probable cause to believe that the member committed an offense, and upon reasonable belief such restraint is necessary. Such restraint may continue only for such time as is reasonably necessary to effect the delivery to civilian authorities. As to the type of analysis to be undertaken in determining whether probable cause exists and whether a reasonable belief exists that restraint is necessary, see MCM 1984, R.C.M. 305(h)(2)(B), and its following discussion. There is no requirement for the formal review of restraint provided in MCM 1984, R.C.M. 305, Air Force Regulation 111–1.

§ 884.5 Returning members, employees, and dependents from overseas who fail to comply with court orders or custody decrees or who are sought for parental kidnapping.

Persons overseas who are wanted by state or federal authorities are expected to make themselves available to those authorities for proper disposition. If this does not occur, 32 CFR part 146, which implements 10 U.S.C. 814 and Public Law 100–456, section 721(a), authorizes and requires commanders to respond promptly to request from civil authorities for assistance in returning members, civilian employees, and dependents from overseas (subpart C of this part).

[1] Air Force publications are available through NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Subpart B—Requests by Authorities for Military Personnel Stationed Within the United States and its Possessions

§ 884.6 Policy on delivery.

When such authorities request the delivery of service members, it is Air Force policy normally to deliver service members when the request is accompanied by a warrant issued pursuant to the Federal Rules of Criminal Procedure, Rule 4, or when the appropriately identified federal officer represents that such a warrant has been issued (MCM 1984, appendix 3).

§ 884.7 Delivery to Federal authorities.

Persons desired by the federal authorities for trial will be called for, and taken into custody by, a U.S. marshal, deputy marshal, or other officer authorized by law. The officer taking custody must execute a statement in substantially the following form:

A warrant for the arrest of (name, grade, and social security number), hereinafter referred to as the "member," who is charged with (offense), has been issued by (name of issuer), and in execution thereof, I accept his or her custody.

The commander (Unit), will be advised of the disposition of the charges. The member will be immediately returned to the custody of the Air Force at (Air Force activity or recruiting office nearest place of trial) upon completion of the trial if acquitted, upon satisfying the sentence imposed if convicted, or upon other disposition of the case. The member's return will not be required if the member's commander has indicated that return is not appropriate. Pending disposition of the charges, the member will remain in the custody of (name of agency and location), unless released on bail or the member's own recognizance, in which event (Air Force unit, activity or recruiting office nearest place of trial) will be notified.

§ 884.8 Requests by authorities of the state in which the member requested is located.

(a) Policy on delivery. It is Air Force policy normally to turn over to the civilian authorities of the state, upon their request, Air Force members charged with an offense against civil authority. There ordinarily will be required with each request by the state authorities for the surrender of a member of the armed forces, a copy of an indictment, information, or other document used in the state to prefer charges.

(b) Delivery to state authorities. Before making delivery to civil authorities of a state, the commander having authority to deliver will obtain from the Governor or other duly authorized officer of such state, a written agreement substantially in the following form:

In consideration of the delivery at (location) of (name, grade, and social security number), hereinafter referred to as the "member," to me (name and capacity), for trial upon the charge of (offense), I, pursuant to the authority vested in me as (position), hereby agree to the following:

The commander, (unit), will be advised of the disposition of the charges. The member will be immediately returned to the custody of the military upon completion of the trial if acquitted, upon satisfying the sentence imposed if convicted, or upon other disposition of the case. The member's return will be to the aforesaid place of delivery, or to such other place as may be designated by the Department of the Air Force. The member's return will not be required if the member's commander has indicated that return is not appropriate. Instead of actual delivery, transportation for the member may be arranged so long as it is without expense to the United States or to the member. Pending dispositon of the charges, the member will remain in the custody of (name of agency and location), unless released on bail or the member's own recognizance, in which event (Air Force unit, activity, or recruiting office nearest place of trial) will be notified.

Where, under the laws of the state concerned, no authority exists permitting agreement to one or more of the conditions set out in the form, the commander may authorize modification. This agreement is substantially complied with when the Air Force authority who delivered the accused is informed of his or her prospective release for return to military authorities, and when the individual is furnished transportation back to his or her station together with necessary funds to cover incidental expenses enroute thereto. Copies of the statement or agreement referenced above, and in § 884.7, will be furnished to the civil authority to whom the member was delivered and to the Air Force unit, activity, or recruiting office nearest to the place of trial designated in the agreement as the point of contact in the event of release on bail or on recognizance (§884.3). The commander, who authorized delivery to civil authority or designee, will immediately notify the civil authority if the return of the member to Air Force custody is no longer required (e.g., discharge from the Air Force).

§ 884.9 Request for delivery by authorities of any state in which the member requested is not located.

This section applies to requested members who are not located overseas. With respect to the extradition process, Air Force ed Force personnel have the same status as persons not in the Armed Forces. Accordingly, if the delivery of a military member is requested by a state other than the state in which the member is located, the requesting state will be required, in the absence of a waiver of extradition process by the member concerned, to use its extradition procedures and to make arrangements to take the individual into custody in the state where he or she is

located. It is contrary to Air Force policy to transfer a military member from a base within one state to a base within another state for the purpose of making him or her amenable to prosecution by civil authorities.

Subpart C—Requests for Custody of Members Stationed Outside the United States

§ 884.10 Air Force policy.

(a) Air Force members are expected to comply with orders issued by a federal or state court of competent jurisdiction unless noncompliance is legally justified. Air Force members who persist in noncompliance are subject to adverse administrative action, including separation for cause under AFRs 36–2 and 39–1.[2] Such action is taken to improve discipline and maintain the standards of conduct expected of Air Force members, but not for the purpose of enforcing private civil obligations.

(b) Air Force officials will ensure that members do not use assignments or officially sponsored residence outside the United States to avoid complying with valid orders of a federal or state court of competent jurisdiction.

(c) Noncompliance with a court order may be legally justified when the individual can adequately demonstrate that the conduct, which is the subject of the complaint or request, was sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good faith legal efforts to resist the request, or other reasons. HQ USAF/JACM and JACA, and Air Force legal offices in the jurisdiction concerned will provide legal support to servicing staff judge advocates who request assistance in reviewing these issues.

(d) When federal, state or local authorities request delivery of an Air Force member who is stationed outside the United States and who is convicted of or is charged by such authorities with a felony or other serious offense punishable by confinement for more than one year under the laws of the requesting jurisdiction, or who is sought by such authorities in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or from the lawful custody of another, the member normally will be expeditiously returned to the United States for delivery to the requesting authorities. Delivery of the member is not required if the controversy can be resolved without returning the member to the United States, or the request for delivery of the member is denied in accordance with this subpart.

(e) An Air Force member stationed outside the United States ordinarily will not be returned to the United States for delivery to civilian authorities in connection with an offense not enumerated in paragraph (d) of this section, but The Judge Advocate General (TJAG) may direct return in such cases when TJAG determines that the best interests of the Air Force require it.

(f) Before action is taken under this subpart, the member will be afforded the opportunity to provide evidence of legal efforts to resist the court order or process sought to be enforced, or otherwise to show legitimate cause for noncompliance.

§ 884.11 Assigned responsibilities.

(a) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) is the denial authority for all requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.10(d) of this subpart.

(b) The Judge Advocate General (TJAG) of the Air Force may approve requests which fall under § 884.10(d) of this subpart, or recommend denial of such requests. TJAG or his designee may approve or deny:

(1) Requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.10(e) of this subpart.

(2) Requests for delays of up to 90 days in completing action on requests for return of members to the United States for delivery to civilian authorities.

(c) The Military Justice Division (HQ USAF/JAJM) is responsible for the timely processing of requests for return of members to the United States for delivery to civilian authorities, and for notifying requesting authorities of decisions on requests. Action on a request will be completed within 30 days after receipt of the request by HQ USAF/JAJM, unless a delay is granted. HQ USAF/JAJM also is responsible for all reports and notifications to ASD (FM&P) and General Counsel, DOD (DOD/GC), as required by this part. HQ USAF/JAJM will conduct all communications with requesters.

§ 884.12 Procedures for return of an Air Force member to the United States.

(a) A request for return of an Air Force member to the United States for delivery to civilian authorities shall:

(1) Fully identify the member sought. Requesting agencies shall provide the members' name, grade, social security number (SSN), and unit of assignment, to the extent that information is known.

(2) Specify the offense for which the member is sought. If the member is charged with a crime, the request shall specify the maximum punishment under the laws of the requesting jurisdiction. If the member is sought in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or the lawful custody of another, the request should so specify.

(3) Include copies of all relevant indictments, informations, or other instruments used to bring charges, all relevant court orders or decrees, and all arrest warrants, writs of attachment or capias, or other process directing or authorizing the requesting authorities to take the member into custody. Reports of investigation and other material concerning the background of the case shall be included, if reasonably available.

(4) State that the requesting authorities will initiate appropriate action to secure the member's lawful delivery or extradition from the port of entry to the requesting jurisdiction, at the expense of the requesting authorities, and that they will notify HQ USAF/JAJM of the member's release from custody and the ultimate disposition of the matter.

(5) Be signed by a United States Attorney or Assistant U.S. Attorney, by the Governor or other duly authorized officer of a requesting state or local jurisdiction, or by the judge, magistrate or clerk of a court of competent jurisdiction.

(b) Requests for return of members to the United States for delivery to civilian authorities shall be directed to HQ USAF/JAJM, Bolling AFB, DC 20332–6128. Requests received by any other Air Force agency or official must be sent to HQ USAF/JAJM by the most expeditious available means.

(c) Upon receipt of a request, HQ USAF/JAJM will promptly notify the members' commander, who will consult with his or her servicing staff judge advocate and provide to HQ USAF/JAJM, through command channels, a report of relevant facts and circumstances and recommended disposition of the request. If the commander recommends denial of the request, or a delay in processing or approving it, he or she will provide the information specified in § 884.13 or § 884.14 of this subpart.

(d) When a request for return of a member to the United States for delivery to civilian authorities has been approved, HQ USAF/JAJM will notify AFMPC of the decision to return a

[2] See footnote 1 in § 884.3.

member to the United States under this subpart. AFMPC will issue permanent change of station (PCS) orders assigning the member to an installation as close to the requesting jurisdiction as possible, in light of the needs of the Air Force for personnel in the member's grade and AFSC.

(e) The requesting authorities will be notified concerning the member's new assignment, port of entry into the United States, and estimated time of arrival. Absent unusual circumstances, this notification will be made at least 10 days before the member's return.

§ 884.13 Delays in returning members to the United States.

(a) A delay of not more than 90 days in completing action on a request to return a member to the United States for delivery to civilian authorities may be granted when:

(1) Efforts are in progress to resolve the controversy to the satisfaction of the requesting authorities without the member's return to the United States.

(2) Additional time is required to permit the member to provide satisfactory evidence of legal efforts to resist the request or show legitimate cause for noncompliance.

(3) Additional time is required to permit the commander to determine and present the specific effect of the loss of the member on command mission and readiness, or pertinent facts and circumstances relating to any international agreement, foreign judicial proceeding, DOD, Air Force, or other military department, investigation, or court-martial affecting the member.

(4) Other unusual facts or circumstances warrant delay.

(b) HQ USAF/JAJM will promptly report all delays in cases falling under § 884.10(d) of this subpart, through SAF/GC and SAF/MI ASD(FM&P), and to DOD/GC.

(c) Delays in excess of 90 days are not authorized in cases falling under § 884.10(d) of this subpart, unless approved by ASD (FM&P).

§ 884. 14 Denials of a request for return of a member to the United States.

(a) Denial of a request for return of a member to the United States for delivery to civilian authorities may be justified when:

(1) The member's return would have an adverse impact on operational readiness or mission requirements.

(2) The member's return is precluded by an applicable international agreement.

(3) The member is the subject of foreign judicial proceedings, court-martial, or a DOD, Air Force, or other military department investigation.

(4) The member has shown satisfactory evidence of legal efforts to resist the request or other legitimate cause for noncompliance.

(5) Other unusual facts or circumstances warrant a denial.

(b) Commanders shall promptly send to HQ USAF/JAJM information suggesting that denial may be appropriate. In cases warranting denial, TJAG will promptly send a recommendation and supporting documentation, through SAF/GC and SAF/MI, to ASD(FM&P) for decision.

(c) The fact that a recommendation for denial is pending does not by itself authorize noncompliance, or a delay in compliance, with any provision of this part, but TJAG may consider a pending request for denial in determining whether to grant a delay.

Subpart D—Compliance with Court Orders by Civilian Employees and Dependents

§ 884.15 Policy on complying.

(a) Air Force civilian employees and dependents are expected to comply with orders issued by a federal or state court of competent jurisdiction unless noncompliance is legally justified. Air Force civilian employees who persist in noncompliance are subject to adverse administrative action, including separation for cause, as provided in AFRs 40–7, 40–735, 40–750, and 147–15.[3] Such action is taken to improve discipline and maintain the standards of conduct expected of Air Force employees, but not for the purpose of enforcing private civil obligations.

(b) Air Force officials will ensure that civilian personnel and dependents do not use assignments or officially sponsored residence outside the United States to avoid complying with valid orders of a federal or state court of competent jurisdiction.

(c) Noncompliance with a court order may be legally justified when the individual can adequately demonstrate that the conduct, which is the subject of the complaint or request, was sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good faith legal efforts to resist the request, or other reasons. HQ USAF/JACM, and JACA, and Air Force legal offices in the jurisdiction concerned will provide legal support to servicing staff judge advocates who request assistance in reviewing these issues.

[3] See footnote 1 in § 884.3.

§ 884.16 Procedure involving a request by federal or state authorities for custody of an overseas civilian employee or a command sponsored dependent.

(a) The procedures of this subpart apply to the following persons:

(1) Civilian employees, including nonappropriated fund instrumentality (NAFI) employees, who are assigned outside the United States.

(2) Dependents residing outside the United States.

(b) This subpart applies only when Air Force authorities receive a request for assistance (see § 884.12 of this part) from federal, state or local authorities involving noncompliance with a court order and noncompliance is the subject of any of the following: an arrest warrant; an indictment, information, or other document used in the jurisdiction to prefer charges; or a contempt citation involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the lawful custody of a parent or third party.

(c) Commanders will comply with requests to the maximum extent possible consistent with operational readiness, mission requirements, provisions of international agreements and foreign court orders, DOD and military department investigations, and courts-martial. If, after all reasonable efforts have been exhausted (see § 884.13 of this part), the matter cannot be resolved without the employee or dependent returning to the United States, then the commander shall:

(1) Strongly encourage the individual to comply; and,

(2) Consider imposing disciplinary action (including removal) against the employee or withdrawing command sponsorship of the dependent, as appropriate, for failure to comply.

§ 884.17 Reporting requests for assistance and action.

The commander or designee will report promptly by message each request for assistance and intended action. Send reports to HQ USAF/JAJM, who in turn will submit required reports through channels to ASD(FM&P). HQ USAF/JAJM will conduct all communication with requesters.

§ 884.18 Format letter.

Subject: Instructions in Case of Release on Bail or Recognizance.

1. You are being released to the custody of civil authorities under the provisions of AFR 111–11. This action does not constitute a discharge from the Air Force. If you are released from civil custody on bail or on your own recognizance, report immediately in person or by telephone to the (Air Force unit, activity, or recruiting office) for further

instructions. Advise the commander of your name, grade, SSN, organization, the circumstances of your release from custody, and the contents of this letter, including the Note below.

2. Certain restrictions may be placed upon you by the civil authorities in connection with your temporary release from custody. Be certain to include in your report what these limitations are.

(Signature element)

Note: Section 884.3 provides that the authority to whom you will report will advise the commander who authorized your delivery to civil authorities, or if that is not possible, HQ AFMPC/DPMARS or DPMRPP2, by the fastest means available. Your name, grade, SSN, organization, and other pertinent circumstances will be provided and further instructions will be requested.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–1121 Filed 1–16–91; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD 89–062]

RIN 2115–AD39

Regulations for Required Participation in Vessel Traffic Service New York; Effective Date Change

AGENCY: Coast Guard, DOT.

ACTION: Final rule; change in effective date.

SUMMARY: On August 27, 1990, the Coast Guard published a final rule in the **Federal Register** (55 FR 34908) amending the Coast Guard's Vessel Traffic Management Rules to include participation in Vessel Traffic Service New York, effective December 1, 1990. The effective date was then delayed until January 16, 1991 (55 FR 49998, December 4, 1990). This document further delays required participation in the New York Vessel Traffic Service until February 15, 1991.

EFFECTIVE DATES: January 17, 1991. The effective date of 33 CFR 161.501 through 161.580 is February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Riley, Project Manager, Commandant (G–NSP), U.S. Coast Guard, 2100 2nd St. SW., Washington, DC 20593–0001, Tel. (202) 267–0412, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard has decided to postpone mandatory participation in VTS New York until February 15, 1991 vice January 16, 1991. Participation will remain voluntary until that date. This will allow additional time for user familiarization, training of VTS watchstanders, and equipment improvements. Participation by vessels listed in § 161.501(c) of the final rule will be required beginning February 15, 1991.

Dated: January 14, 1991.

R.C. Houle,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91–1125 Filed 1–16–91; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–233; RM–7089, RM–7546]

Radio Broadcasting Services; Garberville and Yuba City, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 279C1 to Garberville, California, as that community's second local FM service, in response to a petition for rule making filed by Eric R. Hilding (RM–7089). *See* 55 FR 19284, May 9, 1990. Additionally, in response to a counterproposal filed on behalf of Ridge L. Harlan, Channel 280B1 is substituted for Channel 280A at Yuba City, California, and the license for Station KXCL(FM) is modified accordingly to specify the higher powered channel. Coordinates used for Channel 279C1 at Garberville are 40–05–54 and 123–47–36. Coordinates used for Channel 280B1 at Yuba City are 39–12–21 and 121–49–11. (*See* Supplementary Information, *infra*.) With this action, the proceeding is terminated.

DATES: Effective February 25, 1991; The window period for filing applications for Channel 279C1 at Garberville, California, will open on February 26, 1991, and close on March 28, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–233, adopted December 24, 1990 and released January 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Interested parties should note that the petition for rule making at Garberville was filed prior to October 2, 1989, and, therefore, applicants for Channel 279C1 at that community may avail themselves of the provisions of § 73.213(c) of the Commission's Rules. *See* 47 CFR 73.213(c).

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 279C1 at Garberville and by removing Channel 280A and adding Channel 280B1 at Yuba City.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–1072 Filed 1–16–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–130; RM–7160]

Radio Broadcasting Services; Rockledge, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 274C2 for Channel 274A at Rockledge, Florida, in response to a petition for reconsideration filed by D.V.R. Broadcasting ("petitioner"). A *Report and Order* was issued in this proceeding on October 18, 1990, dismissing the rule making for lack of interest. See 55 FR 42739 (Oct. 23, 1990). Petitioner establishes that timely comments were filed. The coordinates for Channel 274C2 at Rockledge are North Latitude 28–33–30 and West Longitude 80–48–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 90–130, adopted December 28, 1990, and released January 14, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 274A and adding Channel 274C2 at Rockledge.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–1184 Filed 1–16–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–385; RM–6892]

Radio Broadcasting Services; Glen Arbor and Scottsville, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 238C2 for Channel 240A at Glen Arbor, Michigan, and modifies the construction permit for Station WTHM, Channel 240A, to specify Channel 238C2, and also substitutes Channel 235C3 for Channel 240A at Scottsville, Michigan, and modifies the license of Station WKZC, Channel 240A, accordingly. The Notice was issued in response to a petition filed jointly by David C. Schaberg (Glen Arbor) and West Shore Broadcasting (Scottsville). *See* 54 FR 37700, September 12, 1989. Canadian concurrence has been obtained for Channel 238C2 at Glen Arbor at coordinates 44–53–25 and 85–59–59 as a specially negotiated short spaced allotment and for Channel 235C3 at Scottsville at coordinates 44–04–40 and 86–25–00.

EFFECTIVE DATE: February 25, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–385, adopted December 26, 1990, and released January 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 240A and adding Channel 238C2 at Glen Arbor and by removing Channel 240A and adding Channel 235C3 at Scottsville.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–1073 Filed 1–16–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–410; RM–7354]

Radio Broadcasting Services; Pickford, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 288A to Pickford, Michigan, as that community's first FM broadcast service, in response to a petition filed by Leon B. Van Dam. *See* 55 FR 38338, September 18, 1990. Canadian concurrence has been obtained for this allotment at coordinates 46–09–30 and 84–21–30.

DATES: Effective February 25, 1991. The window period for filing applications for Channel 288A at Pickford will open on February 26, 1991, and close on March 28, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–410, adopted December 24, 1990, and released January 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Pickford, Channel 288A.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–1074 Filed 1–16–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–312; RM–6127, RM–6135]

Radio Broadcasting Services; Pearl and Magee, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants Colon Johnston's petition for reconsideration requesting that the Commission rescind the allotment of Channel 230A to Magee, Mississippi, and allot the channel to Pearl, Mississippi. In the report and order in this proceeding, the Allocations Branch staff allotted Channel 230A to Magee as its second local service, even though an allotment to Pearl would have provided that community with its first

local service. This was done because it then appeared that Johnston, the proponent of the Pearl allotment, had not submitted a statement of continuing interest in that allotment. However, as stated in Johnston's petition, such a statement had been timely submitted to the Commission but had not been received in the Allocations Branch.

In view of the above, the Commission believes that the public interest would be better served by allotting Channel 230A to Pearl, since this would provide that community with its first local service. As stated in the notice of proposed rule making, Channel 230A can be allotted to Pearl in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.1 kilometers (4.4 miles) northeast of the community. The coordinates for Channel 230A at Pearl, Mississippi, are 32–15–07 and 90–03–41. With this action, this proceeding is terminated.

DATES: Effective February 28, 1991. The window period for filing applications will open on March 1, 1991, and close on April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 88–312, adopted December 28, 1990, and released January 14, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 230A at Magee and adding Channel 230A at Pearl.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–1185 Filed 1–16–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–74; RM–6440 and RM–6772]

Radio Broadcasting Services; Bourbon and Columbia, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 244A to Bourbon, Missouri, as that community's first FM broadcast service, in response to a petition filed by Lake Broadcasting, Inc. See 54 FR 13536, April 4, 1989. There is a site restriction 8.4 kilometers (5.2 miles) southeast. The coordinates for Channel 244A are 38–06–10 and 91–10–22. Issuance of a license for Channel 244A at Bourbon may be withheld until Station KNSX, Steelville, Missouri, is licensed on Channel 227C2 in lieu of Channel 244A. In response to a counterproposal filed by Ronald L. Peterson, we shall substitute Channel 244C3 for Channel 244A at Columbia, Missouri. We shall also modify the license for Station KCMQ(FM) to specify operation on the Class C3 Channel. The coordinates for Channel 244C3 are 38–58–01 and 92–18–39.

DATES: Effective February 28, 1991; the window period for filing applications for Channel 244A at Bourbon will open on March 1, 1991, and close on April 1, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–74, adopted December 31, 1990, and released January 14, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 244A and adding Channel 244C3 at Columbia, and by adding Bourbon, Channel 244A.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–1186 Filed 1–16–91; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 523, 546, and 552

[APD 2800.12A CHGE 19]

General Services Administration Acquisition Regulation; Hazardous Material Data, Inspection of Supplies

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) (APD 2800.12A) chapter 5, is amended by revising section 523.303 to designate the existing text as paragraph (a) and adding paragraph (b) to prescribe a Nonconforming Hazardous Materials clause at 552.223–72; revising section 546.710 by redesignating the existing text in the basic clause and Alternate I as paragraphs (a)(1) and (a)(2), respectively, and adding paragraphs (a)(3) and (a)(4) to prescribe Alternate II for use if the acquisition is for class 8010 items and Alternative III for use if the acquisition is for class 8030 or 8040 items; adding section 552.223–72 by providing the text of the Nonconforming Hazardous Materials clause to be used in solicitations and contracts requiring contractors to submit hazardous material data; revising section 552.242–70 by permitting contractors to submit information required on GSA Form 1678, Status Report of Orders and Shipments, by electronic data interchange; revising section 552.246–17 by clarifying the contractor's responsibility for removing nonconforming supplies during the warranty period, the remedies available to the Government, and providing the text for Alternates II and III of the basic clause for use in acquisitions for class 8010 items and class 8030 or 8040 items

respectively; revising section 552.246–70 to amend the contractor's record retention period for production records of quality control, reliability and inspection to be consistent with FAR, permitting submission of computer formatted equivalents to the DD Form 250 and for shipments to civilian facilities, provide alternative reporting and certification mechanisms that contractors may utilize in lieu of the DD Form 250; adding amendatory language to clarify the contractor's responsibility for removing nonconforming supplies and the Government's remedies where there is noncompliance by the contractor; revising section 552.246–72 by making the contractor's record retention period for records identified in paragraph f above consistent with the FAR, permitting submission of computer formatted equivalents to the DD Form 250, and clarifying the remedies available to the Government when the contractor fails to remove or provide instructions for the removal of rejected supplies; and revising the matrix at 552.301 to add a reference to the Nonconforming Hazardous Materials clause. The matrixes are not published in this document and do not appear in the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets, NW., Washington, DC 20405.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Paul L. Linfield, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

Comments were solicited from the public as indicated in GSAR Notice 5–173 (53 FR 47551) and in the final rule (54 FR 11954). No comments were received from the public. However, comments received from various GSA offices have been considered and where appropriate incorporated in the final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The revisions regarding the use of various clauses and the requirements of the clauses are not expected to have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act since the current reporting and certification requirements in the clauses have been made more flexible. As indicated in GSAR Notice 5–173 (53 FR 47551) and in the final rule (54 FR 11954), initial and final regulatory flexibility analyses were prepared and made available for public comment. No comments were received on the impact of either the proposed or final rule. The other revisions in the rule also clarify existing requirements. Accordingly, no new regulatory flexibility analysis has been prepared. The Status Report of Orders and Shipments clause at 552.242–70, the Source Inspection by Quality Approved Manufacturer clause at 552.246–70, and the Source Inspection by Government clause at 552.246–72 contain information collection requirements which have been approved by OMB under 3504(h) of the Paperwork Reduction Act and assigned OMB Control No. 3090–0027. Since the mechanism for collecting the information was revised, the proposed rule also was submitted to OMB for review and approval. OMB approved the revised information collection through June 30, 1992.

Comments on the information collection requirements in this proposed rule may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

The title of the first collection in this rule is "Status Report of Orders and Shipments." The clause, requiring contractors to submit a monthly report showing the status of processing of orders received under the contract, is being revised to permit contractors to report the information via electronic data interchange. The contracting officer responsible for administering the contract uses the information to ensure that orders are shipped in accordance with the delivery terms established in the contract and to initiate appropriate action when orders are delinquent. The respondents are contractors awarded indefinite delivery or requirements contracts for stock replenishment items by GSA. The estimated annual burden for this collection is 3,900 hours. This is based on an estimated average burden hour per response of .083, a proposed frequency of 12 responses per respondent, and an estimated number of likely respondents of 3,900.

The title of the second collection in this rule is "Material Inspection and Receiving Report (DD Form 250 and GSA Form 308)." The clause at 552.246–70, Source Inspection by Quality Approved Manufacturer, currently requires the contractor to prepare, sign and distribute a DD Form 250 for each shipment under the contract. Under this revision, shipments to military facilities will still require a DD Form 250 or computer formatted equivalent. For shipments made to civilian facilities, a contractor will have the additional alternatives of providing the requisite information on its company letterhead or invoice document.

The clause at 552.246–72, Source Inspection, requiring the contractor to prepare for signature by Government inspector the DD Form 250 for deliveries to military agencies or the GSA Form 308 for deliveries to civilian agencies, is being revised to permit computer formatted equivalents for the DD Form 250. The contractor distributes the forms after signature by the Government inspector. The information contained on the DD Form 250 or GSA Form 308 is used by various contract administration and other support offices to document contract quality assurance, acceptance of supplies, shipments, and to support payments. The information is essential to effective contract administration. The respondents are contractors awarded supply contracts by GSA that provide for source inspection. The estimated total annual burden for this collection is 13,400 hours. This is based on an estimated average burden hour per response of .05, an average proposed frequency of 64 responses per respondent, and an estimated number of likely respondents of 4,200.

List of Subjects in 48 CFR Parts 523, 546, and 552

Government procurement.

1. The authority citation for 48 CFR parts 523, 546 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 523—[AMENDED]

2. Section 523.303 is revised to read as follows:

523.303 Contract Clause.

(a) The contracting officer shall insert the clause at 552.223–70, Hazardous Substances, in solicitations and contracts for packaged items subject to the Federal Hazardous Substances Act and the Hazardous Materials Transportation Act.

(b) The contracting officer shall insert the clause at 552.223–72, Nonconforming Hazardous Materials, in solicitations and contracts requiring contractors to submit hazardous material data.

PART 546—[AMENDED]

3. In section 546.710 paragraph (a) is revised to read as follows:

546.710 Contract Clauses.

(a)(1) The contracting officer shall insert the clause at 552.246–17, Warranty of Supplies of a Noncomplex Nature, or applicable alternate in solicitations and contracts instead of the FAR clause at 52.246–17 or applicable alternate.

(2) If commercial products or items are to be acquired, the contracting officer shall use the clause at 552.246–17 with its Alternate I. The term "commercial items" does not include Commercial Item Description (CIDs) that describe "commercial-type products" or specifications.

(3) If the acquisition is for other than commercial items in Class 8010, the contracting officer shall use the clause at 552.246–17 with its Alternate II.

(4) If the acquisition is for other than commercial items in Class 8030 or 8040, the contracting officer shall use the clause at 552.246–17 with its Alternate III. In addition, the contracting officer shall specify in the solicitation whether items being acquired are "noncritical end use items" or "critical end use items".

* * * * *

PART 552—[AMENDED]

4. Section 552.223–70 is amended by revising the introductory paragraph to read as follows:

552.223–70 Hazardous Substances.

As prescribed in 523.303(a), insert the following clause:

* * * * *

5. Section 552.223–72 is added to read as follows:

552.223–72 Nonconforming Hazardous Materials.

As prescribed in 523.303(b), insert the following clause:

Nonconforming Hazardous Materials (Dec 1990)

(a) Nonconforming supplies that contain hazardous material or that may expose persons who handle or transport the supplies to hazardous material and which require replacement under the inspection and/or warranty clauses of this contract shall be reshipped to the Contractor at the Contractor's expense. The Contractor agrees to accept return of these nonconforming supplies and to pay all costs occasioned by their return.

(b) "Hazardous material," as used in this clause, is defined in Federal Standard No. 313B, in effect on the date of this contract.

(c) If the Contractor fails to provide acceptable disposition instructions for the nonconforming supplies within 10 days from the date of the Government's request (or such longer period as may be agreed to between the Contracting Officer and the Contractor), or fails to accept return of the reshipped nonconforming supplies, such failure: (1) May be interpreted as a willful failure to perform, (2) may result in termination of the contract for default and (3) shall be considered by the Contracting Officer in determining the responsibility of the Contractor for any future award (see FAR 9.104–3(c) and 9.406–2).

(d) Pending final resolution of any dispute, the Contractor shall promptly comply with the decision of the Contracting Officer.

(End of Clause)

6. Section 552.242–70 is revised to read as follows:

552.242–70 Status Report of Orders and Shipments.

As prescribed in 542.1107, insert the following clause:

Status Report of Orders and Shipments (Dec 1990)

(a) The Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month of contract performance. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instruction on the form, or in an automated printout form as an attachment to the GSA Form 1678 when authorized by the ACO. Blocks 1 through 5 of the GSA Form 1678 must be completed and attached as a cover page to the automated report. Alternatively, the required information may be reported by electronic data interchange using ANSI standards. For further information, contact GSA, Contract Administration Division [Contracting Officer insert appropriate telephone number of FQC]. Reports shall be forwarded to the ACO not later than the seventh workday of the succeeding month.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO or reproduced by the Contractor.

(End of Clause)

7. Section 552.246–17 is revised to read as follows:

552.246–17 Warranty of Supplies of a Noncomplex Nature.

As prescribed in 546.710(a)(1), insert the following clause:

Warranty of Supplies of a Noncomplex Nature (Dec 1990) (Deviation FAR 52.246–17)

(a) *Definitions.* "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract. "Correction," as used in this clause, means the elimination of a defect. "Supplies," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.*

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for*

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with the requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, the Contractor shall be responsible for all costs attendant with no return, correction or replacement of the nonconforming supplies. Any removal in connection with the above shall be done by the Contractor at its expense. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.*

(1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within **. This notice shall contain information concerning the deficiencies found, the location of the nonconforming supplies, and the quantity involved.

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances. When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; *provided,* that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement. All costs incurred by the Government in returning the nonconforming supplies, including costs to the freight carrier resulting from the Contractor's refusal to accept their return, shall be for the Contractor's account.

(4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor—

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure failure within a period of 10 days (or such longer period as the Contracting Office may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price for all nonconforming supplies, including batch or lot materials which either have been consumed or other disposition has been made. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may return the supplies for screening and correction or replacement under subparagraph (c)(3)(ii)(D) above; store the nonconforming supplies for the Contractor's account; sell the nonconforming supplies to the highest bidder on the open market and apply the proceeds against the accumulated storage and other costs, including the cost of the sale; or otherwise dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(6) Unless otherwise provided, this warranty is applicable both within and outside the continental limits of the United States.

(7) In addition to other marking requirements of this contract, the Contractor shall stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The marking should briefly include (i) a statement that the warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) whom to notify if the supplies are found to be defective.

(End of Clause)

* Contracting Officer shall state the specific period of time after delivery or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable event or periods of time.

** Contracting Officer shall insert specific period of time; e.g., "45 days from the last delivery under contract," or "45 days after discovery of the defect." The number of days specified shall be no less than 30.

Alternate I (DEC 1990)

As prescribed in 546.710(a)(2), substitute the following for paragraph (b)(1) of the basic clause and delete paragraph (b)(4) of the basic clause.

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for * all supplies furnished—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

Alternate II (DEC 1990)

As prescribed in 546.710(a)(3), substitute the following paragraph for paragraph (b)(1) of the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for * all supplies furnished—

(i) Conform to the specifications except that in the case of solvent systems, the viscosity may exceed the specified maximum by 10 Kreb Units, unless otherwise specified elsewhere in this contract; and

(ii) Are suitable for their intended purpose as stated in this contract.

Alternate III (DEC 1990)

As prescribed in 546.710(a)(4), substitute the following for paragraph (b)(1) of the basic clause, redesignate paragraph (c) of the basic clause as paragraph (d), and add the following as paragraph (c) in the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for * , beginning with the first day of the first full month following the month of manufacture marked on the container, all supplies furnished retain their original characteristics to the extent that the supplies remain suitable for the intended use as stated in this contract (i) under actual application conditions or (ii) when tested in accordance with requirements stated elsewhere in this contract.

(c) *Government surveillance and testing.*

(1) During this period, surveillance will be maintained on supplies warehoused in Government facilities; and the supplies will be tested periodically to determine their suitability for intended use. Sampling for surveillance testing will be in accordance with Military Standard No. 105, and such testing will be made after NORMAL MIXING, STIRRING, OR SHAKING, in accordance with directions either furnished with the supplies or as shown in the applicable specifications.

(2) Surveillance testing will be based on storage stability requirements set forth in the contract specification, or purchase description on the basis of salient characteristics (e.g., viscosity or sag flow, curing time, strip adhesion or tensile shear, etc.) established by GSA as appropriate to determine suitability for intended use. In the case of brand name items not covered by detailed purchase descriptions, surveillance testing may be based on salient characteristics included in the manufacturer's data sheets. If storage stability requirements showing allowable variations are not included in applicable specifications or elsewhere in the contract, material will be considered suitable for intended use if the salient characteristics vary not more than 20 percent from the originally specified values (i.e., those applicable to acceptance testing of the supplies) for noncritical end-use items, and not more than 10 percent for critical end-use items.

8. Section 552.246–70 is revised to read as follows:

552.246–70 Source Inspection by Quality Approved Manufacturer.

As prescribed in 546.302–70, insert the following clause:

Source Inspection by Quality Approved Manufacturer (Dec 1990)

(a) *Inspection system and inspection facilities.*

(1) The inspection system maintained by the Contractor under the Inspection of Supplies—Fixed Price clause (FAR 52.246–2) of this contract shall be maintained throughout the contract period and shall comply with all requirements of Federal Standard 368, edition in effect on the date of the solicitation. A written description of the inspection system shall be made available to the Government before contract award. The Contractor shall immediately notify the Contracting Officer and the designated GSA quality assurance office of any changes made in the inspection system during the contract period. As used herein, the term "inspection system" means the Contractor's own facility or any other facility acceptable to the Government that will be used to perform inspections or tests of materials and components before incorporation into end articles and for inspection of such end articles before shipment. When the manufacturing plant is located outside of the United States, the Contractor shall arrange delivery of the items from a plant or warehouse located in the United States (including Puerto Rico and the Virgin Islands) equipped to perform all inspections and tests required by the contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(2) In addition to the requirements in Federal Standard 368, records shall include the date when inspection and testing were performed. These records shall be available for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

(3) Offerors are required to specify, in the space provided elsewhere in this solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(4) Within 10 calendar days after receipt of the written notice of award, the Contractor shall provide the Administrative Contracting Officer with the name of the individual and an alternate that will be responsible for inspecting each shipment under this contract.

(b) *Inspection and receiving reports.*

(1) For each shipment released, one of the officials named by the Contractor under paragraph (a)(4) above shall sign a Quality Approved Manufacturer Certificate certifying that supplies have been inspected and found to comply with contract requirements.

The certification shall read as follows:

"I certify that all items in this shipment have been listed herein, and have been inspected and found to comply with all requirements of the contract."

Signature of Certifying Official

(i) For shipments made to military facilities, the Contractor shall prepare and distribute the DD Form 250, Material Inspection and Receiving Report, or computer formatted equivalent of the form not later than the close of business the workday following shipment. The certification above shall be placed in block 16 on this form. The Contractor will be provided a supply of the DD Form 250 with complete instructions for preparation and distribution.

(ii) For shipments made to civilian facilities only, the Contractor shall prepare and distribute not later than the close of business the workday following shipment a certification of inspection and conformance for the identified items, in accordance with instructions furnished at the time of award. The Contractor may furnish the requisite information on the DD Form 250 or computer formatted equivalent, company letterhead, or invoice document.

(c) *Inspection by Government personnel.*

(1) Although the Government will normally rely upon the Contractor's certification as to the quality of supplies shipped, it reserves the right under the Inpsection of Supplies—Fixed Price clause to inspect and test all supplies called for by this contract, before acceptance, at all times and places, including the point of manufacture. When the Government notifies the Contractor of its intent to inspect supplies before shipment, the Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until inspection by the Government is completed and shipment is authorized by the Government.

(2) Government inspection responsibility will be assigned to the GSA quality assurance office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located.

(3) During the contract period, a Government representative may periodically select samples of supplies produced under this contract for Government verification inspection and testing. Samples sent to a Government testing facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(d) *Quality deficiencies.*

(1) Notwithstanding any other clause of this contract concerning the conclusiveness of acceptance by the Government, any supplies or production lots shipped under this contract found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this contract within a period of * months after acceptance shall, at the Government's option, be replaced, repaired or otherwise corrected by the Contractor at no cost to the Government within 30 calendar days (or such longer period as the Government may authorize in writing) after receipt of notice to replace or correct. The Contractor shall remove, at its expense, supplies rejected or required to be replaced, repaired or corrected. When the nature of the defect affects an entire batch or lot of supplies, and the Contracting Officer determines that correction can best be accomplished by retaining the nonconforming supplies and reducing the contract price by an amount equitable under the circumstances, then the equitable price adjustment shall apply to the entire batch or lot of supplies from which the nonconforming item was taken.

(2) If supplies in process, shipped or awaiting shipment to fill Government orders are found not to comply with contract requirements, or if deficiencies in either plant quality or process controls are found, the Contractor may be issued a Quality Deficiency Notice (QDN). Upon receipt of a QDN, the Contractor shall take immediate corrective action and shall suspend shipment of the supplies covered by the QDN until such time as corrective action has been completed. The Contractor shall notify the GSA quality assurance office, within 5 workdays, of corrective action taken or to be taken to permit onsite verification by a Government representative. Shipments of nonconforming supplies will be returned at the Contractor's expense and may constitute cause for termination. Delays due to the issuance of a QDN do not constitute excusable delay under the Default clause. Failure to complete corrective action in a timely manner may result in termination of this contract.

(3) This contract may be terminated for default if subsequent Government inspection discloses that plant quality or process controls are not being maintained, supplies which do not meet the requirements of the specification are being shipped, or there is failure to comply with any other requirement of this clause.

(e) *Additional cost for inspection and testing.* The Contractor will be charged for any additional cost of inspection/testing or reinspecting/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246–2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $ ** per man-hour or fraction thereof if the inspection is at a GSA distribution center; $ ** per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $ ** per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under paragraph (d) above, pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to

avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246–2, supplies may be—

(1) Stored for the Contractor's account;

(2) Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused by the refusal of the Contractor to accept their return also shall be for the Contractor's account); or

(3) Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale.

(g) *Subcontracting requirements.* The Contractor shall insert in any subcontracts the inspection or testing provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause of this contract. The Contractor shall be responsible for compliance by any subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause and the Inspection of Supplies—Fixed Price clause.

(End of Clause)

* The Contracting Officer shall normally insert 12 months as the period during which defective or otherwise nonconforming supplies must be replaced. However, when the supplies being bought have a sheif life of less than 1 year, the shelf-life period should be used, or in the instance where a longer period may reasonably be expected to be available, the longer period should be used.

** The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.

9. Section 552.246–72 is revised to read as follows:

552.246–72 Source Inspection by Government.

As prescribed in 546.302–71, insert the following clause:

Source Inspection by Government (Dec 1990)

(a) *Inspection by Government personnel.*

(1) Supplies to be furnished under this contract will be inspected at source by the Government before shipment from the manufacturing plant or other facility designated by the Contractor, unless the Contractor is otherwise notified in writing by the Contracting Officer or a designated representative. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment. Samples sent to a Government testing facility will be disposed of as follows: Samples from an accepted lot, not damaged in the testing process, will be returned promptly to the Contractor after completion of tests. Samples damaged in the testing process will be disposed of as requested by the Contractor. Samples from a rejected lot will be returned to the Contractor or disposed of in a time and manner agreeable to both the Contractor and the Government.

(2) Government inspection responsibility will be assigned to the GSA quality assurance office which has jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for inspection is located. The Contractor shall notify or arrange for subcontractors to notify the designated GSA quality assurance office 7 workdays before the date when supplies will be ready for inspection. Shipment shall not be made until after inspection by the Government is completed and shipment is authorized by the Government.

(b) *Inspection and receiving reports.* For each shipment, the Contractor shall be responsible for preparation and distribution of inspection documents as follows: (1) DD Form 250, Material Inspection and Receiving Report, or computer formatted equivalent for deliveries to military agencies; or (2) GSA Form 308, Notice of Inspection for deliveries to GSA or other civilian agencies. When required, the Contractor will be furnished a supply of GSA Form 308 and/or DD Form 250, and complete instructions for their preparation and distribution.

(c) *Inspection facilities.*

(1) The inspection system required to be maintained by the Contractor in accordance with FAR 52.246–2, Inspection of Supplies—Fixed Price, may be the Contractor's own facilities or any other facilities acceptable to the Government. These facilities shall be utilized to perform all inspections and tests of materials and components before incorporation into end articles, and for the inspection of such end articles before shipment. The Government reserves the right to evaluate the acceptability and effectiveness of the Contractor's inspection system before award and periodically during the contract period.

(2) Offerors are required to specify, in the spaces provided elsewhere in the solicitation, the name and address of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies.

(3) The Contractor shall deliver the items specified in this contract from a plant or warehouse located within the United States (including Puerto Rico and the Virgin Islands) that is equipped to perform all inspections and tests required by this contract or specifications to evidence conformance therewith, or shall arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(d) *Availability of records.*

(1) In addition to any other requirement of this contract, the Contractor shall maintain records showing the following information for each order received under the contract: (i) Order number; (ii) date order received by the Contractor; (iii) quantity ordered; (iv) date scheduled into production; (v) batch or lot number, if applicable; (vi) date inspected and/or tested; (vii) date available for shipment; (viii) date shipped or date service completed; and (ix) National Stock Number (NSN), or if none is provided in the contract, the applicable item number or other contractual identification.

(2) These records should be maintained at the point of source inspection and shall be available to the Contracting Officer, or an authorized representative, for (i) 3 years after final payment; or (ii) 4 years from the end of the Contractor's fiscal year in which the record was created, whichever period expires first.

(e) *Additional cost for inspection and testing.* The Contractor will be charged for any additional cost for inspecting/testing or reinspection/retesting supplies for the reasons stated in paragraph (e) of FAR 52.246–2, Inspection of Supplies—Fixed Price. When inspection or testing is performed by or under the direction of GSA, charges will be at the rate of $ * per man-hour or fraction thereof if the inspection is at a GSA distribution center; $ * per man-hour or fraction thereof, plus travel costs incurred, if the inspection is at any other location; and $ * per man-hour or fraction thereof for laboratory testing, except that when a testing facility other than a GSA laboratory performs all or part of the required tests, the Contractor shall be assessed the actual cost incurred by the Government as a result of testing at such facility. When inspection is performed by or under the direction of any agency other than GSA, the charges indicated above may be used, or the agency may assess the actual cost of performing the inspection and testing.

(f) *Responsibility for rejected supplies.* When the Contractor fails to remove or provide instructions for the removal of rejected supplies under FAR 52.246–2(h) pursuant to the Contracting Officer's instructions, the Contractor shall be liable for all costs incurred by the Government in taking such measures as are expedient to avoid unnecessary loss to the Contractor. In addition to the remedies provided in FAR 52.246–2, supplies may be—

(1) Stored for the Contractor's account;

(2) Reshipped to the Contractor at its expense (any additional expense incurred by the Government or the freight carrier caused by the refusal of the Contractor to accept their return also shall be for the Contractor's account); or

(3) Sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including the cost of the sale.

(End of Clause)

* The rates to be inserted are established by the Commissioner of the Federal Supply Service or a designee.

Dated: January 2, 1991.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91–1010 Filed 1–16–91; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1061

[Ex Parte No. MC-194]

American Bus Association and United Bus Owners of America Petition for Rulemaking—Prohibition Against Smoking on Interstate Motor Passenger Carrier Vehicles; Action on Smoking and Health

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting final amendments to the rules at 49 CFR part 1061 to prohibit smoking on scheduled intercity passenger service and on special operations. Smoking on chartered buses will be permitted or prohibited at the option of the bus operator or the group chartering the bus. The amended rules are set forth below. A notice of proposed rulemaking was published on September 11, 1990 at 55 FR 37339.

EFFECTIVE DATE: February 16, 1991.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 275–7691, or Joseph B. O'Malley (202) 275–7928, [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 services (202) 275–1721].

Energy and Environmental Considerations

These rule revisions will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We reaffirm our prior certification that adoption of the rule modification will not have an adverse economic impact on a substantial number of small entities. The only monetary expense associated with the proposal is the requirement for the carrier to post signs announcing the smoking prohibition. This expense will be overwhelmingly offset by the benefit to the carrier from the ease of enforcing a blanket no-smoking provision, and by the reduction of health risks to bus passengers.

List of Subjects for 49 CFR Part 1061

Buses, Motor carriers, Smoking.

Decided: January 9, 1991.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1061 of the Code of Federal Regulations is amended as follows:

1. Part 1061 is revised to read as follows:

PART 1061—LIMITATION OF SMOKING ON INTERSTATE PASSENGER CARRIER VEHICLES

Section 1061.1 Prohibition against smoking on interstate passenger-carrying motor vehicles.

Authority: 49 U.S.C. 10101, 10102, 10321, 10922, and 11101, and 5 U.S.C. 553.

§ 1061.1 Prohibition against smoking on interstate passenger-carrying motor vehicles.

(a) All motor common carriers of passengers subject to subchapter II of chapter 105 of title 49, United States Code, shall prohibit smoking (including the carrying of lit cigars, cigarettes, and pipes) on vehicles transporting passengers in scheduled or special service in interstate commerce.

(b) Each carrier shall take such action as is necessary to ensure that smoking by passengers, drivers, and other employees is not permitted in violation of this section. This shall include making appropriate announcements to passengers, the posting of the international no-smoking symbol, and the posting of signs in all vehicles transporting passengers in letters in sharp color contrast to the background, and of such size, shape, and color as to be readily legible. Such signs and symbols shall be kept and maintained in such a manner as to remain legible and shall indicate that smoking is prohibited by Federal regulation.

(c) The provisions of paragraph (a) of this section shall not apply to charter operations as defined in 49 CFR 1054.2(a).

[FR Doc. 91–1153 Filed 1–16–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 900832–1005]

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Notice of final initial specifications for the 1991 Atlantic mackerel, squid, and butterfish fisheries.

SUMMARY: NOAA issues this notice of final initial specifications for the 1991 fishing year for Atlantic mackerel, squid, and butterfish. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish initial specifications for the upcoming fishing year. This action is intended to fulfill this requirement and promote the development of the U.S. Atlantic mackerel, squid, and butterfish fisheries.

EFFECTIVE DATE: January 1, 1991.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's analysis and recommendations are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–9324, or Richard Seamans, 508–281–9244.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) as amended, appear at 50 CFR part 655. These regulations require that the Secretary will publish a notice specifying the initial optimum yield (IOY) as well as the allowable biological catch (ABC); domestic annual harvest (DAH); domestic annual processing (DAP); joint venture processing (JVP); and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP.

Procedures for determining the initial annual amounts are found in § 655.22. The Secretary published this notice of preliminary initial specifications (preliminary notice) on September 18, 1990 (55 FR 38363). The comment period ended October 15, 1990.

The following table contains the final initial specifications in metric tons (mt) for Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish. These specifications are based on the

recommendations of the Mid-Atlantic and New England Fishery Management Councils and consideration of comments received from the public. The Regional Director, Northeast Region, NMFS (Regional Director), after considering all the information available, believes these specifications will stimulate the development of the U.S. industry, leading to increased benefit to the Nation.

INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE 1991 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1991

[Metric tons]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY [a]	44,000	30,000	[b] N/A	16,000
ABC [c]	37,000	22,500	330,000	16,000
IOY	31,010	18,000	114,000	10,019
DAH	31,000	18,000	[d] 90,000	10,000
DAP	31,000	15,000	24,000	10,000
JVP	0	3,000	54,000	0
TALFF	10	0	[e] 24,000	19

[a] Max IOY as stated in the FMP;
[b] Not applicable; see the FMP;
[c] IOY can rise to this amount;
[d] Includes 12,000 mt projected recreational catch based on the formula contained in the regulations (50 CFR 655.21);
[e] Foreign partner is required to purchase JVP and U.S. processed product in the ratio 9 mt TALFF to 3 mt JVP or 1 mt U.S. product. The ratio may therefore be expressed with any combination of JVP or processed mackerel, i.e. 9 to 3 or 0 (JVP) or 9 to 0 or 1 (processed mackerel).

Changes To The Preliminary Initial Specifications

The preliminary initial specifications (preliminary specifications) for squid and butterfish have not been changed. Only one commenter responded to the proposed specifications, indicating support for them as presented.

After publication of the preliminary notice the Mid-Atlantic Fishery Management Council (Council) submitted "Alternative Specifications" for Atlantic mackerel that would reduce TALFF to 0 and add 24,000 mt to JVP. This action was based upon reports that applications would be received for a total of 78,000 mt of JVP only for the 1991 fishing year, resulting in the conclusion that TALFF would be unnecessary to keep the U.S. industry at full fishing capacity. Before this alternative was published in the **Federal Register** for comment, the industry responded, both verbally and in writing, to the action taken by the Council. Comments, both in support of and opposed to the proposed action, were received by NOAA and NMFS. This led to a detailed investigation by the Northeast Region's staff into the validity of statements received. The information obtained showed that U.S. fishing vessels with previous fishing experience in the winter mackerel fishery were significantly reduced in number. Five of the most productive vessels had either moved to the Pacific Northwest or were in the process of doing so. The operators of five additional vessels reported that they were committed to fishing for other markets and would not participate in the joint venture fishery. Of the remaining vessels, four planned to participate in the JVP-only fishery, but nine reported that they could not afford to fish for mackerel at the price being offered. The price was almost 30 percent lower than that paid in 1990.

NMFS recognized that the political changes occurring in Eastern Europe might affect the mackerel joint venture fisheries. Some Eastern European countries had been major participants, and their subsidized fishing programs allowed higher prices to be paid for mackerel delivered over-the-side and for U.S.-processed mackerel than would be possible in a competitive market environment. It was anticipated that additional TALFF allowances might be necessary to compensate for the economic shortfall. Two of the East European countries most involved in past years, East Germany and Poland, have not applied for mackerel. East Germany is now part of a Unified Germany and no applications are expected. Reports have indicated that most of its fishing fleet has been sold. Similarly, it is not likely that Poland will submit applications for a joint venture fishery at this time due to problems in its economy. As a result, continued growth of the winter mackerel fishery is questionable.

The stock assessment report from the Northeast Fisheries Center indicates that the Atlantic mackerel population currently exceeds one million mt and suggests that a total allowable catch of 330,000 mt would be reasonable. Failure to reduce the stock has resulted in reducing size-at-age and could have other negative biological implications in the future. This information makes it difficult to rationalize harvest conditions that are certain to restrict significantly fishing mortality even in the face of economic concerns expressed by some segments of the U.S. industy. In the past, proponents of "JVP only" operations have expressed concern that direct fishing by foreign vessels breaks up the mackerel schools and interferes with their fishing success. To the degree this occurs, it would affect both vessels fishing for JVP and those U.S. vessels fishing to process mackerel for other markets. However, at this time, a very limited number of foreign vessels is likely to be engaged in a directed fishery during 1991. An economic analysis that assumes that the full allocation will be taken in either a "JVP only" fishery, or a fishery involving TALFF, concludes that the TALFF fishery will produce 15 percent greater benefits to the United States. Considering the dollar amounts involved this is significant.

The Regional Director considered the above factors and concluded that in 1991 the greatest benefit to the Nation will be derived by retaining the option of allocating TALFF. It is obvious that the circumstances surrounding the winter mackerel fishery are in a major state of change at this time. None of these changes seems likely to promote the continuation of a significant winter fishery for mackerel in spite of the unusual high level of stock abundance. With stocks of traditional commercial species at record low levels, U.S. vessels capable of doing so should be encouraged to fish for mackerel. The availability of TALFF is expected to provide an additional market for

domestically caught mackerel at an economically viable price. For this reason, the final initial specifications for mackerel retain TALFF at the 24,000 mt level.

In addition, the Regional Director has modified the purchase requirements ratio from 8:3 and 1 to 9:3 or 1 with any combination of JVP and U.S. processed mackerel acceptable. This is the same as the 1988 requirement. Even with this modification, it appears that the ability of the U.S. industry to perform adequately is unpredictable. Recent attempts by U.S. partners in proposed joint ventures to obtain commitments for required amounts of JVP and processed mackerel have shown less than promising results.

Early in the process of establishing mackerel specifications the Regional Director requested that the industry submit what it believed would be economically viable joint venture proposals that had commitments from U.S. fishing and processing interests as well as a foreign partner. For whatever reasons, the industry did not submit any proposals. The Council and the Regional Director will consider adjusting mackerel specifications if warranted by future conditions. The 1991 winter mackerel fishery may provide the information necessary to develop a longer term plan for the future. It will be monitored from that perspective.

Specification Levels

Specification levels for all four species remain unchanged from the preliminary specifications.

Special Conditions

In addition to the specification in Table 1 the Council recommended that conditions and restrictions be placed on the foreign fishery for mackerel. These recommendations are intended to minimize harvesting conflicts among users and impacts on other regional resources. The recommended conditions were contained in the preliminary notice and are listed below. Changes were made in conditions 2 and 8. Condition 2 modifies the purchase ratios to 9:3 or 1 and allows substitution of JVP for processed mackerel. Condition 8 reflects the fact that a "JVP only" fishery may be approved even though the foreign nation has not met the purchase obligations from a previous year.

1. Directed foreign fishing for Atlantic mackerel should be prohibited south of 37° 30'N. latitude. Joint ventures are allowed, but river herring bycatch south of that latitude may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; directed foreign fishing for Atlantic mackerel (allowed north of 37° 30'N. latitude and seaward of a line 20 miles from the shore) should be limited to a 1 percent river herring bycatch; river herring TALFF should be 100 mt with the possibility of an increase to 200 mt.

2. Purchase requirements for foreign nations that request TALFF should be set at a ratio of 9 mt TALFF to 3 mt JVP or 1 mt U.S. processed product, or combination of JVP and U.S.-processed product that will achieve the U.S. production requirements of this ratio.

3. The Regional Director, in consultation with the Council should use the following formula for recommending allocation releases:

a. When the Regional Director has determined that the 1990 (and 1989, if appropriate) requirements for purchases of U.S. harvested and/or processed mackerel have been met, he will request that 25 percent of that foreign nation's cap TALFF be allocated for directed fishing by its vessels;

b. When the allocation is officially released, directed fishing may begin and continue until the allocation is taken;

c. It will be necessary to purchase 25 percent of the JVP and U.S. processed mackerel requirements before an additional TALFF allocation will be made; and

d. When the 25 percent requirement has been met an additional 25 percent of TALFF will be allocated, with further TALFF allocations contingent upon continued performance in the purchase of JVP and U.S. processed mackerel.

4. Foreign nations participating in the 1991 Atlantic mackerel fishery should be required to dedicate a vessel to receive JVP from U.S. vessels exclusively. This dedicated vessel will not be permitted to conduct directed fishing operations until all commitments to purchase are fulfilled.

5. The Regional Director should do everything within his power to reduce impacts on marine mammals in prosecuting the Atlantic mackerel fisheries.

6. Increases in Atlantic mackerel IOY during the year should not exceed 200,000 mt.

7. Atlantic mackerel TALFF should not exceed 24,000 mt, unless the Regional Director, with the concurrence of the Council, determines that it is appropriate to increase IOY under § 655.21(b)(2)(v) to provide additional TALFF.

8. Applications from a particular nation for directed foreign fishing for 1991 should not be approved until the Regional Director determines, based on an evaluation of performances, that the nation's purchase obligations for 1990 (and 1989, if appropriate) have been fulfilled.

9. *Illex* joint ventures should not begin prior to July 15.

Comments and Responses

Written comments were submitted by Amerpol International, Inc.; the Royal Netherlands Embassy, Office of the Agricultural Counselor; the Delegation of the Commission of the European Communities; Mayflower International Ltd.; and four individuals.

Comment: Amerpol International, Inc.; the Royal Netherlands Embassy, Office of the Agricultural Counselor; the Delegation of the Commission of the European Communities (EC); and Mayflower International Ltd. stated their opposition to the proposed 8:3:1 ratio. Also they did not support the initial TALFF of 24,000 metric tons for Atlantic mackerel.

Response: Changes that have occurred on an international level and within the domestic industry have combined to make the 8:3:1 ratio economically onerous. A reduction in the size of the domestic fishing and processing vessel fleet warrants returning to a ratio of 9:3 or 1 for the 1991 winter fishery.

The initial TALFF of 24,000 mt is sufficient to provide applicants with initial allocations. The Regional Director, in consultation with the Council, may increase TALFF specifications if foreign performance warrants.

Comment: Amerpol International, Inc., did not support the proposed DAH of 90,000 metric tons for Atlantic mackerel. It stated that past performance of U.S. industry and current capabilities do not justify that level of DAH, a significant portion of which should be transferred to TALFF. Also it stated that the prohibition to substitute purchases of U.S. processed product with quantities of JVP will not encourage the Polish fishing fleet to participate in the 1991 mackerel fishery.

Response: The proposed DAH is a conservative approach to benefit the U.S. industry. The ABC provides sufficient margin to increase the IOY and TALFF if reason exists to do so. The Regional Director would consult with the Council to determine if an increase in the TALFF specification is warranted during the fishing season.

The purchase ratios have been adjusted to allow either JVP or U.S. processed product, or a combination of both, to earn TALFF.

Comment: The Royal Netherlands Embassy, Office of the Agricultural Counselor, Mayflower International Ltd., and two commentors state they

cannot agree with releases of TALFF in 25 percent increments.

Response: The Regional Director considers it necessary to release TALFF in 25 percent increments to ensure that purchase ratios are honored. Liberalization of the purchase ratio requirements should be helpful in the effort to earn additional TALFF releases.

Comment: The EC stated that the preliminary specifications for Atlantic mackerel for 1991 do not correspond to the specific provisions and intentions of the Magnuson Act to produce maximum benefits to the United States fishing industry. Also it stated that the specifications would seriously prejudice the benefits that the EC expected to obtain from the GIFA Extension.

Response: The preliminary specifications meet the requirements and the intent of the Magnuson Act, as amended. There is no requirement to offer allocations if it is determined to be in the best interest of the United States not to do so. The Regional Director has made significant changes in the preliminary specification's conditions to benefit both the U.S. fishing industry and participating foreign nations.

Comment: Mayflower International Ltd. supported the preliminary specifications for 1991 for *Loligo, Illex,* and butterfish, as written.

Response: No response is necessary.

Comment: Mayflower International Ltd. commented that an initial TALFF of 24,000 mt for Atlantic mackerel is far below the proposed ABC of 330,000 mt and IOY of 114,000 mt. It stated that a DAH of 90,000 metric tons is not realistic and should justify a substantial increase in TALFF for 1991. Mayflower did not agree with what is characterized as a special condition that an application for 1991 not be approved for circumstances beyond the control of a foreign vessel owner.

Response: As noted in a prior response to an Amerpol International comment, the specified TALFF is sufficient to provide an initial release to applicants and can be raised if conditions warrant. The requirement that a foreign nation must meet ratio obligations incurred in a previous year applies to directed fishing operations and is critical for the rational management of the mackerel fishery. (A "JVP only" fishery may be approved even though the purchase obligations from a previous year have not been fulfilled.) This condition insures that all participating nations will be treated equally. It must be recognized that allocations of TALFF are made to foreign nations, not to companies or vessel owners. If this were not so, it would allow company and vessel ownership to change as a means of removing obligations. This would not be in the best interest of the nation. The commenter is referring to special condition 8 that requires a foreign nation, rather than a particular business entity, to fulfill past purchase obligations before a 1991 application is approved. This requirement stems from the Governing International Fishing Agreement (GIFA), that authorizes foreign joint ventures and directed fishing in U.S. waters. Since this is an agreement between the United States and foreign governments, the governments are utlimately responsible for its nationals operating under this agreement. This condition has been in place in previous years and is applied equally to all nations having GIFA's with the United States.

Comment: Mayflower International Ltd. and four commenters did not agree with the 1990 poundage fee of $68.43 per metric ton for Atlantic mackerel and requested that the TALFF fee be lowered.

Response: A Notice of Proposed Rulemaking on the 1991 Foreign Fishing Fees was published for comment on October 12, 1990 (55 FR 41570). The above comment has been considered and will be addressed in the final rule on the 1991 foreign fishing fees.

Classification

This action is authorized by 50 CFR part 655 and complies with Executive Order 12291.

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

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: January 11, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–1136 Filed 1–14–91; 11:47 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 12
Thursday, January 17, 1991

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-56]

Charles Young; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is denying a petition for rulemaking submitted on April 18, 1988, by Mr. Charles Young of Glen Ellyn, Illinois, in his own behalf which requests that the Commission rescind 10 CFR 50.54 paragraphs (x) and (y) to preclude deviation from license conditions or technical specifications for licensed nuclear power plants in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

ADDRESSES: Copies of comments and documents cited in this notice are available for public inspection at the NRC Public Document Room, 2120 L Street, (Lower Level), NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Morton R. Fleishman, Office of Nuclear Regulatory Research, U.S. Regulatory Commission, Washington, DC 20555, Telephone 301–492–3794.

SUPPLEMENTARY INFORMATION:

Background

By letter dated April 18, 1988, Charles Young, 262 Sheffield Lane, Glen Ellyn, Illinois, petitioned the U.S. Nuclear Regulatory Commission to rescind the provision that authorizes nuclear power plant operators to deviate from technical specifications during an emergency. The petitioner notes that the technical specifications (a) prescribe settings for safety systems at nuclear power plants, such as the emergency core cooling system, so that action of a safety system will correct an abnormal condition before fuel design limits are exceeded; and (b) require an automatic safety system to operate as long as the abnormal condition which threatens the nuclear fuel exists in the plant. The petitioner cites several cases of practices involving nuclear power reactors that he considers to be hazardous. In his opinion, these practices could lead to an accident similar to the one at Three Mile Island, Unit 2. The petitioner claims that three official investigations have confirmed that damage to the nuclear reactor at Three Mile Island, Unit 2, could have been prevented if the operators had followed the requirements of the plant's operating license and technical specifications.

According to the petitioner, the three investigations and their applicable findings are as follows:

(1) The President's Commission found that reactor core damage would have been prevented if the high pressure injection system had not been throttled. [Kemeny Commission Finding #4, pg 28]

(2) Calculations by the Special Inquiry Group show that use of the high pressure injection system would have prevented overheating of the fuel and release of radioactive material. [Rogovin, Vol II, part 2, pgh D.2.b, pgs 558, 561]

(3) The Special Investigation by the Senate Subcommittee on Nuclear Regulation found the cause of severe damage to the reactor core was the inappropriate overriding of automatic safety equipment by plant and managers. [Hart Report chapter 2, Findings and Conclusions, #2, pg 9]

The petitioner believes that the NRC should rescind the existing provisions in paragraphs (x) and (y) of 10 CFR 50.54 to adequately protect the public health and safety from the hazards of nuclear radiation from nuclear power reactors.

Notice of receipt of the petition and request for public comment was published in the **Federal Register** on August 26, 1988 [53 FR 32624]. On October 20, 1988 the original notice of receipt for PRM–50–50 was corrected to provide additional information in support of the petitioner's original intent by revising two sentences in the Grounds for the Petition. The correction had the effect of increasing the number of plants included in the basis for the petition [53 FR 40432]. The sixty-day comment period of the original petition expired on October 18, 1988. A total of seven (7) public comment letters were received, representing eleven organizations. All of the commenters were opposed to the petition for rulemaking. The comment letters may be examined in the NRC public document room. All comment letters have been evaluated by the NRC staff.

Discussion

It is the Commission's position that emergency conditions can arise during which a license condition could prevent necessary protective action by the licensee. Technical specifications contain a wide range of operating limitations and requirements concerning actions to be taken if certain systems fail and if certain parameters are exceeded. Most technical specifications are devoted to keeping the plant parameters within safe bounds and keeping safety equipment operable during normal operation. However, technical specifications also require the implementation of a wide range of operating procedures which go into great detail as to actions to be taken in the course of operation to maintain facility safety. These procedures are based on the various conditions—normal, transient, and accident conditions—analyzed as part of the licensing process.

Nevertheless, unanticipated circumstances can occur during the course of emergencies. These circumstances may call for responses different from any considered during the course of licensing. For example, the need to isolate the accumulators to prevent nitrogen injection to the core while there was still substantial pressure in the primary system was not foreseen in the licensing process before TMI–2, thus, the technical specifications prohibited this action. Other circumstances requiring a deviation

from license requirements can arise during emergencies involving multiple equipment failure or coincident accidents where plant emergency procedures could be in conflict, or not applicable to the circumstances.

An accident can take a course different from that visualized when the emergency procedure was written, thus requiring a protective response at variance with a procedure required to be followed by the licensee. In addition, performance of routine surveillance testing, which might fall due during a period for which the plant is in an emergency status, may have to be delayed or cancelled because it could either divert the attention of the operating crew from the emergency or cause loss of equipment needed for proper protective action. It was for these reasons that the Commission added paragraphs (x) and (y) to 10 CFR 50.54 (47 FR 35996).

Paragraph (x) of 10 CFR 50.54 is similar to the so-called "General Prudential Rule" contained in both the International Regulations for Preventing Collisions at Sea, 1972, and the Inland Navigational Rules Act of 1980. This rule states:

> In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which make a departure from those rules necessary to avoid immediate danger.

Thus, a Commanding Officer of a ship is permitted to deviate from written rules to the extent necessary to save the ship.

Paragraph (x) of 10 CFR 50.54 is also very similar to a Federal Aviation Administration (FAA) rule governing the operation of aircraft, 14 CFR 91.3, which states that "[i]n an emergency requiring immediate action, the pilot in command may deviate from any rule * * * to the extent necessary to meet that emergency. Each pilot in command who deviates from a rule * * * shall, upon the request of the Administrator, send a written report of that deviation to the Administrator."

As the Commission stated in the Statement of Considerations for the final rule adopting 10 CFR 50.54 paragraphs (x) and (y), "The Commission had both the General Prudential Rule and the FAA rule in mind when it framed the proposed rule" [48 FR 13966; April 1, 1983].

All of the public comments received by the staff on the petition opposed any change to 10 CFR 59.54 paragraphs (x) and (y). Most of the commenters observed that technical specifications do not dictate mitigation strategies or recovery actions under accident conditions as the petitioner states; rather, generic emergency operating procedures approved by the NRC are relied upon for this purpose instead. Examples of proceduralized deviations from technical specifications were cited. These examples included: Inhibiting detrimental automatic plant responses; defeating interlocks to allow preferred flow paths; taking manual control of automatic systems; maintaining plant parameters (such as reactor water level) outside normal ranges; and cross-tying non-safety equipment to perform accident mitigation functions.

One commenter noted that without 10 CFR 50.54 paragraphs (x) and (y), operators may be reluctant to take reasonable actions in an emergency immediately needed to protect the health and safety of the public. Another commenter noted that requiring operators to obtain permission from the NRC to deviate from technical specifications during an emergency could result in diversion of personnel resources at a critical time.

A third commenter, a legal firm representing five utility licensees, stated that even if the petitioner's statement that the TMI accident would not have occurred had operators complied with technical specification and operating license conditions were true, this conclusion did not support elimination of 10 CFR 50.54 paragraphs (x) and (y). As the Kemeny Commission found, "[t]he accident at * * * TMI occurred as a result of a series of human, institutional, and mechanical failures." The commenter further stresses that "10 CFR 50.54(x) and (y) were promulgated subsequent to TMI." Furthermore, the commenter pointed out that one of the lessons learned from TMI is that the range of circumstances addressed by the technical specifications is limited and that strict adherence to them in an emergency can actually be hazardous to public health and safety.

The petitioner has not shown that the requested rule changes to rescind paragraphs (x) and (y) of 10 CFR 50.54 would enhance the public health and safety or lessen the impact on the environment. Hence, the Commission has decided to deny the petition for rulemaking.

Dated at Rockville, Maryland this 11th day of January 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-1151 Filed 1-16-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-48; Notice No. SC-91-1-NM]

Special Conditions: McDonnell Douglas Model DC-8-70 Series Airplanes; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the McDonnell Douglas Model DC-8-70 series airplanes modified by The Dee Howard Company. This airplane is equipped with high-technology digital avionics systems which perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). This notice proposes additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: Comments must be received on or before February 6, 1991.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-48, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-48. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Holt, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4046; telephone (206) 227-2140.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire.

Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–48." The postcard will be date/time stamped, and returned to the commentor.

Background

On February 2, 1990, The Dee Howard Company of San Antonio, Texas, applied for a supplemental type certificate to modify the McDonnell Douglas Model DC–8–70 series airplanes. The DC–8–70 is a three crew, four-engine airplane with a maximum takeoff weight of approximately 335,000 lbs. The proposed modification incorporates a number of novel or unusual design features, such as digital avionics consisting of dual electronic flight instrument systems (EFIS), dual inertial navigation systems (INS), a dual air data computer (ADC), and an integrated autopilot system, which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.115, subpart C, of the FAR, The Dee Howard Company must show that the altered Model DC–8–70 meets the regulations incorporated by reference in Type Certificate No. 4A25, as specified in § 21.101(a), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under §§ 21.101 (a) and (b); or (3) special conditions are prescribed by the Adminstrator.

Based on the provisions of §§ 21.101 (a) and (b), The Dee Howard Company will have to show compliance with the basic type certification basis per Type Certificate Data Sheet (TCDS) No. 4A25, plus the following FAR part 25 requirements, up to Amendment 25–70, that are deemed necessary to provide a level of safety equivalent to that established by the regulations incorporated by reference in TCDS 4A25: § 25.255; § 25.397(b); §§ 25.561 (c) and (d); §§ 25.581 (a) and (b) (systems only); § 25.603; §§ 25.613 (c) and (e); § 25.671 (a), (b) and (c); § 25.672 (a), (b), and (c) (autopilot); §§ 25.1303 (a), (b), and (c); § 25.1307(e); §§ 25.1309 (a) thru (g); §§ 25.1321 (a) thru (e); § 25.1322 (a) thru (d); §§ 25.1323 (a), (c), and (d); §§ 25.1329 (a) thru (h); §§ 25.1331 (a) and (b); § 25.1353(c); §§ 25.1355 (a) and (c); §§ 25.1359 (a) thru (d); §§ 25.1431 (a), (b), and (c); § 25.1525; § 25.1529; and § 25.1541.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 4b plus applicable part 25 requirements) do not contain adequate or appropriate safety standards for the Model DC–8–70 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(b)(2) to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b) and become part of the type certification basis in accordance with § 21.115(a).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive and electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Model DC–8–70 which would require that the new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), the dual inertial navigation systems (INS), the dual air data computer (ADC), and the integrated autopilot system be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the proposed special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstration compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AR) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its sytems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed sytems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (1/2 Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple

strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of 1/2 magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulse accompanying the airplane lightning strike process. Whole insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pluses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
I_{peak} =	200 KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$(amp/sec) =	1.4×10^{11} '@t=0+sec	1.4×10^{11} '@t=0+sec	0.7×10^{11} '@t=0+sec	2.0×10^{11} '@t=0+sec
di/dt, (amp/sec) =	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{1} @t=.25μs	.....
Action Integral (amp^2 sec) =	2.0×10^{6}	0.25×10^{6}	$.0625\times10^{6}$	.....

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS and EICAS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz—500 KHz	80	80
500 KHz—2 MHz	80	80
2 MHz—30 MHz	200	200
30 MHz—100 MHz	33	33
100 MHz—200 MHz	33	33
200 MHz—400 MHz	150	33
400 MHz—1GHz	8,300	2,000
1 GHz—2 GHz	9,000	1,500
2 GHz—4 GHz	17,000	1,200
4 GHz—6 GHz	14,500	800
6 GHz—8 GHz	4,000	666
8 GHz—12 GHz	9,000	2,000
12 GHz—20 GHz	4,000	509
20 GHz—40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Certification of the modified McDonnell Douglas DC–8–70 airplane is currently scheduled for February 12, 1991. The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances. For this reason, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, the public comment period is shortened to 20 days.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportations, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the supplemental type certification basis for the modified McDonnell Douglas Model DC–8–70 series airplanes:

1. *Lightning Protection*

a. Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

Critical Function. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on January 9, 1991.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–1131 Filed 1–16–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 173, 175, 176, 177, 178, 179, 180, and 181

[Docket No. 85N–0145]

Use of Acrylonitrile Copolymers; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the submission of comments and data in response to the advance notice of proposed rulemaking (ANPRM) on acrylonitrile copolymers. This notice responds to three comments that requested that the comment period be extended for an additional 90 days to allow sufficient time to compile the data FDA requested in the ANPRM.

DATES: Comments by February 7, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Data, including trade secret and commercial trade information, to the Division of Food and Color Additives (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 8, 1990 (55 FR 8476), FDA published an ANPRM on acrylonitrile copolymers. In this notice the agency requested information on food-contact uses of acrylonitrile copolymer, on the levels of residual acrylonitrile contained in the finished articles fabricated from these copolymers, and on the migration of residual acrylonitrile to food, as well as information necessary to evaluate the economic and environmental impacts of the ANPRM. The original comment period under the ANPRM ended May 7, 1990.

In response to three comments, all from trade associations stating that more time was needed to compile the information that was requested by the agency, the comment period was reopened for 180 days. This notice was published in the **Federal Register** of July

20, 1990 (55 FR 29635) and provided for the submission of comments and data until November 7, 1990. Three comments have been received during the reopened comment period requesting additional time to respond to the request for data in the ANPRM. Two of the comments stated that they were having difficulty adapting existing analytical procedures for acrylonitrile monomer to the analysis of acrylonitrile monomer in specific acrylonitrile copolymers. The third comment cited delays in obtaining reviews, under contract, of the epidemiology and toxicology of acrylonitrile monomer and of the environmental effects of acrylonitrile polymer production. The three comments requested an additional extension of 90 days beyond the original extension of 180 days.

FDA is aware of the difficulties involved with adapting existing acrylonitrile monomer analytical methodology, developed for high nitrile copolymers, for use in analyzing low nitrile copolymers. The agency is also aware that many acrylonitrile copolymers contain rubber or other substances that interfere with the analyses. For this reason, FDA has decided to grant the requests by these comments for additional time to generate and submit data responsive to the request for information outlined in the ANPRM and to complete final reports of the reviews of the epidemiology and toxicology of acrylonitrile monomer and the environmental effects of acrylonitrile polymer production. Therefore, the agency is reopening the comment period to provide for the submission of comments and data until February 7, 1991.

As announced in the original ANPRM, comments may be submitted to the Dockets Management Branch (address above). However, data containing trade secret or confidential commercial information should be submitted to the Division of Food and Color Additives, as a letter, as a food additive master file, or as part of a food additive petition.

Dated: January 10, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-1115 Filed 1-16-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[PS-94-90]

RIN 1545-AP24

Retail Excise Taxes on Certain Luxury Items

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to retail excise taxes on certain passenger vehicles, boats, aircraft, jewelry, and furs.

DATES: The public hearing will be held on Friday, April 26, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, April 12, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-94-90), room 4429, Washington, DC 20044. In the alternative, comments and requests to speak (with outlines) may be hand-delivered to: Internal Revenue Service, Attention: CC:CORP:T:R (PS-94-90), room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-343-0232 or 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 4001, 4002, 4003, 4006, and 4007 of the Internal Revenue Service Code as enacted by section 11221 of the Omnibus Budget Reconciliation Act of 1990. The proposed regulations appeared in the Federal Register for Wednesday, January 2, 1991 (56 FR 36).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, April 12, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-1070 Filed 1-16-91; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL-3857-7]

Approval and Promulgation of Implementation Plans; California: South Central Coast Air Basin, Ventura County Nonattainment Area Plan for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This notice of proposed rulemaking announces EPA's proposed action to approve in part and disapprove in part revisions to the California State Implementation Plan (SIP) for ozone for the Ventura County portion of the South Central Coast Air Basin (SCCAB). The revisions were submitted to EPA by the State of California on May 24, 1989, March 26, 1990 and October 16, 1990.

EPA proposes to extend its prior disapproval of the attainment demonstration portion of the plan and to retain the constuction moratorium, under section 110(a)(2)(I) of the Clean Air Act, for new major sources and major modifications of sources of volatile organic compounds (VOC), previously imposed on October 5, 1988.

EPA also proposes to extend the moratorium to include new major sources and major modifications of sources of nitrogen oxides (NO_x).

Under section 110(c) of the Act, EPA also proposes to promulgate a Federal Implementation Plan (FIP) for ozone for Ventura County. The proposed FIP is in response to an order by the U.S. District Court for the Central District of California, as modified on July 23, 1990, requiring EPA to promulgate a FIP for ozone in two "phases" in Ventura County, with the first phase to be proposed no later than October 29, 1990, and promulgated no later than June 28, 1991.

DATES: Written comments on the proposed EPA actions must be received by EPA at the address below on or before March 18, 1991. A public hearing on the proposed Federal Implementation Plan and EPA's proposed rulemaking on the State Implementation Plan will be held on Wednesday, January 30, 1991, at the County Government Center, Hall of Administration, Lower Plaza Assembly Room. The hearing will convene at 10 a.m., 2 p.m. and 7 p.m.

For 30 days following the public hearing EPA will accept rebuttal and supplemental comments relating only to comments raised at the public hearing.

ADDRESSES: Written comments on this proposed action should be addressed to:

Mr. Richard Grow, A-2-2, Air and Toxics Division, State Liaison Section, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Docket:

Docket No. 90-CA-VENT-1, containing a copy of the SIP submittal and complete documentation supporting the proposed actions, is available for inspection at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket.

U.S. Environmental Protection Agency, Library, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the proposed FIP and the other plan elements proposed for action in this notice and the documentation supporting the proposed actions are available at the above location and at the County and State offices listed below:

Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, CA 93009.

California Air Resources Board, 1102 Q Street, Sacramento, CA 95814.

Foster Public Library, 651 E. Main St., Ventura, CA 93009.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air and Toxics Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California, 94105, telephone (415) 556-5152 (before January 15, 1991), or (415) 744-1207 (after January 15, 1991).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Introduction and Purpose of Notice.
B. The Air Quality Problem in Ventura County.
C. History of the Ventura County Ozone SIP.
1. 1979 Plan.
2. 1982 Plan.
3. 1986 SIP Call.
4. 1987 Plan.
5. 1988 SIP Disapproval.
6. Current Planning Efforts.
a. 1988 SIP Call.
b. California CAA.
D. Legal Basis and Schedule for the FIP.
1. *Citizens to Preserve the Ojai* (CPO) v. *EPA*.
a. CPO claims against EPA.
b. Stipulation—July 11, 1988.
c. Stipulation—March 28, 1989.
d. Modified stipulation—July 23, 1990.
2. FIP Schedule.
E. Legal Requirements of the Clean Air Act.
1. SIPs and FIPs.
a. Demonstration of Attainment and Determination of Attainment Date.
b. Reasonable Available Control Measures.
c. Other Legal Requirements.
II. Proposed SIP Actions.
A. Proposed Actions on the 1987 AQMP.
1. Disapproval of the Attainment Demonstration.
a. Construction moratorium.
2. Control Measures.
a. Criteria for Approval.
b. Stationary Source.
c. Further Study Measures.
d. Transportation Control Measures.
B. Proposed Actions on SIP Rule Revisions.
1. Stationary Source Rules.
III. Proposed FIP Actions.
A. Introduction.
1. Two-Phased Approach.
2. State-Federal Cooperation.
3. Legal Authority for Phased Rulemaking.
4. Attainment Demonstration to Await Phase II.
Rationale for Selection of Phase I Measures.
B. Emission reductions needed for attainment.
C. NO_x construction moratorium.
D. South Coast Core Measures extended to Ventura.
1. Fuel Measures.
a. Gasoline Volatility Restrictions during the Ozone Season.
b. Reformulated Gasoline.
2. Enhanced Evaporative Emission Controls for Gasoline-Fueled Vehicles.
E. Stationary Source Control Measures.
1. VOC Measures.
a. Architectural Coatings.
b. Motor Vehicle Refinishing.
c. Adhesives Applications.
F. Summary of Impact of Phase I FIP.
G. The Phase II FIP.
H. FIP Delegation and Rescission.
IV. Regulatory Impact/Flexibility Analysis.
A. Administrative Designation.
B. Cost Impacts.
C. Benefits.
D. Impact on Small Entities.
E. Paperwork Reduction Act.
List of Subjects in 40 CFR Part 52.

PROPOSED REVISIONS TO THE CODE OF FEDERAL REGULATIONS

I. Background

A. Introduction

On October 5, 1988, EPA disapproved the attainment demonstration portion of the 1982 ozone SIP for the nonattainment portion of Ventura County and imposed a moratorium on construction of new major sources and major modifications to stationary sources of volatile organic compounds (VOC), a precursor in the formation of ozone in the ambient air. (53 FR 39087). This action was taken pursuant to a stipulation agreed to by EPA and entered by the District Court in partial settlement of *Citizens to Preserve the Ojai* (CPO) v. *EPA*, No. CV-88 00982 HLH.

Subsequently, EPA and the plaintiffs agreed to settle the remaining claims and a stipulation was entered by the court on March 28, 1989 obligating EPA to propose and promulgate a Federal Implementation Plan (FIP) for the Ventura nonattainment area by May 28, 1991. On July 23, 1990 a modified stipulation was entered by the court directing EPA to promulgate the FIP in two phases, the first to be proposed by October 29, 1990. The court orders and stipulations are described in greater detail under section D.1., *Citizens to Preserve the Ojai* v. *EPA*, below.

The purpose of today's notice is to propose the Phase I FIP and to propose a number of actions on revisions submitted by the State for the Ventura County portion of the California SIP.

Regarding the SIP revisions, EPA proposes to approve under section 110 of the Act most of the control measure commitments in the 1987 Air Quality Management Plan (AQMP) for the Ventura nonattainment area. The measures proposed for approval strengthen the SIP. EPA proposes to extend its prior disapproval of the plan's attainment demonstration under part D of title I of the Clean Air Act ("CAA" or "the Act") because the revised AOMP does not provide for the attainment of the National Ambient Air Quality Standard (NAAQS) for ozone by a fixed date.

As a result of this proposed disapproval, EPA proposes to retain the construction ban on major new stationary sources and major modifications to existing sources of volatile organic compounds (VOC) in Ventura County. EPA also proposes to extend the construction moratorium to major new sources and major modifications to existing sources of oxides of nitrogen (NO_x).

Because EPA is proposing to disapprove the attainment demonstration portion of the plan, the Agency is not taking action on other elements of the plan including, e.g., modeling and inventory, which will be addressed upon submission of a complete approvable plan revision in the future. EPA is, however, proposing action on seven SIP rule revisions which were submitted separately from the 1987 AQMP. Of these, six are proposed for approval.

EPA proposes to conclude, however, that the State and local commitments in the plan, and obligations under the California Clean Air Act, to develop and apply additional controls in the future, demonstrate that the State is making reasonable efforts at this time to submit an adequate ozone SIP. Therefore, EPA does not propose in this rulemaking to initiate actions to impose in Ventura County the Federal highway funding restrictions under section 176(a) of the Act.

EPA is also proposing, under section 110(c) of the Act, a Federal Implementation Plan (FIP) for ozone in Ventura County. EPA is proposing the FIP in two phases, and today's notice proposes only Phase I. EPA is scheduled to issue its notice of final rulemaking on June 28, 1991. The second phase is to be proposed no later than June 28, 1991 and promulgated no later than February 28, 1992.

The FIP approach proposed is designed to support rather than to undermine progress scheduled under the locally adopted SIP and other local planning efforts currently underway. EPA's FIP proposal is to supplement the state plan with federal programs and measures, several of them similar or identical to the "core" measures recently proposed by EPA for the South Coast Air Basin. 55 FR 36458 (September 5, 1990). These measures, applicable to mobile sources, are proposed: Gasoline volatility restrictions, reformulated gasoline and enhanced evaporative emission controls. Three additional federal measures, applicable to stationary sources, are proposed: Architectural coatings, motor vehicle refinishing and adhesives applications.

Before EPA takes final action to disapprove Ventura's SIP, Congressional amendments to the CAA may establish new national requirements and deadlines for SIPs. As a result, EPA may conclude that California should be allowed additional time to prepare amendments to the Ventura plan. EPA's proposed disapproval actions might then be replaced or supplemented by action requiring California to submit additional SIP elements in accordance with the new national schedule.

B. The Air Quality Problem in Ventura County

The Ventura ozone nonattainment area includes all portions of the county south of the southern boundary of the Los Padres National Forest. The population at the time of the most recent Air Quality Management Plan (AQMP) update was approximately 612,000.

Growth rates for the period 1987—2000 are projected in the 1987 AQMP as: Population 29%, housing 39%, motor vehicle fuel use 23%, electric utility emissions 38%, and offshore shipping 28%.

Ventura County lies immediately adjacent and to the northwest of the South Coast Air Basin (SCAB), which itself is the site of the worst ozone problem in the United States.

Ozone is a photochemical oxidant and the major component of smog. Atmospheric ozone is formed when Volatile Organic Compounds (VOC) react with nitrogen oxides (NO_x) in the presence of sunlight. In this notice, the federal terminology, VOC, is used interchangeably with the Ventura County comparable term, reactive organic compounds (ROG), since they are substantially identical. Since the photochemical reaction is enhanced by heat, atmospheric ozone concentrations are usually highest during the summer. While ozone in the upper atmosphere shields the earth from harmful ultraviolet radiation given off by the sun, high concentrations of the ozone at ground level are a major health and environmental concern.

Acute health effects include inflammation of the lungs, impaired breathing, increased acute respiratory infection, coughing, chest pain, nausea and throat irritation. These effects are of particular concern for asthmatics, children and the elderly. Chronic effects of repeated exposure include increased susceptibility to respiratory infection, permanent damage to lung tissues and impaired breathing capacity. Ozone also reduces crop yield, may severely damage forests, and adversely impacts buildings and materials.

The national ambient air quality standard (NAAQS) for ozone is violated when the number of days with a maximum hourly average concentration above 12 parts per hundred million (pphm) over a period of three years is greater than three. The fourth highest value over three years at the highest site in the monitoring network is the design value used to determine the attainment status of the area.

The design value for Ventura County, based on 1987–1989 data for the Simi Valley site, is 17 pphm, 42% greater than the NAAQS. The inland monitoring stations such as Simi Valley have typically recorded higher ozone values than the coastal sites in Ventura County. In 1989 the Simi Valley site recorded 40 exceedances of the standard and the second highest value recorded at the site was 17 pphm. In contrast, the Ventura station recorded two exceedances, and recorded a second high of 14 pphm.

The number of exceedances of the ozone standard in a given year varies greatly due to variations in meteorological conditions. Three-year averages of data, adjusted for meteorology, indicate a slight downward trend in ozone values for the inland sites in Ventura County over the past ten years.

The latest planning inventory from the state shows a 1987 base year inventory, onshore, of 91 hours per day ROG and 76 tons per day NO_x. Of this, some 45% of the VOC and 64% of the NO_x are projected to be from mobile sources (on and off-road) in 1987. Other significant contributors to base VOC emissions levels are organic solvents (20)%, oil and gas development and distribution-related emissions (14%) and pesticides (15%). Significant NO_x source categories include oil and gas development (20%) and utility power plants (15%).

According to the District's 1987 Air Quality Management Plan (AQMP), mobile source emissions will continue to make up a significant portion of the inventory well into the future. For instance in the year 2000, mobile source emissions will comprise 25% and 55% of the VOC and NO_x emissions respectively. Other significant VOC categories are projected to be organic solvents (36%), pesticides (21%) and oil and gas development and distribution (10%). The most significant NO_x category other than mobile sources becomes utility power plants (31%).

Outer Continental Shelf (OCS) emissions from petroleum-related exploration and development, and from ships passing through the Santa Barbara Channel are also substantial. OCs emissions in the AQMP are reported for

the Channel for both Santa Barbara and Ventura Counties in aggregate. The AQMP projects a substantial increase in NO_x emissions by the year 2000.

According to preliminary analyses, a number of combinations of emission reductions of VOC and NO_x would produce attainment of the ozone standard. The approach currently being implemented by the State is a combined VOC NO_x reduction strategy.

C. History of the Ventura County Ozone SIP

1. 1979 SIP

In accordance with the requirements of the 1977 Amendments to the Clean Air Act, the 1979 Air Quality Management Plan (AQMP) for Ventura was submitted to EPA by the State in 1979, with a number of subsequent revisions submitted in 1980 and 1981. On July 1, 1982, EPA took final action to approve, conditionally approve, and disapprove portions of the plan. The disapproval related primarily to the plan's failure to include an Inspection and Maintenance program as required by the Act. In its 1979 plan Ventura projected attainment of the ozone standard by the end of 1987, based on a strategy which scheduled reductions for both VOC and NOx sources.

As authorized by part D of the Act, the State requested, and EPA subsequently approved, in 1982, an extension beyond the statutory 1982 attainment date for ozone in Ventura County to December 31, 1987. (47 FR 28621).

2. 1982 SIP

Between December, 1982 and June, 1984 the State submitted the 1982 AIr Quality Management Plan (AQMP) and a number of subsequent revisions to that plan for Ventura County. On February 3, 1983 EPA proposed to disapprove the 1982 Plan and impose a construction moratorium because the plan did not provide for attainment of the ozone standard by the end of 1987. (48 FR 5047).

The plan did not provide for attainment at any date in the future for a substantial portion of the nonattainment area, although it did project that one portion (the "Ojai Valley Airshed") would meet the ozone standard by the end of 1987.

On July 30, 1984 EPA took final action to approve the control measures submitted by the State as part of the 1982 plan. (49 FR 30300). As with the 1979 plan, Ventura's plan included reductions in emissions of NOx as well as VOC. In the notice EPA held open the question of whether to approve the attainment demonstration. In that same notice EPA took similar action with regard to three other California areas which had also failed to show attainment by 1987 (South Coast, Fresno and Sacramento).

EPA later proposed to withhold disapproval of the SIP so long as the State adopted all reasonably available control measures. EPA solicited comments on this policy, the "reasonable extra efforts policy," on September 26, 1986. (51 FR 34428). On July 14, 1987 EPA revised its approach and proposed to disapprove the ozone SIP for Ventura and several other areas. (52 FR 26408–26409, 26431–26435).

In that notice EPA stated that it lacked authority to continue to defer action on the plans for those areas that had not yet submitted a plan demonstarting attainment by the statutory deadline, and that it had no choice but to disapprove the plans for those areas and impose a construction moratorium under section 110(a)(2)(I).

In that same notice, however, EPA proposed to continue to abstain from making a negative "reasonable efforts" finding under sections 176(a) or 316(b) of the Act, so long as Ventura continued to meet certain benchmarks of progress, which were defined in terms of a schedule of expected adoptions of control measures. (52 FR 26433).

3. 1986 SIP Call

On March 17, 1986 EPA notificed the Governor pursuant to section 110(a)(2)(H) of the Act that the California SIP was inadequate to meet the requirements of section 110 and part D for ozone in the South Central Coast Air Basin (SCCAB), including the nonattainment portion of Ventura County. In this SIP call, EPA required improvements in the 1982 plan for the Basin, updated emissions inventories, incorporation of airshed modeling into the planning effort, evaluation of the impacts of emissions from offshore oil development on the Outer Continental Sheld (OCS), and consideration of controls on oxides of nitrogen (NOx) as ozone reduction measures.

4. 1987 Air Quality Management Plan (AQMP)

In September of 1987 Ventura County adopted a draft AQMP updating the 1982 plan. The Board fully adopted the 1987 plan on July 26, 1988, and the plan was submitted by the State to EPA as a SIP revision on May 24, 1989. The AQMP acknowledged that the control strategy included in the plan would not provide for full attainment of the ozone standard at any future date. Today's notice proposes to approve some portions of the plan and disapprove others.

5. 1988 SIP Disapproval

Finally, as described below in greater detail, on October 5, 1988, pursuant to a stipulation in *CPO* v. *EPA*, EPA disapproved the attainment demonstration portion of the 1982 Plan for Ventura County and imposed a construction moratorium on major new sources and major modifications to existing sources of VOC, as a precursor of ozone.[1] (53 FR 39087). Since the 1987 Plan had not yet been submitted to EPA by the State as a SIP revision, EPA's disapproval had no effect on that submittal.

6. *Current Planning Efforts*

a. *1988 SIP Call.* On May 26, 1988 EPA issued notices of SIP inadequacy under section 110(a)(2)(H) through letters to the Governors of states with areas which failed to attain the ozone and CO standards. See 53 FR 34500 (September 7, 1988). EPA's May 26th letter to the Governor of California asked that the State (1) correct the SIP where it failed to meet the requirements of section 110 or EPA's existing Part D CAA guidance relating to the control of VOC and CO emissions, (2) satisfy unimplemented prior SIP commitments by adopting any missing control measures and (3) begin updating the base year emissions inventory for new attainment plans to be prepared in the future.

Within the framework of the SIP call, a State is required to correct deficiencies in existing State regulations and full correction of basic deficiencies in the 1982 SIPs; evaluate and adopt as appropriate enhancements of existing control measures, including but not limited to Inspection and Maintenance (I&M) programs; submit a revised SIP demonstrating attainment over an appropriate planning area as expeditiously as practicable, and implement control measures on a schedule to ensure reasonable further progress toward attainment during the interim.

b. *California Clean Air Act.* On September 30, 1988 the Governor of California signed into law Assembly Bill 2595, the "California Clean Air Act" (CCAA) (A.B. 2595, Ch. 1568, Stat. 1988). The CCAA requires areas currently in violation of the state air standards

[1] Within this nonattainment area, any major new source or major modification for which the construction permit application was incomplete on or after November 4, 1988 is prohibited from construction. EPA's criteria for determining an application to be complete are explained in 52 FR 26404 and 26409 n.18 (July 14, 1987).

(California's ozone standard is more stringent than the federal standards [2]), to develop attainment plans. Plans for ozone nonattainment areas such as Ventura County are to be submitted by June 30, 1991 to the California Air Resources Board (CARB). The planning requirements of the CCAA have many similarities to part D of the federal CAA. One of the substantive requirements of the CCAA is for a five percent annual reduction in emissions of reactive organic compounds (ROC) and oxides of nitrogent (NO_x), as precursors of ozone.

D. Legal Basis and Schedule for the FIP

1. Citizens to Preserve the Ojai (CPO) v. EPA

a. *Citizens to Preserve the Ojai Claims Against EPA.* On February 29, 1988, The Citizens to Preserve the Ojai, Inc. (CPO) filed suit against EPA in the United States District Court for the Central District of California. In the complaint, CPO alleged that EPA had failed to perform non-discretionary duties under section 110 of the Act to (1) disapprove the 1982 AQMP and (2) promulgate a federal implementation plan (FIP) for attainment of the ozone NAAQS in Ventura County. CPO sought an order directing EPA to disapprove the 1982 AQMP and to promulgate a federal plan within six months.

b. *Stipulation—July 11, 1988.* In July of 1988 CPO and EPA entered into a Stipulation and Agreement of Partial Settlement settling the plaintiffs' first claim for relief. The Court entered an order approving the Stipulation on July 11, 1988.

Pursuant to the order, on October 5, 1988, EPA promulgated a final disapproval of the ozone attainment demonstration portion of the 1982 AQMP and imposed a construction moratorium under section 110(a)(2)(i) on major stationary sources or major modifications of stationary sources of VOC in Ventura County. The disapproval action was taken because the 1982 AQMP did not provide for attainment of the ozone NAAQS by the statutory deadline of December 31, 1987, or by any other fixed date, as required by section 172(a) of the Act. (53 FR 39087).

c. *Stipulation—March 28, 1989.* In March of 1989, CPO and EPA entered into a Stipulation and Agreement of Partial Settlement, settling the plaintiff's second claim for relief. The court entered an order approving the Stipulation on March 28, 1989. Pursuant to the order, EPA was required to issue a notice of proposed rulemaking (NPRM) proposing a FIP for Ventura by September 28, 1990, and to sign a notice of final rulemaking (NFRM) on the proposal by May 28, 1991. Under the order EPA was also to make a preliminary determination, based on modeling results, of the emissions reductions needed for attainment.

In September, 1989, EPA made this preliminary determination, consistent with the order, and provided the interim emissions reduction targets which have been the basis for much of the subsequent FIP and SIP development.

d. *Modified Stipulation—July 23, 1990.* Due primarily to a severe earthquake which occurred on October 17, 1989 and displaced EPA Region 9 staff from their offices for a four month period, EPA encountered substantial difficulties in meeting the FIP promulgation schedule in the 1989 stipulation. As a result, EPA and CPO entered into a Modified Stipulation and Agreement of Partial Settlement. The court entered an order approving the Modified Stipulation on July 23, 1990. The renegotiated schedule provides for the FIP to be proposed and promulgated in two phases as set forth below.

Phase I of the FIP, to be proposed no later than October 29, 1990, is to include any proposed federally enforceable control measures that EPA has determined by that time to be necessary for attainment of the ozone NAAQS in Ventura County as expeditiously as practicable. Phase II of the FIP, to be proposed no later than June 28, 1991, is to set forth a final FIP to attain the primary ozone NAAQS in Ventura County as expeditiously as practicable.

2. FIP Schedule

Phase I: propose by October 29, 1990, promulgate by June 28, 1991.

Phase II: propose by June 28, 1991, promulgate by February 28, 1992.

E. Legal Requirements of the Clean Air Act

1. State Implementation Plans (SIPs) and Federal Implementation Plans (FIPs)

This section briefly summarizes EPA's requirements, as they are relevant to the actions proposed in this notice, for SIP approval in areas subject to section 110 and Part D of the Act, such as the Ventura nonattainment area. The requirements apply both to the proposed SIP actions and, in general, to the proposed promulgation of the FIP. A detailed description of the applicable legal requirements relating to EPA's actions on SIPs and FIPs is set forth in EPA's proposal for a FIP for the South Coast Air Basin (SCAB), 55 FR 36458, 36467 (September 5, 1990). The elements of EPA's applicable guidance are discussed at length in EPA's guidance on SIP revisions. See, for example, 44 FR 20372 et seq. (April 4, 1979) and 46 FR 7182 et seq. (January 22, 1981). Upon passage of new CAA amendments, which are currently before the President, these requirements would be amended to accord with the revised statutes. If pertinent amentments are enacted before final action on the SIP or FIP, EPA's proposed actions on the Ventura SIP or FIP would be revised as necessary.

a. *Demonstration of Attainment and Determination of Attainment Date.* Section 172(a)(1) of the Act states that "an applicable implementation plan * * * shall provide for attainment of each such national ambient air quality standard in each such area as expeditiously as practicable." Section 110(a)(B) requires this plan to "Include emissions limitations, schedules and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment * * *". For EPA's current interpretation of these requirements in the period after the December 31, 1987 attainment deadline under the Clean Air Act, see section III.A. below and the **Federal Register** notices referenced in that section.

b. *Reasonably Available Control Measures.* (1) RACT. Section 172(b)(2) requires the plan to "provide for the implementation of all reasonably available control measures as expeditiously as practicable". Section 172(b)(3) also requires that in the interim, reasonable further progress is made, including reductions in emissions from existing sources through adoption of Reasonably Available Control Technology (RACT). This may include the adoption and enforcement of regulations representing RACT for stationary sources, transportation RACT measures, and control of mobile source emissions through implementation of a motor vehicle inspection and maintenance program. These requirements were articulated in the April 4, 1979, general preamble (44 FR 20372) and remain essentially unchanged.

(2) Reasonably Available Transportation Control Measures. Detailed requirements for implementation of all reasonably available transportation control measures are contained in the January 22, 1983 Policy Statement (40 FR 7132). Areas must implement "all transportation RACT measures and

[2] The federal primary NAAQS can be most simply described as 12 parts per hundred million (pphm). See 40 CFR part 50 for an exact description. The California standard is 10 pphm.

packages of measures necessary for expeditious attainment of the transportation emission reduction target" (p. 7187). The categories of such measure are identified in section 108(f) of the Act.

EPA has recently revoked certain aspects of this guidance as it applied to 1982 planning for post-1987 attainment, to avoid any unintended implication that post-1987 planning should provide for attainment as soon as possible using unreasonable measures with severe socioeconomic impacts. 55 FR 38326 (September 18, 1990). However, the outstanding portions of the 1981 guidance concerning use of all reasonably available transportation control measures remain applicable to all post-1987 planning. Generally, plans should contain all reasonable measures listed in section 108(f), or an explanation of why any such measures are not appropriate for implementation given the particular facts of the area involved.

(3) Other Legal Requirement. In addition to the above provisions, Section 110 and 172 of the Act establish additional requirements, relevant to today's proposed SIP and FIP actions, for EPA approval of a plan or portions of a plan, including individual control measures. Among other requirements, these sections provide that the plan revisions must include (1) necessary emissions limitations, schedules and compliance timetables, (2) evidence that the measures have been properly adopted by statute, regulation, ordinance or other legally enforceable document, and (3) evidence that the responsible agencies are committed to implementing and enforcing the appropriate elements of the plan. Both section 110(a)(2)(F) and 172(b)(7) require that a State provide assurances that all resources needed to carry out the plan provisions, specifically personnel, funding and authority, will be committed to that task.

In *Abramowitz* v. *EPA*, 832 F.2d 1071, 1079 (9th Cir. 1988), the Ninth Circuit left open the question of whether, at the time EPA disapproves an attainment demonstration, "it may nonetheless approve individual control measures if they would strengthen the SIP and improve air quality." Here, while EPA is acting to disapprove the State's attainment demonstration, and therefore to disapprove the SIP as a whole, EPA believes it has the authority to approve individual measures that strengthen the SIP. See *Michigan* v. *Thomas*, 805 F. 2d 176 (6th Cir. 1986). (EPA may approve rules under section 110(a)(2) of the Clean Air Act, while disapproving them for failing to meet Part D requirements.)

II. Proposed SIP Actions

A. Proposed Actions on the 1987 Air Quality Management Plan (AQMP)

On May 24, 1989 the State submitted to EPA the Ventura County Air Quality Management Plan for the control of ozone, adopted by the Ventura County Air Pollution Control Board on July 26, 1988 (the "1987 AQMP").

The 1987 AQMP contains no actual control measures, but rather a schedule for adoption, implementation and further study of control measures. The plan also contains additional elements such as air quality trends, emission inventories, emission forecasts, photochemical modeling, contingency and conformity. EPA is not taking action on these elements in this notice, but will address them upon submission of a complete approvable plan revision in the future.

1. Disapproval of Attainment Demonstration

Because the 1987 Plan does not provide for attainment of the ozone NAAQS by any fixed date, as required by Section 172(a) of the Act, EPA proposes to disapprove the attainment demonstration portion of the plan.

a. *Construction Moratorium.* As a result of the proposed disapproval, EPA proposes to retain the moratorium on the construction and modification of major stationary sources of volatile organic compounds (VOC) in Ventura County. See section 110(a)(2)(I) and 53 FR 39087 (October 5, 1988). The current ban was applied to sources of VOC as a recognized precursor in the formation of ozone. Elsewhere in this notice EPA proposes to extend the construction moratorium to NOx. (Section III.C.)

2. Control Measures

a. *Criteria for Approval.* EPA's criteria for approval of control measure and commitments to adopt control measures are summarized in the general preambles to guidance for the 1979 and 1982 SIP revisions. See 44 FR 20372 et seq. (April 4, 1979), and 46 FR 7182 et seq. (January 22, 1981). For a more detailed discussion see also the South Coast SIP and FIP proposal at 55 FR 36470, col. 2. In general, EPA's policy calls for measures that are completely described, capable of achieving the reductions specified, and fully adopted by the appropriate implementing agency, with assurances that the agency has available resources to implement the control measures.

Under the preferred course EPA would fully approve and grant emission reduction credit (for purposes of demonstrating attainment) to those SIP measures that have been submitted in legally enforceable form. Alternatively EPA may accept as part of the SIP, but without assigned emission reduction credit, specific commitments to adopt measures in legally enforceable form. In this action EPA proposes to follow the latter course and incorporate the AQMP schedule as an enforceable requirement of the SIP. As the actual regulations are submitted as SIP revisions EPA will propose action on the regulations themselves.

b. *Stationary Source Commitments.* The control strategy and measures for stationary sources are located in Chapter 5 of the AQMP. Included are control measures for "reactive organic compounds" ROG (EPA uses the term volatile organic compounds, or VOC) and Nitrogen Oxides (NOx). There are no actual regulations included in the AQMP but rather a description and schedule for each control measure.

The following commitments to adopt and implement twelve control measures in legally enforceable form have been made in the SIP submission and are proposed for approval as strengthening the SIP. In each case a commitment to implement the rule within one year of the cited adoption date is also made and these commitments also are proposed for approval as strengthening the SIP.

VOC controls	AQMP tactic	Adoption date
Deletion of Vapor Recovery Exemptions.	(R-49)	7/1/87
Vapor Recovery on Crude Oil Tank Batteries.	(R-50)	7/1/89
Sealed Covers on Oil-Water Separators.	(R-52)	4/1/90
Submerged Fill Crude Oil Loading Racks.	(R-45)	7/1/90
Oil Field Maintenance Procedures.	(R-51)	10/1/90
Petroleum Dry Cleaners	(R-57)	4/1/93
Paper, Fabric and Film Coating	(R-56)	7/1/93

NOx controls	AQMP tactic	Adoption date
Boilers, Steam generators and Process Heaters.	(N-27)	10/1/88
industrial IC Engines (phase 3)	(N-8)	4/1/89
Oil Well Drilling	(N-21)	4/1/89
Commercial Water Heaters	(N-19)	7/1/91
Gas Turbines	(N-9)	10/1/91

c. *Further Study Stationary Source Measures.* The plan also includes a schedule for "further study" measures, for which there is not a commitment for adoption and implementation. Rather, there is a commitment by the District to consider adopting and implementing the measure. On specified dates the District

Board commits to take action to (1) adopt the measure and set an implementation date, (2) reject the measure as infeasible, or (3) set a future date to reconsider the measure.

EPA is proposing to approve nine further study measure commitments as strengthening the SIP:

VOC controls	AQMP tactic	Action date
Indirect Source Review	(R-58)	12/1/89
Landfill Gas Recovery	(R-47)	1/1/90
Semiconductor Fabrication	(R-48)	4/1/92
Petroleum Tank Cleaning	(R-28)	7/1/94
Pleasure Craft Fuel Transfer	(R-53)	7/1/94

VOC controls	AQMP tactic	Action date
Thermally Enhanced Oil Recovery (TEOR).	(N-2)	10/1/88
Indirect Source Review	(N-26)	12/1/89
Electric Utility Boilers	(N-1A)	1/1/92
IC Engine Electrification	(N-22)	10/1/94

d. *Transportation Control Measures.* The 1987 AQMP describes in detail eight transportation control measures:

1. Ridesharing Programs.
2. Traffic Flow Improvements.
3. Parking Management.
4. Land Use Strategies.
5. Transit.
6. Non-Motorized Strategies.
7. Telecommunications.
8. Control of Extensive Idling.

The plan also discusses a ninth measure, a demonstration program using methanol-fueled vehicles.

Air pollution control districts generally do not have legal authority to adopt and implement many of the listed TCMs. This legal authority rests with local jurisdictions through their land use and police powers. In order to implement these TCMs, the Ventura County APCD sought and received from the ten jurisdictions in Ventura County commitments for implementation. These commitments are compiled in the document "Resolutions of Commitment to Implement Reasonably Available Transportation Control Plan," December 1988, which can be found in the docket for this proposal. These commitments are proposed to be incorporated into the ozone SIP for Ventura.

Emission reductions from these TCMs are not quantified in the AQMP and therefore no emission reduction credit is proposed for approval.

B. Proposed Actions on Individual SIP Rule Revisions

EPA is today also proposing action on six rule revisions submitted by CARB as SIP revisions on March 26, 1990, and October 16, 1990. All of the rules proposed for approval serve to strengthen the SIP.

Of these rule revisions, three were submitted to EPA in response to EPA's SIP call of May 26, 1988. The three remaining rules were submitted to EPA by CARB on the initiative of the District.

EPA's guidance for evaluating whether these rules meet the RACT and enforceability requirements of part D of the Act are contained in the Control Technique Guidelines (CTGs) and in appendix D of the proposed post-1987 ozone policy, 52 FR 45044 (November 24, 1987). In appendix D, EPA summarized the deficiencies and inconsistencies that States should address and correct in response to SIP calls. In addition, on May 25, 1988, EPA's office of Air Quality Planning and Standards (OAQPS) issued the "bluebook" ("Issues Relating to VOC Regulation Cut-points, Deficiencies and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register**"). This document provided additional clarification of the deficiencies cited in appendix D of the proposed post-1987 policy.

Of the six rules, only Rule 71.4 is being proposed for disapproval, because it does not meet EPA enforceability criteria and part D RACT requirements. Three of the rules are proposed for approval under section 110 and part D of the CAA. The remaining two are proposed for approval only under section 110. Approval under Part D indicates that the rule fulfills the part D RACT requirements.

Rules approved under section 110, but not under part D, contain deficiencies with respect to EPA criteria or part D RACT requirements. These rules are proposed for approval because they strengthen the SIP. The District continues to have responsibility to fully correct these rules.

Following are summaries of EPA's analyses of the rules. Substantive supporting documentation can be found in the Technical Support Document associated with each rule.

1. Stationary Source Rules

a. *Rule 2: Definitions:* Submitted by CARB on March 26, 1990. Adopted by the District on November 29, 1988.

EPA proposes to approve under section 110 a revision to Rule 2 deleting ten definitions that are no longer used in the regulation, due to past rule revisions, and one definition that has been incorporated into another rule. EPA also proposes to approve, for the most part, a revised definition of reactive organic compounds. Except as noted below, that definition meets federal criteria for volatile organic compounds.

EPA proposes to approve the definition of reactive organic compounds, except that EPA takes no action on the definition insofar as it includes ethane as a ROG. EPA has classified ethane as a negligibly reactive organic compound. *See 42* FR 35314 (July 8, 1977) corrected 42 FR 38931 (Aug. 1, 1977). The District's list of exempt compounds, however, does not include ethane, and thus its ROG definition includes ethane. While the District is free to control ethane emissions as a matter of State law, EPA believes that control of ethane is not relevant to providing for attainment of the ozone standard and is not therefore appropriate for inclusion in an ozone SIP. Thus, such requirements are not approvable under section 110 as strengthening an ozone SIP, and credit for such controls cannot be allowed as part of an attainment demonstration or for emission trading with other reactive compounds.

Further, EPA proposes to approve the District's definition on the understanding that the District's exemption of "M-carbonates" is not intended to exempt organic carbonates. The District has indicated it will confirm this interpretation in writing.

b. *Rule 70: Storage and Transfer of Gasoline.* Submitted by CARB on March 26, 1990. Adopted by the District on November 29, 1988.

Revised Ventura County rule 70 requires vapor recovery systems to be installed on underground gasoline storage tanks at bulk plants and gasoline dispensing facilities, gasoline bulk plant loading racks, and gasoline dispensers, in order to reduce VOC emissions during normal operations.

Several previously uncontrolled sources will now be subject to the requirements of rule 70. This version of the rule is made considerably more enforceable by the inclusion of EPA and CARB test methods, recordkeeping requirements, and by the requirement for CARB-certified gasoline transfer equipment.

EPA is proposing to approve rule 70 under section 110 of the Clean Air Act because it represents a strengthening of the federally approved SIP for California. However, because the rule still contains RACT deficiencies, EPA is withholding approval under part D of the Clean Air Act.

c. *Rule 71: Crude Oil and Reactive Organic Compound Liquids:* Submitted by CARB on October 16, 1990. Adopted by the District on September 26, 1989.

Rule 71 contains definitions which apply to rules 71.1, 71.2 and 71.4, which EPA is proposing for action in today's

notice. These definitions serve to make the applicable rules more enforceable by clarifying some existing definitions and clearly defining new terms. This rule contains no deficiencies. EPA is therefore proposing to approve rule 71 under Section 110 and Part D of the Clean Air Act.

d. *Rule 71.2: Storage of Reactive Organic Compound Liquids:* Submitted by CARB on October 16, 1990. Adopted by the District on September 26, 1989.

This control measure requires vapor recovery systems to be installed on certain fixed roof organic liquid storage tanks. Floating roof tanks of the same capacity are required to be equipped with double seals.

The submitted rule is considerably stronger than the federally approved rule because it increases the applicability of the rule to several previously uncontrolled sources and it requires more stringent vapor control provisions for floating roof tanks. The rule is made considerably more enforceable through expanded inspection procedures and recordkeeping requirements, and by requiring the use of specific EPA approved test methods.

Rule 71.2 contains no deficiencies with respect to RACT requirements or EPA's enforceability criteria. Therefore, EPA is today proposing to approve Ventura rule 71.2 under both section 110 and part D of the Clean Air Act.

e. *Rule 71.4: Petroleum Sumps, Pits, Ponds and Well Cellars:*

Submitted by CARB on March 26, 1990.

Adopted by the District on October 4, 1988.

Rule 71.4 is a new rule. The purpose of rule 71.4 is to control reactive organic compound emissions from sumps, pits, ponds and well cellars during the production, gathering, separation, processing or storage of petroleum material. The emission sources covered by this rule are not governed by a Federal Control Technique Guideline (CTG). They are not required to meet Federal RACT requirements because the District has estimated that the total emissions resulting from these sources are considerably less than 10 tons per year. Therefore, this rule need only meet the Federal policies regarding enforceability.

Rule 71.4 does not stipulate specific control provisions for emissions reductions and contains serious deficiencies that compromise enforceability. Further, the rule allows the APCO the discretion to exempt any source from the requirements of this rule. For these reasons, the EPA proposes to disapprove rule 71.4 under section 110 and part D of the Clean Air Act.

f. *Rule 74.7: Fugitive Emissions of Organic Compounds at Petroleum Refineries and Chemical Plants:*

Submitted by CARB on March 26, 1990.

Adopted by the District on January 10, 1989.

Rule 74.7 controls fugitive emissions from reactive organic compounds at petroleum refineries and chemical plants. The submitted rule specifies a monitoring and repair program that meets or exceeds RACT requirements for refineries and chemical plants. The rule also requires that each source submit an "operator management plan," the acceptability of which will be determined by the Air Pollution Control Officer.

The District has indicated that the provision is intended to insure that sources will meet the inspection and maintenance requirements of the rule and will not be used to approve alternative means of complying with the rule.

Rule 74.7 contains deficiencies with respect to compliance issues. The rule does not (1) require that operators use only EPA Method 21 for inspections; and (2) specify a test method for determining the efficiency of vapor recovery or disposal systems when asserting an exemption for safety relief valves. However, the rule does include Method 21 as an applicable leak detection method and therefore, does not preclude EPA's use of the method for enforcement. With respect to the safety relief valve exemption, the district has indicated that it intends to require EPA Method 25.

EPA is proposing to approve rule 74.7 under part D of the Clean Air Act, conditional upon the District's submission—before EPA's final rulemaking—of written confirmation of the District's intent to implement the inspection and maintenance requirements and test procedure requirements of the rule as indicated above.

III. Proposed FIP Actions

A. Introduction

1. Two-Phased Approach

EPA is developing this FIP pursuant to a court-ordered settlement that establishes a two-phased schedule for FIP promulgation. This schedule allows EPA to issue an initial portion of FIP measures in anticipation of the issuance of the final, complete FIP. In the first phase, EPA is to propose and issue a final notice that includes "any proposed federally enforceable control measures that EPA has determined by such date to be necessary for attainment of the ozone NAAQS in Ventura County as expeditiously as practicable". Modified Stipulation, paragraph 9(a). In the second phase, which EPA must propose simultaneous with the final notice on the first phase, EPA is to issue a "final FIP to attain the primary ozone NAAQS in Ventura County as expeditiously as practicable".

2. State-Federal Cooperation

One of the purposes of this phased approach is to foster coordination of the state and federal efforts to develop a successful plan for Ventura. Since submitting the 1987 AQMP, the Ventura County Air Pollution District ("the District") has worked to improve its control strategy. The District must comply with the California Clean Air Act requirement to submit, to the California Air Resources Board (CARB) by June 1991, a complete, updated attainment plan. In this undertaking, the District and CARB have worked closely with EPA to coordinate the development of control measures so as to avoid duplication and conflict.

EPA expects that a draft of the District's updated attainment plan will be available for review by early 1991. EPA access to this plan should aid EPA considerably in more accurately identifying and undertaking the tasks to be addressed in the second phase of its rulemaking.

3. Legal Authority for Phased Rulemaking

Courts have upheld EPA's authority to engage in this sort of phased rulemaking. In Group Against Smog and Pollution, Inc. v. EPA 665 F. 2d 1284, 1291–92 (D.C. Cir. 1981), EPA issued a final opacity standard, while simultaneously giving notice of its intent to launch another rulemaking to amend that standard. The Court held:

> Having decided upon an effort to broaden its regulations to control fugitive emissions * * * EPA cannot soundly be charged with arbitrariness merely because it chose a separate rulemaking proceeding as the process for proposing a revised standard * * * we think it was reasonable for the agency to establish the separate rulemaking agenda it did. Id. at 1292.

Here, similarly, EPA will take a first cut at the problem, and then broaden its focus, issuing a proposed complete FIP simultaneous with the promulgation of its final first-phase FIP. As in Group Against Smog, under the circumstances presented here the Agency's graduated action is reasonable. As described below, preliminary modeling for the

Ventura nonattainment area shows that substantial additional emissions reductions are needed to attain the ozone Standard in the area. EPA need not wait for completion of the necessary modeling and selection of the full set of measures needed to attain, before proceeding to require measures that will achieve at least some of the necessary emissions reductions.

4. Attainment Demonstration to Await Phase II

As indicated above, EPA has performed a preliminary determination of the emission reductions required for attainment. The development of a full attainment demonstration, along with a fixed attainment date, must await proposal of Phase II of the FIP.

Thus it is not necessary or possible here to discuss attainment issues in detail. We note, however, that the state of current law, as outlined briefly below, has complicated the process of ascertaining the appropriate attainment date and attainment demonstration.

The deadline in the current Clean Air Act for a SIP—and by analogy a FIP—to project attainment (December 31, 1987) has passed, and Congress has not extended it. In March 1990, the Ninth Circuit issued an opinion that interpreted EPA's statutory requirement to develop a FIP in light of this lapsed deadline. The Court concluded that "the national ambient air quality standards must be attained as soon as possible with every available control measure, including those that the EPA identified in its criteria for approving 1982 plans." *Delaney* v. *EPA*. 898 F. 2d 687, 691 (1990). In its recent proposals on the South Coast and Arizona FIPs, EPA has set forth how it intends to apply the teachings of the Delaney decision.

See South Coast NPR at 55 FR 36503–36506 (September 5, 1990); Arizona NPR at 55 FR 41204 (October 10, 1990).

5. Rationale for Selection of Phase I Control Measures

The determination of what constitutes attainment "as soon as possible with every available control measure" under *Delaney* and EPA's reading of that case must await Phase II of the FIP and a full attainment demonstration. But given EPA's preliminary determination of emissions reductions, and an initial review of potential control measures, EPA is able now to propose a number of measures that are necessary (if not sufficient), and available to provide for attainment. As to these measures, there is no need to wait for Phase II to propose. In selecting these candidates for Phase I proposal, EPA looked to measures that EPA contractors and/or the Ventura District identified as having significant emission reduction potential, and for which there was an existing state or local rule that EPA could adapt for federal promulgation. Thus EPA lent weight to local initiatives in selecting these measures.

In developing Phase II of the FIP, EPA will screen the remaining universe of possible measures for candidate measures that it could effectively implement in Ventura, and which are necessary to attain as soon as possible.

B. Emissions Reductions Needed for Attainment

In order to make a determination of emissions reductions needed for attainment of the ozone standard in Ventura County, extensive air quality modeling is being performed for the Ventura County portion of the South Central Coast Air Basin (SCCAB). Under the stipulation of March 28, 1989 (see section I.D.c.), EPA made and submitted to the court in September 1989 a preliminary determination of the reductions of ozone precursor emissions required for attainment of the ozone standard. The technical basis for the preliminary determination was multiple sensitivity simulations of various levels of VOC and NOx emissions.[3]

The Urban Airshed Model (UAM) used for this analysis is a three dimensional photochemical model. A number of UAM simulations of SCCAB ozone episodes were developed using data collected during the South Central Coast Cooperative Aerometric Monitoring Project (SCCCAMP), and one three day episode was selected for further evaluation. Approximately fifty UAM sensitivity runs were performed to assess the relative effects which reductions of VOCs and/or NOx emissions would have on peak ozone levels throughout the Basin. These simulations were based on uniform precursor reductions applied throughout the Basin, varying from 0 to 100 percent. Using the results of these modeling runs, ozone isopleth plots were generated predicting the ozone levels resulting from any combination of VOC and NOx emissions. For a detailed discussion of the modeling results consult the technical report referenced earlier.

The preliminary conclusion of the technical report reads in part, "It would appear then that the ozone NAAQS in Ventura County could be achieved if basin-wide emissions of VOCs or NO_x are reduced on the order of 55%, or if a combined strategy is implemented that would reduce both precursor pollutants on the order of 40% * * * the emission reductions which are used in an eventual attainment demonstration will be different from (these targets) because of spatial variability of sources * * *" (page 6). In its Status Report to the Court regarding the modeling results EPA also noted that "other emission reduction combinations would also attain the ozone NAAQS in Ventura County."

EPA's preliminary determination combined these technical results with policy considerations to conclude that "emissions reductions of approximately 40% VOC and 40% NO_x are necessary to attain the ozone NAAQS * * * (This conclusion) is necessarily subject to change as the FIP development work progresses."

Some of the considerations affecting EPA's determination include (1) the historical reliance of the state and local attainment plan on both NO_x and VOC reductions; EPA reached its conclusion only after extensive consultation with both the State and Ventura air pollution officials, (2) EPA's desire to promulgate a FIP most consistent with the local approach, in order to minimize federal intrusion into the state and local program, and (3) high ambient NMOC/NO_x ratios (NMOC refers to nonmethane organic compounds) characterizing the air basin, values frequently exceeding 10:1 and occasionally approaching 20:1, indicating a relatively higher effectivensss of NO_x reductions. Generally NO_x controls are not considered effective strategies if NMOC/NO_x ratios are less than 10:1.

The reductions were projected from a base year 1984 emission level. In order to identify required emissions reductions for a future year it is necessary first to project baseline (no additional controls) emissions for the future years. Since completion of the modeling discussed above, the State has drafted new 1987 "baseline planning inventories" which are currently being reviewed and incorporated into new projections for future years. Therefore, at this time it is not possible to assign exact tonnages to the required emissions reductions. As described in the 1987 AQMP, the 1983 base year inventories for VOC and NO_x emissions were 95 and 77 tons per day respectively.

EPA has continued its modeling efforts since the preliminary determination and is continuing to evaluate modeling results for the basin EPA will incorporate improvements to the modeling to the extent practicable

[3] EPA's September 28, 1989 *"Status Report"* to the Court, and its technical report, *"Modeling of Preliminary Emission Reduction Estimates for Attainment of the National Ambient Air Quality Standard for Ozone in Ventura County"*, are both included in the docket for this rulemaking action.

prior to final rulemaking on either Phase I or Phase II of the FIP.

The EPA solicits comments on the above mentioned preliminary finding that "emissions reductions of approximately 40% VOC and 40% NO_x are necessary to attain the ozone NAAQS" and that NO_x emissions in the Ventura County nonattainment area are precursors to ozone formation.

C. NO_x Construction Moratorium

Elsewhere in this notice EPA has proposed actions on recent SIP submissions for Ventura County and has made the finding that the State's plan does not provide for attainment of the ozone standard by a fixed date. Accordingly EPA proposed to retain the current moratorium, under section 110(a)(2)(I) of the Act, on major sources and major modifications to sources of VOC. The moratorium has been applied to VOC sources because of its recognized role as a precursor in the formation of ozone.

As noted elsewhere in this notice, the Ventura Air Pollution Control Board and the California Air Resources Board have traditionally relied on a two pollutant control program (i.e. NO_x and VOC) to achieve reductions in the ambient ozone levels. In submitting the 1979 implementation plan to meet the requirements of the 1977 amendments to the Clean Air Act, the APCB and CARB proposed a dual control system and has continued to support such an approach since that time. As noted below, EPA believes that the dual control of VOC and NO_x in Ventura County appears to be a rational alternative to control of VOC alone. Under such an approach increases in emissions of NO_x as well as VOC have the potential to impact the future ability of the area to attain the ozone ambient air quality standard.

In 1987, EPA considered extending the moratorium in Ventura County to NO_x sources as well as VOC sources. See 52 FR 26435 (July 14, 1987). At that time, EPA cited existing modeling and monitoring data to support the Agency's conclusion that NO_x emissions also contribute to the ozone problem. Based on this technical information, EPA determined that the measured ambient ratios of NMOC to NO_x in the area, and airshed modeling, show the sensitivity of ozone to both VOC and NO_x emissions. In an area with a high NMOC/NO_x ratio, NO_x emission increases would also be assumed to cause or contribute to increased ozone contributions. Although other factors (such as meteorology) must also be considered in this analysis, the measured ratios are a principal consideration in determining the relative impact of NO_x emissions on ozone levels.

In response to the 1987 notice, commenters primarily addressed (1) the adequacy of the data base regarding NMOC/NO_x ratios and meteorology, (2) adequacy of the modeling analysis, and (3) EPA's statutory and regulatory authority for imposing such a moratorium. Since that time, EPA has made a preliminary determination that both VOC and NO_x reductions would be needed for attainment of the ozone NAAQS in Ventura County. See section III.B. above.

Based on the technical information underlying EPA's 1987 notice and its recent preliminary determination, the Agency is today proposing to extend the construction moratorium to major sources and major modifications to sources of NO_x. Once the Administrator finds that NO_x causes or contributes to concentrations of ozone in an ozone non-attainment area, section 110(a)(2)(I) of the Clean Air Act (prior to the Amendments of 1990) requires the imposition of a construction ban for major new or modified sources of NO_x.

One consequence of a NO_x construction moratorium, however, is that the greater than one-to-one offsetting emissions reductions that new or modified major NO_x sources would otherwise be required to obtain (as a precondition under the Clean Air Act for construction) would not be achieved. Instead, such sources would simply be barred from constructing, and hence the benefits of both the new source growth and the net offsetting reductions would never occur. EPA solicits comment on these consequences of imposing the construction moratorium for major NO_x sources. In light of the new Clean Air Act amendments that recently passed both Houses of Congress, EPA also solicits comment on the use of offsets in lieu of a construction ban.

EPA is requesting comments on the proposed NO_x moratorium and on whether to revise its regulations pertaining to the VOC construction maratorium. The restrictions in EPA's current regulations implementing the construction ban: "apply only to major stationary sources of emissions that cause or contribute to concentrations of the pollutant for which the nonattainment area was designated as nonattainment, and for which the SIP does not meet the requirments of part D or is not being carried out in accordance with the requirements of part D. See 40 CFR 52.24(d). Several other regulatory provisions expressly state that for the purpose of the construction ban provisions, "sources that are major for volatile organic compounds shall be considered major for ozone." See 40 CFR 52.24(e), 52.24(f)(4)(ii) and 52.24(f)(5)(ii) [4]

EPA, however, does not read these regulations or the Act as limiting the scope of § 52.24(d), which applies, as shown above, to all stationary sources that "cause or contribute to concentrations of the pollutant for which the nonattainment area was designated as nonattainment." Although EPA believes no regulatory revisions are required to establish this authority, it may be helpful to propose additional regulatory language to clarify that NO_x sources may also be embraced in a construction ban covering an ozone nonattainment area. As an alternative to adding no further language to 40 CFR 52.24, EPA is proposing such language below:

(1) Add a new sentence to § 52.24(e): Where the Administrator determines that a major stationary source or major modification that is major for oxides of nitrogen causes or contributes to concentrations of ozone, such source is also major for ozone.

(2) Add a new sentence to § 52.24(f)(4)(ii): Where the Administrator determines that a major stationary source that is major for oxides of nitrogen causes or contributes to concentrations of ozone, such source shall be considered major for ozone.

(3) Add a new sentence to § 52.24(f)(5)(ii): Where the Administrator determines that a major stationary source that is major for oxides of nitrogen causes or contributes to concentrations of ozone, any net emissions increase that is considered significant for oxides of nitrogen shall be considered significant for ozone. EPA solicits comment on these three alternatives.

It should be noted that the Clean Air Act Amendments pending before Congress will lift construction bans currently in effect except those imposed because of SIPs that contain deficient new source review of sulfur dioxide provisions. EPA's final rulemaking on any NO_x construction ban in Ventura County will be consistent with whatever

[4] 40 CFR 52.24(e) provides, in pertinent part, that:
"A major stationary source or modification that is major for volatile organic compounds is also major for ozone."
40 CFR 52.24(f)(4)(ii) provides:
"A major stationary source that is major for volatile organic compounds shall be considered major for ozone."
40 CFR 52.24(f)(5)(ii) provides:
"Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone."

provisions the forthcoming Clean Air Act contains on this matter.

D. Extension of South Coast Core Measures to Ventura

On July 31, 1990 EPA proposed a FIP for the South Coast Air Basin (SCAB), 55 FR 36458 (September 5, 1990). That Notice proposed a numer of "federal core measures" for the control of ozone in the SCAB, all of which have potential applicability to the Ventura County nonattainment area. Venture County is immediately contiguous to the South Coast basin to the north and west, and is part of the same Consolidated Metropolitan Statistical Area (CMSA).

EPA is proposing to extend the following core measures for the control of ozone beyond the South Coast border, into the Ventura nonattainment area.

1. Fuel Measures

Motor vehicle fuel is, in general, produced in and supplied to the Ventura area from the South Coast. Thus, the institution in the nonattainment portion of Ventura County of the same fuel measure requirements for ozone control which were proposed in the FIP for the South Coast Air Basin is feasible and will simplify the implementation and enforcement of these measures.

a. *Gasoline Volatility Restrictions.* On June 11, 1990 (55 FR 23658) EPA promulgated the second phase of a two-phase program for national, summertime gasoline volatility control. One widely-used measure of gasoline volatility, i.e., the tendency of gasoline to evaporate at various temperatures, is Reid Vapor Pressure (RVP). Under EPA's final rulemaking, gasoline Reid Vapor Pressure in the state of California is limited to a maximum of 9.0 pounds per square inch (psi) for the month of May and 7.8 psi for June through September 15 beginning in 1992. Current California regulations limit the RVP of gasoline to 9.0 psi for the period of April 1 through October 31 in Ventura County. On September 28, 1990 ARB adopted a revised regulation which will reduce the maximum allowable RVP limit to 7.8 psi for the same control period beginning in 1992.

The volatility of gasoline directly impacts the emission of hydrocarbons. The higher the volatility, the greater the potential for the generation of evaporative emissions during the production, distribution, and use of the fuel. Source categories affected include gasoline transfer and storage and off-highway vehicle emissions as well as highway vehicle emissions. Thus, further RVP control can result in significant hydrocarbon emission reductions. In addition, these reductions are immediately available upon implementation.

Lowering RVP limits has raised issues regarding drivability and fuel safety. Specifically, concern has been expressed that low RVP gasoline would negatively affect drivability and could lead to the formation of an explosive mixture in the gas tank at lower ambient temperatures. EPA analyzed both of these issues in detail in the final Regulatory Impact Analysis for the second phase of the Federal volatility regulations. Additional analyses specific to Ventura County and the South Coast Air Basin, which has climate and geography similar to Ventura County, are contained in the Technical Support Documents in the docket for this notice. EPA has concluded that any perceptible drivability problems should be negligible and that it is highly unlikely that tank vapor pressure conditions will occur which are lower than are currently being experienced nationally during the winter even with a reduction in RVP to 7.0 psi.

In developing the Phase II gasoline volatility program, EPA performed an analysis of climate and elevation in order to determine what RVPs would result in equivalent per vehicle emissions nationwide. The results of this analysis were similar to the American Society for Testing and Materials (ASTM) system, including considerable variability by state and by month. To simplify enforcement and make compliance less complex for refiners and distributors, the final system of standards simplifies the results of the climate based analysis. In general, all states have an RVP standard of 9.0 psi in May, and either a 9.0 or 7.8 psi standard for the remainder of the control season. Average temperatures in the nonattainment portion of Ventura County, as in the South Coast Air Basin, are high enough to sustain a reduction in RVP to 7.0 psi with only a slight increase in potential drivability problems under a worst case scenario during the months of June, July, August, and September.

Due to the length of the ozone season in Ventura County, EPA is proposing to extend the 7.8 limit of the national rule to the months of April, May, and October beginning April 1, 1992, the same year the second phase of the national program takes effect. To obtain maximum emission benefits from RVP control, EPA is further proposing to limit RVP to 7.0 psi for the months of June, July, August, and September, the warmest months when the highest ozone readings occur. In order to allow refiners the opportunity to coordinate any changes in refinery processes necessary to meet the reduction of RVP to the 7.0 psi standard with those necessitated by the requirements being proposed elsewhere in this notice for reformulated gasoline, this second phase of the regulation would be implemented beginning June 1, 1994. EPA proposes to restrict the control area for the RVP program to the boundaries of the Ventura County nonattainment area. The compliance schedule offset for fuel suppliers versus retail outlets contained in the Federal volatility rulemaking will continue to apply under this proposal.

Because the addition of alcohol to gasoline raises the RVP of the resulting gasoline blend, EPA granted a 1 psi increase in RVP from the summer volatility standards for ethanol blends containing 9 to 10 percent ethanol, i.e., gasohol, in the Federal RVP rulemaking. ARB's regulation also provides a 1 psi RVP allowance from its summertime volatility standards for ethanol blends. As part of EPA's decision to grant the allowance, the potential effect of ethanol blend use on ambient ozone concentrations was reviewed from a nationwide perspective (55 FR 23658, June 11, 1990). EPA concluded that the likely small adverse air quality effect did not justify the almost certain elimination of the ethanol fuels industry, which had become a significant part of many local economies around the country.

The current market for ethanol blended gasoline in the Los Angeles and Ventura areas, however, appears to the quite small, so the supporting analyses for today's proposal do not explicitly include the RVP allowance. Additionally, the current small market share suggests the economic effects of not continuing the RVP allowance may not be as significant as in other areas of the country. Since this allowance could potentially decrease the VOC benefit to be obtained from the further reduction in the RVP standards proposed here, EPA is proposing to discontinue the 1 psi summertime RVP allowance for ethanol blends in Ventura as was proposed in the FIP for the South Coast Air Basin (55 FR 36458, September 5, 1990).

Finally, it should be noted that the enforcement regulations promulgated for the Phase I national RVP program have been changed for the Phase II program such that EPA will take enforcement action only when RVP is measured at more than 0.3 psi above the applicable standard, provided that the responsible party measured the RVP at or below the standard. This policy takes into account the 0.3 psi average reproducibility of the RVP test method, and makes the EPA program consistent in this respect with the California RVP control program.

b. *Reformulated Gasoline.* The formulation of gasoline is another potential fuel measure which could reduce hydrocarbon emissions from motor vehicles. EPA's two phase proposal for 7.8 and 7.0 psi limits on gasoline volatility in the ozone season will provide near term reductions of ozone-forming emissions. As more is learned about the effects of gasoline composition and refining processes on emissions, further reductions will become possible.

EPA's understanding is that oxygen content, aromatic content (generally, or of specific aromatic components), olerfin content, and the distillation characteristics of gasoline can all affect emissions quantity and composition. The effect of oxygen content on VOC mass has been explored experimentally, as has the effect of aromatic content on benzene emissions in particular. The effects of the other fuel variables have until recently been much less studied. However, a group of vehicle manufacturers and petroleum companies has underway a large scale testing program to explore such effects.

Therefore, EPA proposes a performance standard for gasoline that would further reduce total VOC mass emissions from conventional vehicles or that would shift the VOC composition more toward chemical compounds with less of a tendency to assist in ozone formation. For purposes of today's proposal, EPA is proposing a performance standard of 15 percent from the emission level achieved via 1990 baseline gasoline beginning with the 1995 ozone season, but EPA invites comment on an alternative percent reduction in the range of 10–25 percent.

It is EPA's intent to finalize a reformulated gasoline requirement for Ventura County which complies with the program contained in the Clean Air Act Amendments of 1990 which is currently nearing enactment. Although the final statutory language for reformulated gasoline has not been decided, it is EPA's understanding that Congress is considering an initial 15 percent performance standard in the 1995 time frame, phasing up to a 20–25 percent performance standard in the year 2000. In response to the new Clean Air Act requirements, EPA will be proposing national regulations within the next year which will address oxygen content, benzene, aromatics, heavy metals, and detergents. A 1995 implementation date will provide time for additional research and will allow the Ventura requirement to be consistent with the regulations developed for the Clean Air Act Amendments of 1990.

2. Enhanced Evaporative Emission Controls

EPA has recently proposed additional federal motor vehicle control requirements to prevent excess evaporative emissions (55 FR 1914). As part of today's action, EPA is proposing the applicability of the proposed Federal evaloprative emission requirement to vehicles sold in California.

Before discussing the control strategy it is important to understand the relationship between the current Federal and California mobile source programs. Basically, the CAA generally prohibits States from enforcing standards applicable to the emissions of new motor vehicles that are otherwise subject to the Federal emissions control program. This pre-emption may be waived for a state that had standards prior to March, 1966 (i.e., only California) by the Administrator under the provisions of Section 209, thereby allowing California to enforce its own separate emissions control program. The conditions for receiving such a waiver include the existence of a compelling air quality problem and a finding that the State standards, in the aggregate, are as protective of public health as the otherwise applicable federal standards. The State of California has received waivers for its motor vehicle standards and enforcement procedures.

As alluded to earlier, the Federal evaporative emission proposal has already been published. Because of this, only a brief description of the proposal is provided here. For more detailed discussions, as well as the technical support for the proposed rule, the interested reader is referred to the January 19, 1990, **Federal Register** notice referred to above. The reader also should consult that document for the text of the draft regulations (i.e., 40 CFR part 86), keeping in mind that some changes may be necessary to ensure California applicability when the FIP is promulgated.

Evaporative emissions from gasoline-fueled motor vehicles have been regulated by EPA for many years. The intent of the present evaporative standards and associated test procedures was to effectively control these emissions in actual use. However, the Agency now finds that the present test procedures do not provide such control. Specifically, the procedures are based on a rather moderate, single diurnal temperature variation, i.e., one daily temperature cycle. Also, new information has shown that "running losses," or evaporative emissions generated while the vehicle is in actual operation, are essentially unregulated by the current test.

The Agency's evaporative emissions proposal affects light-duty vehicles, light-duty trucks, and heavy-duty trucks that are fueled with gasoline. The test procedure changes include using two diurnal heat builds at the end of the current Federal Test Procedure, a representative temperature range of 72–96 degrees Fahrenheit for each diurnal cycle, removing the fuel tank cap near the beginning of the hot soak portion of the test procedure, and an engineering review of control system designs to ensure that any vapors generated under conditions typical of high-ozone days are routed to the evaporative control system. No specific implementation date has been proposed, but it is anticipated the new test procedure would become effective sometime after the 1991 model year. In addition, EPA has specifically requested comments on a more comprehensive proposal from General Motors that may involve the actual measurement of running losses.

E. Stationary Source Control Measures

Several lists of candidates measures were suggested to EPA for inclusion in the Phase I proposal. These include (1) "further study" measures included in "Alternative III" of the 1987 AQMP, (2) 36 measures suggested by the plaintiffs in correspondence in June, 1988, (3) 50 measures identified by the District based on its own regulatory agenda and in part on its survey of regulatory developments in other Districts in California. His lists overlap with regard to many of the measures.

Several of the suggested control measures involve transportation and growth controls, others would require new legislation or actions by other federal agencies (e.g., OCS controls, shipping lane relocation) and others require innovative regulatory approaches to the extent that they were not good candidates for the Phase I FIP. After eliminating the measures mentioned above, EPA screened the remaining measures by determining which, in addition to the core measures from the South Coast proposal, (1) had been identified, either by contractors or Ventura County as having significant emission reduction potential, and (2) for which there was an existing or proposed local or state rule which could be readily adapted to the Ventura situation.

Three stationary sources VOC measures met both of these tests and therefore are proposed for inclusion in the Phase I FIP: Requirements to reduce VOC emissions from (1) architectural

coatings, (2) motor vehicle and mobile equipment non-assembly line coating operations, and (3) adhesives applications. EPA is hopeful that for each of these measures the State and local agencies will proceed to develop and adopt their own regulations in the near future, thereby eliminating the need for EPA's direct regulation of these sources categories. As discussed elsewhere in this notice, EPA also seriously considered a NOx control measure for electric utility boilers for Phase I, but decided to consider the measure further in its Phase II rulemaking. (See section III.G.)

The following is a description of EPA's proposed actions. For detailed information on the proposal and EPA's evaluation, please see the Technical Support Document (TSD) on file as part of the Docket.

1. VOC Measures

Three measures controlling emissions of VOC are being proposed in this notice. Taken together these measures are projected to result in emissions reductions of approximately 5–10% of the projected stationary source inventory in the year 2000. Based on the criteria described above, EPA has determined that these measures are necessary and appropriate for Phase I of the FIP.

a. *Architectural Coatings.* This proposed rule applies to architectural coatings (paints, primers, waterproofers, wood preservatives, and coatings used to aid construction, among others) which are applied to stationary structures and their appurtenances, mobile homes, pavements, or curbs. The rule limits the volatile organic compound (VOC) content of the coating and prohibits the sale or use of coatings exceeding that limit. As of 1987, VOC emissions in Ventura from architectural coatings were about 4.9 tons per day.

Emissions are reduced by limiting the VOC content of architectural coatings. The VOC concentration of flat and non-flat coating categories is set at 250 grams of VOC (less water and other exempt solvents) per liter of coating. While flat and non-flat categories account for 75 percent of the sales in the District, the remaining 25 percent, known as specialty coatings, account for over 73 percent of the VOC emissions. The specialty coatings require more VOC in order to attain the effectiveness for which they are used. VOC limits have been set on specialty coatings with effective dates by which these limits are to be met. Those limits are shown in the Table of Standards in the rule.

The sources affected by this rule are the manufacturers, distributors, retailers and users of architectural coatings. There are no known manufacturers in Ventura County at this time. A provision of the rule allows for retailers to sell, and contractors to apply, previously unregulated non-complying coatings for up to three years after the limit becomes effective in order to deplete their inventory. This provision also gives manufacturers shipping to the District time to bring their coatings into compliance.

The rule exempts (1) coatings manufactured for use outside the District or shipped to other manufacturers, (2) coatings supplied in containers of one liter or less, (3) aerosols in non-refillable containers of one liter or less, and (4) emulsion-type bituminous pavement sealers.

There are labeling requirements in the rule. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulates pesticides and sets labeling requirements for them. Thus, coatings such as wood preservatives that are regulated as pesticides are exempt from the labeling requirements of this rule.

Currently, there is no federal CTG which sets presumptive RACT for architectural coatings. The California Air Resources Board (CARB) together with the EPA, industry and the California Air Pollution Control Officers Association (CAPCOA) published a Suggested Control Measure (SCM) on July 7, 1989 for this source category, after holding several workshops and public hearings. The architectural coating rule proposed here follows the SCM in general. Changes include the addition of provisions making it compatible with current EPA policy and regulations, and strengthening of regulations against excessive thinning of coatings.

Ventura County has in the current SIP Rule 74.2, Architectural Coatings, which was submitted on March 14, 1984 and approved by EPA on January 24, 1985. The proposed FIP rule will strengthen the SIP by regulating specialty coatings which emit a high percentage of the VOC from architectural coatings. Because the proposed FIP rule is more stringent than the SIP rule, it would have the legal effect, under section 116 of the Act, of pre-empting the local rule. However, if the CARB submits to EPA an identical or equally effective rule, EPA would withdraw or rescind the FIP rule.

Ventura County has pending for adoption another version of its architectural coatings rule that is similar to the SCM. The staff has supplied its report supporting the pending revision to EPA. It is unknown when or if the rule will be adopted by the District.

The following APCDs in California have adopted similar architectural coatings rules: Santa Barbara County Air Pollution Control District, South Coast Air Quality Management District, Bay Area Air Quality Management District, Colusa County Air Pollution Control District, and Imperial County Air Pollution Control District. To our knowledge, the following APCDs in California have proposed to adopt similar architectural coatings rules in their Districts: San Diego County Air Pollution Control District, Placer County Air Pollution Control District, Sacramento Metropolitan Air Quality Management District, and Monterey Bay Unified Air Pollution Control District.

Estimates have been made of the reduction in VOC emission in tons per day (TPD) for Ventura County, based on an EPA study that was completed in May, 1990 by Engineering-Science, Inc., Pasadena, California. The projected emission reductions reflect the level of emissions after the implementation of the architectural coatings rule adopted by the District on October 26, 1986.

EPA estimates the reductions at 10% (of a base inventory of 4.9 tons per day (tpd) in 1992, or 0.49 tpd, and 15%, or 0.7 tpd in 1994. The reductions for 1992 and 1994 are based on the most recent available data (1987) regarding use of architectural coatings, and therefore represent reductions from the 1987 baseline. As population increases, use of architectural coatings and associated levels of emissions will increase, as will the reductions.

Recordkeeping for this rule is not required at this time. The limits are based on the VOC content of the coating and, for exemptions, on container size. Thus, enforcement will be a function of testing a coating for VOC content and matching that content with the use of the coating as specified on the label.

Recordkeeping by manufacturers or distributors of the location of contractors and high-use customers would be useful in establishing whether the coating was to be used outside of the District and therefore be exempt. However, such information should be obtainable from the company's sales records.

b. *Motor Vehicle and Mobile Equipment (non-assembly line) Coating Operations (Autobody Refinishing).* Ventura County APCD does not presently have a rule that specifically regulates emissions from automobile refinishing coating operations. However, this category was designated for further study in the 1987 Air Quality Management Plan. Based on the availability of new technologies for high

solid-low volatile organic compound (VOC) coatings, for water based primers, for low-VOC cleaning solvents and for improved coating transfer efficiency, adoption of a motor vehicle and mobile equipment refinishing rule appears to be reasonable and feasible.

The rule proposed by EPA today is similar to a draft version of such a rule presently being developed in Ventura County. It will control emissions of VOC-containing solvents used in the process of refinishing motor vehicles and mobile equipment.

A subcommittee of the California Technical Review Group (TRG) is in the process of developing a Suggested Control Measure (SCM) for the control of automobile refinishing coating operations. A draft SCM entitled Automotive Refinishing Operations is being submitted to the TRG. EPA, the California Air Resources Board and several California air pollution control districts (including Ventura) have been involved in developing this SCM.

There are currently two districts in California that are implementing adopted automobile refinishing rules; the Bay Area Air Quality Management District (AQMD) and the South Coast AQMD. The SCM and the rule EPA is proposing today are based on the Bay Areas AQMD's Regulation 8, Rule 45, Motor Vehicle and Mobile Equipment Refinishing Operations.

The rule achieves emission reductions through three requirements:

(1) It establishes limits for VOCs which may be used in motor vehicle and mobile equipment coatings. These limits are on an as-applied basis and exclude water and exempt solvents. An option is available for spray booth operators to install VOC pollution abatement equipment providing the equipment has a combined capture and control efficiency of at least 90 percent.

(2) The rule also specifies that equipment with a high degree of transfer efficiency be used to apply motor vehicle and mobile equipment coatings. Electrostatic application equipment or high volume low pressure (HVLP) spray equipment operated in accordance with manufacturer's recommendations are allowed. Other equipment may be used providing the source demonstrates to the satisfaction of the Administrator that it achieves at least 65 percent transfer efficiency and providing the Administrator has issued written approval.

(3) The rule establishes standards for the handling and storage of surface preparation and cleanup solvent. Low VOC (200 grams per liter or less VOC) cleaning solvents are to be used for surface preparation. Solvent and paper on cloth used for surface preparation and clean up must be stored in closed containers, and clean up of spray equipment that involves the use of solvents must be carried out in an enclosed system.

Adoption of the proposed rule would have an impact on any person who applies coatings to any vehicle, mobile equipment, or to their exterior parts or components. This would include anything that could be driven or drawn on a roadway such as autos, trucks, buses, trailers, utility bodies, camper shells, mobile cranes, bulldozers, tractors, concrete mixers, street cleaners, golf carts and all terrain vehicles. Prohibitions on specification or sale of noncomplying coatings would have an impact on customers of auto refinishing shops and all retail outlets of autmotive coatings.

The automotive refinishing industry is currently subject to Rule 66, Organic Solvents, and generates approximately 1.1 tons of VOC per day based on the 1983 emission inventory. An interim VOC reduction of 63 percent is anticipated by January 1992 based on controls of primers and surface cleaning solvents and the use of high efficiency spray equipment. The projected total emission reductions based on this rule is approximately 0.83 tons of VOC per day, or a 75 percent reduction by 1995. The report written by the Midwest Research Institute in November of 1989 for the National Paint and Coatings Association documents this emission reduction in detail.

c. *Control of Volatile Organic Compound Emissions from Adhesives Applications.* Ventura County regulates VOC emissions from a number of sources (including adhesives) under Rule 66—Organic Solvents. There is no specific rule that regulates VOC emissions from adhesives.

Adhesives are defined as substances such as glue, mucilage, paste, rubber and cement used in the manufacturing of products to bond one surface to another by attachment. The surface materials (glass, rubber, plastic, wood and metal) adhere to the adhesives, and it is the strength of the surface adhesion and the strength of the adhesive that holds the two components together. "Weld" adhesives dissolve the surface layers of the substratus and, by using the solid ingredients in the adhesive, fuse the substratus together.

Rule 66 controls VOC emissions by requiring incineration or adsorption with 85 percent control efficiency if the VOC emissions exceed 15 pounds per day if the compound is baked, or 40 pounds per day if the compound is air dried. Low VOC compounds that do not come into contact with a flame are also exempt.

The South Coast Air Quality Management District (SCAQMD) adopted a rule in April, 1989, that specifically controls emissions from adhesives applications. The SCAQMD rule specifies the amount of VOC permitted in different types of adhesives and requires that adhesives be applied with high transfer efficiency methods. As an alternative to complying with these provisions, owners or operators may comply by using air pollution control equipment, provided VOC emissions are reduced by 80 percent. The SCAQMD staff report for Rule 1168 dated March 16, 1988, estimates that overall reduction would be 90.8 percent in the SCAQMD. This percentage was rounded downward to 90 percent to provide a more conservative estimate for use in this report.

The control measure being proposed today is based on the SCAQMD rule and specifies requirements to reduce volatile organic compound (VOC) emissions from the adhesives application process. The proposed control measure would require adhesive manufacturers to reformulate to low-VOC adhesives. The available reformulation materials required to meet most of these limits include waterborne, hot-melt, two-compound solventless adhesives and exempt solvents (such as 1,1,1 trichloroethane). The limits identified for adhesives used in aircraft tire rebuilding, footwear manufacturing, cove base installation and ceramic tile installation would require additional technological development, and will therefore not take effect until 1993.

The proposed control measure specifies the use of low VOC content solvents for equipment cleaning and clean-up procedures. The use of add-on equipment such as carbon absorbers and after burners are permitted as an alternative to reformulation. The equipment would have to have an emission capture and control efficiency of at least 80 percent.

Adhesive use in Ventura County currently (1987) produces 0.79 tons per day of VOC emissions, based on 250 working days per year. Since it is estimated that emissions will be reduced by about 90 percent, the following VOC emissions reductions, from projected increases based on growth, are forecast: 1995—0.89 tons per day; 2000—1.02 tons per day; 2010—1.27 tons per day.

F. Summary of Phase I Impacts

EPA has estimated the emission reductions for the year 2000 due to

implementation of the Phase I measures to be between 10 and 20 percent of the base VOC emissions inventory. These estimates are necessarily preliminary due to the lack of future year projections based on the 1987 planning inventory.

G. The Phase II FIP

On June 28, 1991, EPA is to propose a final, or Phase II, FIP which provides for expeditious attainment of the ozone standard in Ventura County; final promulgation of Phase II is to follow by February 28, 1992. The settlement also provides that, to the extent that EPA approves a State-submitted implementation plan for attainment of the ozone standard before the deadline, EPA shall be relieved of its obligation to provide federal attainment measures.

General requirements applicable to FIPs have been discussed earlier and will be discussed with greater particularity in the Phase II proposal. The most difficult questions to be faced involve selecting the appropriate array of control measures, to make up a control strategy capable of producing the required emission reductions.

As discussed earlier, EPA's preliminary determination regarding required emissions reductions is that a "dual" or mixed approach is appropriate. (See discussion at III.B.) Accordingly, it is EPA's assumption that the FIP will include a mix of VOC and NOx measures. While the preliminary determination suggested a 40% reduction in both VOC and NOx, EPA also acknowledged that these percentages might change as further modeling results become available, or that, even under the existing modeling results, other combinations of VOC and NOx reductions might also result in attainment. For instance the extremes of 55 percent VOC and 0 percent NOx, or 55 percent NOx and 0 percent VOC reductions were described as alternatives, and any other number of combinations along the ozone isopleth also are possible alternatives.

Emission Source Categories. In choosing a control strategy for Phase II, EPA must consider the relative contributions of various source categories. For purposes of the following discussion, EPA has used projections from the 1987 AQMP for the year 2000.

Other than emissions related to mobile sources (projected as 25% and 55% of VOC and NO_x respectively), the largest source categories are organic solvents (36% of the VOC inventory), utility boilers (31% of the NO_x inventory) and pesticides (21% of VOCs). Solvents are comprised of several subcategories, one of which, architectural coatings, is subject to a federal measure proposed elsewhere in this notice. The largest single categories of potential emissions reductions, then, become utility boilers (for NO_x) and pesticides (for VOCs).

Candidate control measures. The District's recommended long-term course of action, beyond the measures committed for adoption in the 1987 AQMP, included, for VOCs: Control of organic solvents and pesticides; for NO_x: Control of electric utility boiler emissions, IC engine electrification; for both pollutants the District cited imposition of indirect source review.

It would appear that even if EPA pursues a dual approach of reducing VOC and NO_x, thereby relieving some of the need for VOC reductions, choices will still have to be made regarding the relative reductions to be obtained from pesticides and organic solvents. EPA is investigating the technical feasibility and cost of reducing emissions from pesticides and organic solvents, and solicits comment regarding these issues.

Given the likelihood of the need for NO_x controls in the final FIP, and the fact that control of electric utility boilers is the most readily identifiable candidate measure, at this point such controls must be considered for inclusion in the final control strategy. Selective Catalytic Reduction (SCR) techniques are projected as capable of producing 90% reduction in NO_x emissions, and EPA considered proposing this level of reduction in Phase I, but concluded that such a proposal was premature in light of analyses to be performed in preparing the Phase II FIP.

Instead EPA is soliciting comment regarding the technical feasibility and cost implications of retrofit NO_x controls on utility boilers, as well as regarding alternative levels and sources of NO_x reductions.

H. FIP delegation and rescission

The Administrator of the EPA has the authority to delegate implementation and enforcement of a FIP measure to the State, to a regional agency or to a local government within its jurisdictional boundaries. Prior to any delegation, the Administrator would have to determine that the agency or jurisdiction requesting the delegation has legal authority to implement and enforce the measures and has committed the necessary staffing and resources to implement and enforce it. EPA would encourage agencies who meet these criteria to apply for delegation.

Following promulgation of the FIP for Ventura County, the State may wish to submit to EPA demonstrations, procedures and/or regulations to substitute for part or all of the federal plan. Such procedures and or regulations would need to comply with all applicable CAA requirements and EPA guidance. The State would also need to show that any regulations intended to replace a federal measure would achieve, in total, at least the equivalent emission reductions on the same or a faster schedule than the FIP measure.

There are at least two reasons why the State may wish to submit an implementation plan which fully complies with all CAA requirements and EPA guidance beyond the desire to eliminate the burden of a federal plan. One reason is that the continuing disapproval of the Ventura plan automatically continues the construction moratorium under section 110(a)(2)(I) of the CAA on major new sources or major modifications of sources of VOC and possibly NO_x. The moratorium can only be lifted when EPA approves a State-submitted implementation plan that meets the requirements of part D of the CAA.

The other reason is that, under the language of the Clean Air Act, as long as the State fails to submit an approvable SIP or fails to make reasonable efforts to submit an approvable SIP, the nonattainment areas remain potentially subject to other sanctions under the CAA, including highway funding restrictions under 176(a) and wastewater treatment grant restrictions under 316(b).

EPA intends to work with the State and local agencies in developing corrective SIPs.

IV. Regulatory Impact/Flexibility Analysis

A. Administrative Designation and Regulatory Analysis

Executive Order No. 12291 requires each Federal Agency to determine if a regulation is a "major" rule as defined by the order and "to the extent permitted by the law" prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

EPA has determined that the annual cost to the economy of the proposed FIP measures is less than $100 million and

the projected cost increases are not major. In addition, significant adverse effects on competition, employment, investment, productivity, innovation or trade are not anticipated. Consequently, this action is not considered major and a RIA has not been prepared.

The draft regulatory impact analysis addresses the benefits, and benefits-costs of the measure proposed today in this proposed rulemaking. Under Executive Order No. 12291 this action is not major. It has been submitted to the Office of Management and Budget for review.

B. Cost Impacts

A summary of the costs for the Ventura County Phase I FIP measures shows that VOC controls for extension of South Coast FIP core measures (fuel volatility limitations, reformulated gasoline, enhanced evaporative emission controls) and controlling emissions from architectural coatings, adhesives applications and autobody refinishing amount to approximately $11 million per year in 1995. Of this amount, $6.7 million are expenditures for reformulating gasoline. The basis for this estimate is a unit cost of 6.6 cents per gallon of gasoline for consumers. A more detailed analysis is contained in the Technical Support Document.

C. Benefits

A formal benefit analysis has not been prepared. However, qualitatively it can be stated that an improvement in health can be expected due to reducing both acute and chronic health risks associated with reduced exposure to elevated levels of ozone. Welfare improvements can also be expected, in the form of reduced vegetation effects and reduced materials damages.

In addition, reduction of VOCs, which are precursors to ozone, also produces health and welfare benefits in the form of reduced morbidity and mortality associated with particulate matter formed as a secondary pollutant. To some degree VOC emissions lead to condensation and the formation of secondarily formed aerosols, and hence cause increased ambient air concentrations of particulate matter. Furthermore, exposure to certain VOC emissions can pose risks in terms of potential toxicity on human health (e.g., carcinogens).

D. Impact on Small Entities

A significant effect on a substantial number of small entities is not anticipated. Control costs for the three stationary source VOC measures, as a percent of sales, are estimated to be 0.2%, 0.4% and 3.1% respectively for architectural coating, adhesives and autobody refinishing sources.

E. Paperwork Reduction Act

The information collection provisions relating to this proposal have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA and a copy may be obtained from the Information Policy Branch (PM–223); U.S. Environmental Protection Agency; 401 M Street SW., Washington, DC 20460, or by calling (202) 382–2706. Comments on the ICR may be submitted to EPA at the above address and should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Oxides of nitrogen, Ozone reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 29, 1990.

William K. Reilly,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart F—California

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.24 is proposed to be amended by adding the following sentences to the end of paragraphs (e), (f)(4)(ii), and (f)(5)(ii) to read as follows:

§ 52.24 Statutory restriction on new sources.

* * * * *

(e) * * * Where the Administrator determines that a major stationary source or major modification that is major for oxides of nitrogen causes or contributes to concentrations of ozone, such source is also major for ozone.

(f) * * *

(4) * * *

(i) * * *

(ii) * * * Where the Administrator determines that a major stationary source that is major for oxides of nitrogen causes or contributes to concentrations of ozone, such source shall be considered major for ozone.

(5) * * *

(i) * * *

(ii) * * * Where the Administrator determines that a major stationary source that is major for oxides of nitrogen causes or contributes to concentrations of ozone, any net emissions increase that is considered major for oxides of nitrogen shall be considered significant for ozone.

* * * * *

3. Section 52.220 is proposed to be amended by adding paragraphs (c)(180), (181) and (182) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(180) The following rules were submitted by the Governor's designee on March 26, 1990.

(i) Incorporation by reference.

(A) Ventura County APCD

(1) Rule 2

(2) Rule 70

(3) Rule 71.4

(4) Rule 74.7

(181) The following rules were submitted by the Governor's designee on October 16, 1990.

(i) Incorporation by reference

(A) Ventura County APCD

(1) Rule 71

(2) Rule 71.2

(182) The following amendments to the plan were submitted by the Governor's designee on May 24, 1989.

(i) Ventura County APCD

(A) 1987 Air Quality Management Plan, adopted July 26, 1988

(1) Chapter 5. Area and Stationary Source Control Measures.

(2) Chapter 6. Transportation Control Measures.

4. Section 52.237 is proposed to be amended by adding a sentence to the end of paragraph (a)(2) to read as follows:

§ 52.237 Part D Disapproval.

(a) * * *

(2) * * * This moratorium on construction in Ventura County also applies to major new stationary sources or major modifications to existing sources of oxides of nitrogen.

* * * * *

5. 40 CFR part 52 is proposed to be amended by adding a new § 52.283 to read as follows:

§ 52.283 Controls and prohibitions on gasoline volatility and liability for violations.

(a) *Definitions.* For the purpose of this section:

(1) *Carrier* means any distributor who transports or stores or causes the transportation or stores or storage of gasoline without taking title to or otherwise having any ownership of the gasoline, and without altering either the quality or quantity of the gasoline.

(2) *Distributor* means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

(3) *Ethanol blending plant* means any refinery at which gasoline is produced solely through the addition of ethanol to gasoline, and at which the quality and quanity of gasoline is not altered in any other manner.

(4) *Ethanol blender* means any person who owns, leases, controls, or supervises and ethanol blending plant.

(5) *Refiner* means any person who owns, leases, operates, controls, or supervises a refinery.

(6) *Retailer* means any person who owns, leases, operates, controls, or supervises a retail outlet.

(7) *Reseller* means any person who purchases gasoline identified by the corporate, trade, or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumer displaying the refiner's brand, and whose assets or facilities are not substantially owned, leased, or controlled by such refiner.

(8) *Wholesale purchaser-consumer* means any organization that is an ultimate consumer of gasoline and which purchasers or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

(b) *Prohibited Activities.* No refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall sell, offer for sale, supply, offer for supply, or transport gasoline whose Reid vapor pressure exceeds the appliable standard within the nonattainment area of Ventura County. As used in this section "applicable standard" means the standard listed in this paragraph for the time period in which gasoline is intended to be dispensed to motor vehicles or, if such time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year.

APPLICABLE STANDARDS*

Month	RVP—1992	RVP—1993	RVP—1994
January	No limit	10.0	10.0
February	No limit	10.0	10.0
March	No limit	10.0	10.0
April	7.8	7.8	7.8
May	7.8	7.8	7.8
June	7.8	7.8	7.0
July	7.8	7.8	7.0
August	7.8	7.8	7.0
September	7.8	7.8	7.0
October	7.8	7.8	7.8
November	10.0	10.0	10.0
December	10.0	10.0	10.0

*Note—These standards supersede standards listed in 40 CFR 80.27.

(c) *Determination of Compliance.* Compliance with the standards listed in paragraph (b) of this section shall be determined by use of one of the sampling methodologies specified in appendix D to 40 CFR part 80 and one of the testing methodologies specified in appendix E to 40 CFR part 80.

(d) *Liability.* Liability for violations of paragraph (b) of this section shall be determined according to the provisions of paragraphs (e) through (k) of this section.

(e) *Violations at Refineries or Importer Facilities.* Where a violation of the applicable standard set forth in paragraph (b) of this section is detected at a refinery or importer's facility, the refiner or importer shall be deemed in violation.

(f) *Violations at Carrier Facilities.* Where a violation of the applicable standard set forth in paragraph (b) of this section is detected at a carrier's facility, whether in a transport vehicle, in a storage facility, or elsewhere at the facility, the following parties shall be deemed in violation:

(1) The carrier, except as provided in paragraph (k)(1) of this section; and

(2) The refiner (if he is not an ethanol blender) at whose refinery the gasoline was produced or the importer at whose facility the gasoline was imported, except as provided in paragraph (k)(2) of this section; and

(3) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (k)(6) of this section.

(g) *Violations at Branded Distributor or Reseller Facilities.* Where a violation of the applicable standard set forth in paragraph (k)(6) of this section is detected at a distributor facility, a reseller facility, or an ethanol blending plant which is operating under the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor or reseller, except as provided in paragraph (k)(3) of this section; and

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard; and

(3) The refiner under whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) the distributor, reseller, or ethanol blender is operating, except as provided in paragraph (k)(4) of this section; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in (k)(6) of this section.

(h) *Violations at Unbranded Distributor Facilities.* Where a violation of the applicable standard set forth in paragraph (k)(6) of this section is detected at a distributor facility or an ethanol blending plant not operating under a refiner's corporate, trade, or brand name, or that of any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor, except as provided in paragraph (k)(3) of this section;

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard;

(3) The refiner (if he is not an ethanol blender) at whose refinery the gasoline was produced or the importer at whose import facility the gasoline was imported, except as provided in paragraph (k)(2) of this section; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (k)(6) of this section.

(i) *Violations at Branded Retail Outlets or Wholesale Purchaser-Consumer Facilities.* Where a violation of the applicable standard set forth in paragraph (k)(6) of this section is detected at a retail outlet or at a wholesale purchaser-consumer facility displaying the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (k)(5) of this section;

(2) The distributor (if any) and/or reseller (if any), except as provided in paragraph (k)(3) of this section;

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard;

(4) The refiner whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) is displayed at the retail outlet or wholesale purchaser-

consumer facility, except as provided in paragraph (k)(4) of this section; and

(5) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (k)(6) of this section.

(j) *Violations at Unbrander Retail Outlets or Wholesale Purchaser-Consumer Facilities.* Where a violation of the applicable standard set forth in paragraph (k)(6) of this section is detected at a retail outlet or at a wholesale purchaser-consumer facility not displaying the corporate, trade, or brand name of a refinery or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (k)(5) of this section;

(2) The distributor (if any), except as provided in paragraph (k)(3) of this section;

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard; and

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (k)(6) of this section.

(k) *Defenses.* (1) In any case in which a carrier would be in violation under paragraph (f)(1) of this section, the carrier shall not be deemed in violation if he can demonstrate:

(i) Evidence of an oversight program conducted by the carrier, such as periodic sampling and testing of incoming gasoline, for monitoring the volatility of product stored or transported by that carrier; and

(ii) That the violation was not caused by the carrier or his employee or agent.

(2) In any case in which a refiner or importer would be in violation under paragraphs (f)(2) or (h)(3) of this section, the refiner or importer shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Test results, performed in accordance with the sampling and testing methodologies set forth in appendices D and E to 40 CFR part 80, which evidence that gasoline determined to be in violation was in compliance with the applicable standard when it was delivered to the next party in the distribution system.

(3) In any case in which a distributor or reseller would be in violation under paragraphs (g)(1), (h)(1), (i)(2), or (j)(2), of this section, the distributor or reseller shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or a carrier, reseller or distributor from whom the gasoline was received, which represented to the distributor or reseller that the gasoline was in compliance with the applicable standard when delivered to the distributor or reseller; and

(iii) Evidence of an oversight program conducted by the distributor or reseller, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the distributor or reseller sells, supplies, offers for sale or supply, or transports.

(4) In any case in which a refiner would be in violation under paragraph (g)(3) or (i)(4) of this section, the refiner shall not be deemed in violation if he can demonstrate all of the following:

(i) Test results, performed in accordance with the sampling and testing methodologies set forth in appendices D and E to 40 CFR part 80 at the refinery at which the gasoline was produced, which evidence that the gasoline determined to be in violation was in compliance with the applicable standard when transported from the refinery; and

(ii) That the violation was not caused by him or his employee or agent; and

(iii) That the violation:

(A) Was caused by an act in violation of law (other than the Act or this part), or an act of sabotage or vandalism, whether or not such acts are violations of law in the jurisdiction where the violation of the requirements of this part occurred, or

(B) Was caused by the action of a reseller, an ethanol blender, or a retailer supplied by such reseller or ethanol blender, in violation of a contractual undertaking imposed by the refiner on such reseller or ethanol blender designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(C) Was caused by the action of a retailer who is supplied directly by the refiner (and not by a reseller), in violation of a contractual undertaking imposed by the refiner on such retailer designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(D) Was caused by the action of a distributor or an ethanol blender subject to a contract with the refiner for transportation of gasoline from a terminal to a distributor, ethanol blender, retailer or wholesale purchaser-consumer, in violation of a contractual undertaking imposed by the refiner on such distributor or ethanol blender designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

(E) Was caused by a carrier or other distributor not subject to a contract with the refiner but engaged by him for transportation of gasoline from a terminal to a distributor, ethanol blender, retailer or wholesale purchaser-consumer, despite reasonable efforts by the refiner (such as specification or inspection of equipment) to prevent such action, or

(F) Occurred at a wholesale purchaser-consumer facility: *Provided, however,* That if such wholesale purchaser-consumer was supplied by a reseller or ethanol blender, the refiner must demonstrate that the violation could not have been prevented by such reseller's compliance with a contractual undertaking imposed by the refiner on such reseller as provided in paragraph (k)(4)(iii)(B) of this section.

(iv) In paragraphs (k)(4)(iii) (A) through (E) of this section, the term "was caused" means that the refiner must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(5) In any case in which a retailer or wholesale purchaser-consumer would be in violation under paragraph (i)(1) or (j)(1) of this section, the retailer or wholesale purchaser-consumer shall not be deemed in violation if he can demonstrate that the violation was not caused by him or his employee or agent.

(6) In any case in which an ethanol blender would be in violation under paragraph (f)(3), (g)(4), (h)(4), (i)(5) or (j)(4) of this section, the ethanol blender shall not be deemd in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or the carrier, reseller, or distributor from whom the gasoline was received, which represented to the ethanol blender that the volatility of the gasoline when delivered to the ethanol blender was such that the addition of

ethanol to the gasoline would not result in an exceedence of the applicable standard; and

(iii) Evidence of an oversight program conducted by the ethanol blender, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the ethanol blender sells, supplies, offers for sale or supply, or transports; and

(iv) That the gasoline determined to be in violation contained no more than 100 percent ethanol (by volume) when it was delivered to the next party in the distribution system.

(7) In paragraphs (k)(1)(iii), (k)(2)(i), (k)(3)(i), (k)(4)(ii), (k)(5), and (k)(6)(i) of this section the respective party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that it or its employee or agent did not cause the violation.

6. 40 CFR part 52 is proposed to be amended by adding a new § 52.284 to read as follows:

§ 52.284 Reformulated Gasoline Program.

(a) *Regulatory standard.* No person shall first introduce into commerce within the nonattainment area of Ventura County (Ventura or "control area") during the period April 1, 1995 to October 31, 1995 and each period of April 1 to October 31 thereafter ("control period") gasolien that has not been certified by the Administrator as being in compliance with the following requirements:

(1) Produces no more than 15 percent less ozone-forming VOC emissions, adjusted for reactivity, than would be produced from conventional gasoline-fueled motor vehicles operating on gasoline representative of gasoline commercially available in Ventura County during the same period in 1990.

(2) Produces no more NO_x emissions from gasoline-fueled motor vehicles than gasoline that was widely available within the control area during April 1, 1990 through October 1990.

(b) *Certification and Compliance Procedures.* [Reserved]

7. 40 CFR part 52 is proposed to be amended by adding a new § 52.285 to read as follows:

§ 52.285 Architectural Coatings.

(a) *Applicability.* This rule is applicable to any person who supplies, sells, offers for sale, applies, or solicits the application of any architectural coating, or who manufactures any architectural coating for use within the District.

(b) *Definitions.* (1) *Appurtenances:* Accessories to an architectural structure, including, but not limited to: hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-gutters and down spouts, window screens, lamp-posts, heating and air conditioning equipment, other mechanical equipment, large fixed stationary tools and concrete forms.

(2) *Architectural Coatings:* Coatings applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

(3) *Below-Ground Wood Preservatives:* Coatings formulated to protect below-ground wood from decay or insect attack and are registered under the Federal Insecticide, Fungicide, and Rodenticide Act.

(4) *Bituminous Coating:* Black or brownish coating materials which are soluble in carbon disulfide, which consist mainly of hydrocarbons, and which are obtained from natural deposits or as residues from the distillation of crude oils or of low grades of coal.

(5) *Bond Breakers:* Coatings applied between layers of concrete to prevent the freshly poured top layer of concrete from bonding to the layer over which it is poured.

(6) *Clear Wood Finishes:* Clear and semitransparent coatings, including lacquers and varnishes, applied to wood substrates to provide a transparent or translucent solid film.

(7) *Concrete Curing Compounds:* Coatings applied to freshly poured concrete to retard the evaporation of water.

(8) *Dry Fog Coatings (Mill White Coatings):* Coatings formulated only for spray application such that overspray droplets dry before subsequent contact with other surfaces.

(9) *Exempt Solvents:* Compounds identified are exempt under the definitions of Volatile Organic Compounds, Subsection B.38.

(10) *Fire-Retardant Coatings:* Coatings which have a flame spread index of less than 25 when tested in accordance with ASTM Designation E–84–87, "Standard Test Method for Surface Burning Characteristics of Building Material", after application to Douglas fir wood according to the manufacturer's recommendations.

(11) *Form-Release Compounds:* Coatings applied to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of wood, metal, or some material other than concrete.

(12) *Graphic Arts Coatings (Sign Paints):* Hand-applied coatings formulated for artists using brush or roller techniques on indoor or outdoor signs (excluding structural components) and murals, including lettering enamels, poster colors, copy blockers, and bulletin enamels.

(13) *High-Temperature Industrial Maintenance Coatings:* Industrial maintenance coatings formulated for and applied to substrates exposed continuously or intermittently to temperatures above 400 degrees Fahrenheit.

(14) *Industrial Maintenance Anti-Graffiti Coatings:* Two-component clear industrial maintenance coatings formulated for and applied to exterior walls and murals to resist repeated scrubbing and exposure to harsh solvents.

(15) *Industrial Maintenance Coatings:* High performance coatings formulated for and applied to substrates in industrial, commercial, or institutional situations that are exposed to one or more of the following extreme environmental conditions:

(i) Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous), or chronic exposure of interior surfaces to moisture condensation;

(ii) Acute or chronic exposure to corrosive, caustic or acidic agents, or to chemicals, chemical fumes, chemical mixtures and solutions;

(iii) Repeated exposure to temperatures in excess of 250 degrees Fahrenheit;

(iv) Repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial solvents, cleansers, or scouring agents; or

(v) Exterior exposure of metal structures.

Industrial Maintenance Coatings are not for residential use or for use in administrative areas of industrial, commercial, or institutional facilities such as office space and meeting rooms.

(16) *Laquers:* Clear wood finishes formulated with nitrocellulose synthetic resins to dry by evaporation without chemical reaction, including clear lacquer sanding sealers.

(17) *Magnesite Cement Coatings:* Coatings formulated for and applied to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

(18) *Mastic Texture Coatings:* Coatings formulated to cover holes and minor cracks and to conceal surface irregularities, and applied in a thickness of at least 10 mils (dry, single coat).

(19) *Metallic Pigmented Coatings:* Coatings containing at least 0.4 pounds of metallic pigment per gallon of coating as applied. Determination of the metallic content will be done by the method described in the South Coast Air Quality Management District Laboratory

Methods, Section 30, Spectrographic Method.

(20) *Multi-Colored Coatings:* Coatings which exhibit more than one color when applied and which are packaged in a single container and applied in a single coat.

(21) *Opaque Stains:* All stains that are not classified as semitransparent stains.

(22) *Opaque Wood Preservatives:* All wood preservatives not classified as clear or semitransparent wood preservatives or as below-ground wood preservatives.

(23) *Pre-Treatment Wash Primers:* Coatings which contain a minimum of ½% acid by weight, applied directly to bare metal surfaces to provide necessary surface etching. Determination of the acidity will be done ASTM method D–1613–81 (Modified).

(24) *Primers:* Coatings formulated and applied to substrates to provide a firm bond between the substrate and subsequent coats.

(25) *Residential Use:* Use in areas where people reside or lodge including, but not limited to single and multiple family dwellings, condominiums, mobile homes, apartment complexes, motels, and hotels.

(26) *Roof Coatings:* Coatings formulated for application to exterior roofs and for the primary purpose of preventing penetration of the substrate by water, or reflecting heat and ultra-violet radiation. Metallic pigmented roof coatings which qualify as metallic pigmented coatings shall not be considered to be in this category, but shall be considered to be in the metallic pigmented coating category.

(27) *Sanding Sealers:* Clear wood coatings formulated for and applied to bare wood for sanding and to seal the wood for subsequent application of varnish. To be considered a sanding sealer, a coating must be clearly labeled as such.

(28) *Sealers:* Coatings formulated for and applied to a substrate to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to the subsequent coatings by materials in the substrate.

(29) *Semitransparent Stains:* Coatings formulated to change the color of a surface but not to conceal the surface.

(30) *Semitransparent Wood Preservatives:* Wood preservative stains formulated and used to protect exposed wood from decay or insect attack by the addition of a wood preservative chemical registered under the Federal Insecticide, Fungicide, and Rodenticide Act, and which change the color of a surface but do not conceal the surface, including clear wood preservatives.

(31) *Shellacs:* Clear or pigmented coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

(32) *Solicit:* To require for the use or to specify, by written or oral contract.

(33) *Swimming Pool Coatings:* Coatings formulated and used to coat the interior of swimming pools and to resist swimming pool chemicals.

(34) *Swimming Pool Repair Coatings:* Chlorinated rubber-based coatings used for the repair and maintenance of swimming pools over existing chlorinated rubber-based coatings.

(35) *Traffic Coatings:* Coatings formulated for and applied to public streets, highways, and other surfaces including, but not limited to curbs, berms, driveways, and parking lots.

(36) *Undercoaters:* Coatings formulated and applied to substrates to provide a smooth surface for subsequent coats.

(37) *Varnishes:* Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

(38) *Volatile Organic Compounds (VOC):* Any organic compound which participates in atmospheric photochemical reactions. This includes any organic compound other than the following compounds:

methane,
ethane,
methyl chloroform (1,1,1-trichloroethane),
CFC–113 (trichlorotrifluoroethane),
methylene chloride,
(chlorodifluoromethane),
FC–23 (trifluoromethane),
CFC–114 (dichlorotetrafluoroethane),
CFC–115 (chloropentafluoroethane),
HCFC–123 (dichlorotrifluoroethane),
HFC–134a (tetrafluoroethane),
HCFC–141b (dichlorofluoroethane), and
HCFC–142b (chlorodiflroroethane).

These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOC will be measured by EPA approved test methods. Where such a method also measures the above photochemically nonreactive compounds, the owner or operator may exclude these compounds when determining compliance with emission standards.

(39) *Waterproofing Sealers:* Colorless coatings which are formulated and applied for the sole purpose of protecting porous substrates by preventing the penetration of water and which do not alter surface appearance or texture.

(c) *Standards.* (1) The effective date for these standards is March 1, 1987 except as specifically given in the paragraphs of this section.

(2) Except as provided in paragraphs (c)(3), (c)(4), and (c)(5) of this section, no person shall, within the District, supply, offer for sale, sell, apply, or solicit the application of any architecural coating which, at the time of sale or manufacture, contains more than 250 grams of volatile organic compounds per liter of coating (less water and exempt solvents, and excluding any colorant added to tint bases), or manufacture, blend or repackage such coating for use within the District.

(3) Except as provided in paragraphs (c)(3), (c)(4), and (c)(5) of this section, no person shall, within the District, supply, offer for sale, sell, apply, or solicit the application of any architectural coating listed in the Table of Standards which contains volatile organic compounds (less water and exempt solvents, and excluding any colorant added to tint bases) in excess of the corresponding limit specified in the Table, after the corresponding date specified, or manufacture, blend or repackage such a coating for use within the District.

TABLE OF STANDARDS

[Grams of VOC per liter]

Coatings	Effective Dates				
	9/1/84	9/1/89	Adoption date	9/1/92	9/1/94
Below-Ground Wood Preservatives			600	350	
Bond Breakers			750	[1] 350	
Clear Wood Finishes:					
Lacquer		680	680		
Sanding Sealers			550	350	

TABLE OF STANDARDS—Continued

[Grams of VOC per liter]

Coatings	Effective Dates				
	9/1/84	9/1/89	Adoption date	9/1/92	9/1/94
Varnish	500	350	350		
Concrete Curing Compounds		350	350		
Dry Fog Coatings			400		
Enamel Undercoaters	450	350	(2)		
Fire-Retardant Coatings:					
Clear			650		
Pigmented			350		
Form-Release Compounds			250		
Graphic Arts (Sign) Coatings			500		
Industrial Maintenance Primers and Topcoats		420	(2)		
Industrial Maintenance:					
Coatings			420	340	
Anti-Graffiti			600	340	
High Temperature			650	550	420
Magnesite Cement Coatings			600	450	
Mastic Texture Coatings			300		
Metallic Pigmented Coatings			500		
Multi-Color Coatings			580	420	
Opaque Stains	400	350	350		
Opaque Wood Preservatives	400	350	350		
Pre-Treatment Wash Primers			780	780	420
Primers, Sealers, Undercoaters	400	350	350		
Quick Dry Enamels		400	(2)		
Roof Coatings		300	300		
Semitransparent Stains		350	350		
Semitransparent and Clear Wood Preservatives		350	350		
Shellac:					
Clear			730		
Pigmented			550		
Specialty Flats		400	(2)		
Specialty Primers, Sealers, and Undercoaters		350	(2)		
Swimming Pool Coatings			650	340	
Swimming Pool Repair and Maintenance Coatings			650	[3] 340	
Traffic Paints:					
Public Streets/Highways	415	250	250		
Other Surfaces	250	250	250		
Black Traffic Coatings		250	250		
Waterproof Mastic Coatings		300	(2)		
Waterproofing Sealers		400	400		

[1] Differing effective dates by 9/1/90.
[2] Delete category.
[3] Differing effective dates by 9/1/97.

(4) If anywhere on the container of any coating listed in the Table of Standards, on any sticker or label affixed thereto, or in any sales or advertising literature, a representation is made that the coating may be used as, or is suitable for use as a coating for which a lower VOC standard is specified in the Table or in Subsection c.2 above, then the lowest VOC standard and/or earlier effective date shall apply. This requirement does not apply to the representation of the following coatings in the manner specified:

(i) High-temperature industrial maintenance coatings, which may be represented as metallic pigmented coatings for use consistent with the definition of high temperature industrial maintenance coatings;

(ii) Lacquer sanding sealers, which may be recommended for use a sanding sealers in conjunctioin with clear lacquer topcoats;

(iii) Metallic pigmented coatings, which may be recommended for use as primers, sealers, undercoaters, roof coatings, or industrial maintenance coatings; and

(iv) Shellacs.

(5) The VOC limits set in this rule apply to coatings after any thinning with solvents (excluding water and exempt solvents) as recommended by the manufacturer. Thinning recommendations will not exceed the coating VOC limits set in this rule.

(6) Sale or application of a coating manufactured prior to the effective date of the corresponding standard in the Table of Standards, and not complying with that standard, shall not constitute a violation of Subsection c.3. until three years after the effective date of the standard.

(7) All VOC-containing materials shall be stored in closed containers when not in use. In use includes, but is not limited to being accessed, filled emptied, maintained or repaired.

(d) *Administrative Requirements.* (1) Each container of any coating subject to this rule shall display the date on which the contents were manufactured or a code indicating the date of manufacture. Each manufacturer of such coatings shall file with the EPA an explanation of each code.

(2) Each container of any coating subject to this rule shall display a statement of the manufacturer's recommendation regarding thinning of the coating. This recommendation shall not apply to thinning of the coating with water. Any recommended thinning shall not exceed the extablished VOC standard for a coating. The recommendation shall specify that the coating is to be employed without thinning or diluting under normal environmental and application conditions unless any thinning

recommended on the label for normal environmental and application conditions will not cause the coating to exceed its applicable VOC emission standard.

(3) Each container of any coating subject to this rule and manufactured after (one year from the date of adoption) shall display the maximum VOC content of the coating, as applied, and after any thinning as recommended by the manufacturer. VOC content shall be displayed as grams of VOC per liter of coating (less water and exempt solvents, and excluding any colorant added to tint bases). VOC content displayed may be calculated using product formulation data, or may be determined using the test method in paragraph (f)(1) of this section.

(4) Beginning (one year from the date of adoption), the labels of all industrial maintenance coatings shall include the statement "Not for Residental Use", or "Not for Residential Use in California" prominently displayed.

(e) *Exemptions.* The requirements of this rule do not apply to:

(1) Architectural coatings manufactured for use outside of the District or for shipment to other manufacturers for repackaging.

(2) Architectural coatings supplied in and applied from containers having capacities of one liter or less, which were offered in containers of such capacities prior to (the date of adoption of this rule).

(3) Architectural coatings sold in non-refillable aerosol containers having capacities of one liter or less.

(4) Emulsion-type bituminous pavement sealers.

(5) The labeling requirements of this rule are exempt for those coatings which contain pesticide preservatives regulated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) which has priority over labeling requirements. These coatings include, but are not limited to, below-ground wood preservatives, opaque wood preservatives, and semi-transparent wood preservatives.

(f) *Test Methods*—(1) *Volatile Organic Compounds.* Measurement of volatile organic compounds in architectural coatings shall be conducted and reported in accordance with EPA Test Method 24 (40 CFR part 60, appendix A) with the following modifications to ASTM D 2369–81 for multi-component coatings:

(1) All components of the coating are to be weighed in the proper proportion into the analysis container and mixed together just prior to analysis and (B) the mixture is allowed to stand for at least one hour but no more than 24 hours prior to being oven dried at 110 degrees centigrade for one hour.

(2) *Exempt Non-photochemically Reactive Compounds.* For the measurement of the exempt chemicals in coatings, ASTM D4457–85, Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph, should be used.

(3) Test methods for the determination of metals in metallic pigmented coatings for acids in pre-treatment wash primers are identified in paragraphs (b) (19) and (23) of this section, respectively. The test method for determining if a coating is a fire-retardant coating is identified in paragraph (b)(10) of this section.

8. 40 CFR part 52 is proposed to be amended by adding a new § 52.286 to read as follows:

§52.286 Control of Volatile Organic Compound Emissions from Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations.

(a) *Applicability.* This rule is applicable to any person who sells, offers for sale, applies or specifies the use of coatings for refinishing of vehicles, mobile equipment and their exterior parts or components.

(b) *Requirements.* (1) Effective on the dates specified, any person who applies coatings to Group I or II vehicles, mobile equipment, their parts and components, shall comply with the following:

(i) No person shall refinish where color match is required any Group I vehicles, their exterior parts and components, or Group II vehicles and mobile equipment using any coating with a VOC content in excess of the following limits, expressed as grams of VOC per liter (or pounds per gallon) of coating applied, excluding water and exempt compounds:

	VOC 1/1/91	VOC 1/1/93	VOC 1/1/95
Pretreatment Wash Primer	780 g/l	780 g/l	420 g/l
Precoat	780 g/l	780 g/l	420 g/l
Primer/Primer Surfacer	720 g/l	340 g/l	250 g/l
Primer Sealer	720 g/l	420 g/l	340 g/l
Topcoat	720 g/l	600 g/l	460 g/l
Metallic/ Iridescent Topcoat	720 g/l	600 g/l	540 g/l

(ii) No person shall refinish where color match is not required any Group I or Group II vehicles and mobile equipment, or their exterior parts using any coating with a VOC content in excess of the following limits, expressed as grams of VOC per liter (or pounds per gallon) of coating applied, excluding water and exempt solvents:

	VOC 1/1/90	VOC 1/1/92	VOC 1/1/95
Pretreatment Wash Primer	780 g/l	780 g/l	420 g/l
Precoat	780 g/l	780 g/l	420 g/l
Primer	340 g/l	340 g/l	250 g/l
Topcoat	420 g/l	420 g/l	340 g/l
Camouflage	420 g/l	420 g/l	420 g/l

(2) In lieu of complying with the coating limits in Section B.1., an operator may install air pollution control equipment that will control emissions to at least an equivalent level with a combined capture and destruction efficiency of at least 90%.

(3) Transfer Efficiency. Effective January 1, 1992 for all coatings, a person shall not apply any coating to any Group I or II vehicles or mobile equipment or their parts and components unless one of the following methods is used:

(i) Brush coating;

(ii) Dip coating;

(iii) Roll coating;

(iv) Electrostatic application equipment, operated in accordance with the manufacturer's recommendations;

(v) High volume Low Pressure (HVLP) spray equipment, operated in accordance with the manufacturer's recommendations;

(vi) Other coating applications which have been demonstrated to the satisfaction of the Administrator to be achieving at least 65% transfer efficiency during normal operating conditions and which has received written approval by the Administrator for use.

(4) Prohibition of Specification. No person shall solicit or require for use or specify the application of a coating on a Group I or II vehicle, mobile equipment, or part or component thereof if such use or application results in a violation of the provisions of this Rule. The prohibition of this Section shall apply to all written or oral contracts under the terms of which any coating which is subject to the provisions of this rule is to be applied to any motor vehicle, mobile equipment, or part or component at any physical location within the District.

(5) Prohibition of Sale. A person shall not offer for sale or sell within the District any coating if such product is prohibited by any of the provisions of this Rule. The prohibition of this section shall apply to the sale of any coating which will be applied at any physical location within the District.

(6) Compliance Statement Requirement. The manufacturer of coatings subject to this rule shall include

a designation of VOC as supplied, including coating components, expressed in grams per liter or pounds per gallon, excluding water and exempt solvents, on data sheets. This designation shall include a statement of manufacturer's recommendation regarding thinning, reducing, or mixing with any other VOC containing materials and the VOC of the coating as applied.

(7) Surface Preparation and Cleanup Solvent. The requirements of this section shall apply to any person using solvent for surface preparation and cleanup.

(i) A person shall not use an organic compound for surface preparation with a VOC content in excess of 200 grams per liter (1.67 pounds per gallon).

(ii) A person shall use closed, nonabsorbent containers for the storage or disposal of cloth or paper used for solvent surface preparation and cleanup.

(iii) A person shall store fresh or spent solvent in closed containers.

(iv) A person shall not use organic compounds for the cleanup of spray equipment including paint lines unless an enclosed system is used for cleanup. Equipment used shall minimize the evaporation of organic compounds to the atmosphere.

(8) Specialty Coatings. A person shall not use any specialty coating with a VOC content in excess of 840 g/1 (7.0 lbs/gal), excluding water and exempt solvents. Use of all specialty coatings except antiglare/safety coatings shall not exceed 5.0 percent of all coatings applied, on a daily basis. The application of topcoats with a specialty coating used as an additive shall be subject to the topcoat limits in Section b.1.i or b.1.ii.

(c) *Exemption.* (1) The provisions of this rule shall not apply to stationary sources emitting not more than 3 pounds of VOC per day and not more than 200 pounds of VOC per year from surface coating operations including coatings, thinners, or any other solvent containing materials.

(d) *Recordkeeping Requirements.* (1) Any person subject to this rule shall comply with the following requirements:

(i) The person shall maintain and have available during an inspection, a current list of coatings in use which provides all of the coating data necessary to evaluate compliance, including the following information, as applicable:

A. Volume of coating, catalyst and reducer used.

B. Mix ratio of components used.

C. VOC content of coating as applied.

(ii) The person shall maintain records on a daily basis including the following information:

(A) volume of coating and mix ratio of components in the coating used.

(B) volume of each coating applied.

(2) Any person subject to this rule shall have the manufacturer's specification sheets of solvents used for equipment cleaning and surface cleaning available for review and shall maintain the following records on a daily basis:

(i) Type of solvent

(ii) VOC content of solvent

(iii) Volume of solvent used for cleanup and surface preparation

(3) Records shall be retained and available for inspection by the Administrator for the previous 24 month period.

(e) *Test methods.* (1) Analysis of Samples. Samples of volatile organic compounds as specified in paragraph (b)(1)(i) or (b)(1)(ii) of this section shall be analyzed as prescribed by EPA Reference Method 24.

(2) Determination of Emissions. Emissions of volatile organic compounds as specified in paragraph (b)(2) of this section shall be measured as prescribed by EPA Reference Method 25 and by EPA's Capture Efficiency Protocol.

(3) Determination of Transfer Efficiency. The test method for determination of transfer efficiency as required by paragraph (b)(3)(iii) of this section shall:

(i) Be modeled after the test method described in the EPA document (EPA/600/2–88/–26b) "Development of Proposed Standard Test Method for Spray Painting Transfer Efficiency",

(ii) Simulate the transfer efficiency achieved during the actual operations, and

(iii) have received written approval by the Administrator.

(f) *Definitions.* (1) Antiglare/Safety Coating. A coating which does not reflect light.

(2) Basecoat/Clearcoat System. A topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. Basecoat/clearcoat systems' VOC content shall be calculated according to the following formula:

$$VOCbc/cc = \frac{(VOCbc) + 2(VOCcc)}{3}$$

Where:

VOCbc/cc is the VOC content of the basecoat/clearcoat (bc/cc) system.

(VOCbc) is the VOC content of the basecoat as applied.

2(VOCcc) is two times the VOC content of the clearcoat as applied.

(3) Camouflage Coating. A coating applied on motor vehicles to conceal such vehicles from detection.

(4) Color Match. The ability of a repair coating to blend into an existing coating so that color difference is not visible.

(5) Electrostatic Application. The application of charged atomized paint droplets which are deposited by electrostatic attraction.

(6) Exempt Compounds. Any of the following compounds.

1,1,1, trichloroethane, methylene chloride, trifluoromethane, (FC–23), trichlorofluoroethane (CFC–113), dichlorodifluoromethane (CFC–121), trichlorofluoromethane (CFC–111), chlorodifluoromethane (HCFC–22), dichlorotetrafluoroethane (CFC–114), chloropentafluoroethane (CFC–115,dichlororifluoroethane (HCFC–123), tetrafluoroethane (HCFC–134a), dichlorofluoroethane (HCFC–141b), chlorodiflroroethane (HCFC–142b).

(7) Grams of VOC per Liter of Coating Less Water and Less Exempt Compounds. A unit of measurement for the following equation used in determining the VOC content of a coating:

$$Gvoc = \frac{Ws - Ww - Wes}{Vm - Vw - Ves}$$

Where:

Gvoc = grams VOC per liter of coating less water and exempt compounds

Ws = weight of volatile compounds in grams

Ww- = weight of water in grams

Wes = weight of exempt compounds in grams

Vm = volume of materials in liters

Vw = volume of water in liters

Ves = volume of exempt compounds in liters.

(8) Group I Vehicles. Passenger cars, large/heavy duty truck cabs and chassis, light and medium duty trucks and vans, and motorcycles.

(9) Group II Vehicles and Equipment. Public transit buses and mobile equipment.

(10) High Volume Low Pressure (HVLP) Spray. Equipment used to apply coatings by means of a gun which operates between 0.1 and 10 psi air pressure.

(11) Metallic/Iridescent Topcoat. Any coating which contains more than 5 g/1 (.042 lb/gal) of metal or iridescent particles, as applied, where such particles are visible in the dried film.

(12) Mobile Equipment. Any equipment which may be drawn or is capable of being driven on a roadway, including, but not limited to, truck bodies, truck trailers, utility bodies, camper shells, mobile cranes,

bulldozers, street cleaners, golf carts and implements of husbandry.

(13) Precoat. Any coating which is applied to bare metal primarily to deactivate the metal surface for corrosion resistance to a subsequent water-base primer.

(14) Pretreatment Wash Primer. Any coating which contains a minimum of 0.5% acid by weight, is necessary to provide surface etching and is applied directly to bare metal surfaces to provide corrosion resistance and adhesion.

(15) Primer. Any coating applied prior to the application of a topcoat for the purpose of corrosion resistance and adhesion of the topcoat.

(16) Primer Sealer. Any coating applied prior to the application of a topcoat for the purpose of corrosion resistance, adhesion of the topcoat, color uniformity, and to promote the ability of an undercoat to resist penetration by the topcoat.

(17) Primer Surfacer. Any coating applied prior to the application of a topcoat for the purpose of corrosion resistance, adhesion of the topcoat, and which promotes a uniform surface by filling in surface imperfections.

(18) Reducer. The solvent used to thin enamel.

(19) Refinishing. Any coating of vehicles, their parts and components, or mobile equipment, including partial body collision repairs, for the purpose of protection or beautification and which is subsequent to the original coating applied at an Original Equipment Manufacturing (OEM) plant coating assembly line.

(20) Specialty Coatings. Coatings which are necessary due to unusual job performance requirements. Said coatings include, but are not limited to adhesion promoters, uniform finish blenders, elastomeric materials, gloss flatteners, bright metal trim repair, and anti-glare/safety coatings.

(21) Three-stage Coating System. A topcoat system composed of a pigmented basecoat portion, a semi-transparent midcoat portion, and a transparent clearcoat portion. Three-stage coating systems' VOC content shall be calculated according to the following formula:

$$\text{VOC3-stage} = \frac{(\text{VOCbc}) + (\text{VOCmc}) + 2(\text{VOCcc})}{4}$$

Where:

VOC3-stage is the sum of the VOC content as applied in the basecoat.

(VOCbc) is the VOC content as applied of any given basecoat.

(VOCmc) is the VOC content as applied of any given midcoat.

2 (VOCcc) is two times the VOC content as applied of any given clearcoat.

(22) Topcoat. Any coating applied over a primer or an OEM finish for the purpose of protection or appearance. For the purposes of this Rule, basecoat/clearcoat systems and three-stage coating systems shall be considered jointly as a topcoat.

(23) Transfer Efficiency. The ratio of the amount of coating solids adhering to the object being coated to the total amount of coating solids used in the application process, expressed as a percentage.

(24) Volatile Organic Compound. Any organic compound (not including exempt compounds) which would be emitted during use, application, curing or drying of a solvent or surface coating.

9. 40 CFR part 52 is proposed to be amended by adding a new § 52.287 to read as follows:

§ 52.287 Control of Volatile Organic Compounds Emissions from Adhesive Applications.

(a) *Intent.* The intent of this rule is to prevent, limit, and control the emissions of volatile organic compounds to the atmosphere from adhesives and adhesive primers; for the purpose of minimizing the atmospheric photochemical reactions that result in ozone formation in the ambient air.

(b) *Applicability.* This rule applies to the distribution, storage, sale and use of adhesives, adhesive products, adhesive chemical constituents, and adhesive primers which contain solids (non-volatile compounds); all within Ventura County, California.

(c) *Definitions*— (1) *Adhesive.* Any substance or combination of substances that is used as a partial or total surface coating to bond, join, glue, stick, or otherwise attach one object to another by means of a physical reaction (e.g., dissolving) or chemical reaction (e.g., polymerization, crosslinking of multiple bond molecules) occuring within one or among more than one chemical compounds.

(2) *Adhesive Bonding Primer.* An adhesive applied to a surface to improve the bond of subsequent adhesives and sometimes to inhibit corrosion by the subsequent adhesive.

(3) *Adhesive Chemical Constituents.* Chemical substances and products which contain separate chemical substances which, when mixed, form an adhesive.

(4) *Aerosol Spray Can.* A hand held, pressurized, non-refillable container which expels adhesive in a finely divided spray when a valve on the container is depressed.

(5) *Aerospace Component*: The fabricated part, assembly of parts or completed unit of any aircraft or space vehicle, excluding tires.

(6) *Aircraft*: Any machine designed to travel through the air, without leaving the earth's atmosphere, whether heavier or lighter than air, including airplanes, baloons, dirigibles, helicopters, and missiles.

(7) *Carpet Pad*: A cushioning material used beneath a rug.

(8) *Ceramic Tile*: A manufactured surfacing unit made from clay or a mixture of clay and other materials.

(9) *Composition Vinyl*: A material that is made partially of polyvinyl plastic.

(10) *Cove Base*: Floor level vertical wall molding generally made of wood or vinyl.

(11) *Dry Wall*: A manufactured wall or ceiling surfacing unit composed of gypsum.

(12) *Edge Bands*: Strips of material affixed to the outer rims of wood or simulated wood sheet materials.

(13) *Elastomeric Adhesive*: Any adhesive containing 15 percent or more, by weight, or natural or synthetic rubber.

(14) *Exempt Compounds*: Any organic compound found by EPA to be photochemically unreactive in the tropospheric ozone formation process, as follows:

methane, ethane, 1,1,1 trichloroethane (methyl chloroform), methylene chloride, trichlorofluoromethane (CFC–11), dichlorodifluoroethane (CFC–12), chlorodifluoromethane (CFC–22), trifluoromethane (CFC–23), trichlorotrifluoroethane (CFC–113), dichlorotetrafluoroethane (CFC–114), chloropentafluoroethane (CFC–115), dichlorotrifluoroethane (CFC–123), tetrafluoroethane (CFC–134a), dichlorofluoroethane (CFC–141b), chlorodifluoroethane (CFC–142b).

(15) *Felt Backed*: When felt of any composition is attached to the underneath side of the material

(16) *Fiberglass*: Fine filaments of glass.

(17) *Foam*: A rigid or spongy cellular mass with gas bubbles dispersed throughout.

(18) *Footwear Manufacturing*: The production of shoes, sandals, boots, galoshes, etc., including attaching the sole and the insole.

(19) *Footwear Primer*: A coating or adhesive that is applied to footwear prior to the application of adhesive.

(20) *Glue*: A hard gelatin obtained from hides, tendons, cartliage, bones, etc., of animals. Through general use the

term "glue" is synonymous with the term "adhesive".

(21) *Grams of VOC per Liter of Adhesive, Less Water and Less Exempt Compounds*: The weight of VOC contained in the combined volume of VOC and solids, including thinners and dilutents, as stored or as applied—for in-use situations, calculated by the following equation:

Grams of VOC per liter of adhesive, less exempt compounds and less water

$$= \frac{Wvc - Ww - Wec}{VA - Vw - Wec}$$

Where:

Wvc = weight of volatile compounds (in grams)
Ww = weight of water (in grams)
Wec = weight of exempt compounds (in grams)
Va = volume of adhesive or constituent components, as stored, in accordance with the product manufacturer's directions for thinning, diluting, or mixing (in liters), or as applied—for in use situations
Vw = volume of water (in liters)
Vec = volume of exempt compounds (in liters).

(22) *Indoor Carpet*: A carpet that is meant for installation in an enclosure and not for exposure to ambient weather conditions during normal use.

(23) *Landau Top*: A plastic, leather, cloth or other material that is affixed to the exterior top of an automobile.

(24) *Natural or Synthetic Rubbers*: Any materials listed on page 385 and described on pages 386–498 of Rubber World Magazine's BLUE BOOK, 1987 edition.

(25) *Outdoor Carpet*: Carpet that is not meant solely for indoor installation.

(26) *Panel*: Plywood, pre-decorated hardboard or tileboard, fiberglass, reinforced plastic, and similar pre-decorated or non-decorated sheets of material meant for application to studs or solid surfaces.

(27) *Parquet*: Small sections constructed of contrasting woods.

(28) *Percent VOC By Weight*: The ratio of the weight of VOC to the weight of adhesive solids and VOC, expressed as a percentage. The percent VOC by weight can be expressed as follows:

$$\%VOC\ weight = \frac{Wv}{Wcs + Wv}$$

Where:

Wv = standard definition of VOCs by weight (in grams)
Wcs = adhesive solids by weight (in grams), defined as the non-volatile portion of the material.

(29) *Planks:* Pieces of solid wood.

(30) *Plastic Cement:* An adhesive made from resins and solvents which is used to disolve the surfaces of plastic to form a bond between coated surfaces.

(31) *Plastic Foam:* A foam constructed of plastics.

(32) *Plastic Pipe:* Plastic pipes and fittings including PVC meeting ANSI/ASTM D–2564–84 standards, CPVC meeting ASTM F–493, and ABS meeting ASTM D–2235.

(33) *Polystyrene:* A form of plastic.

(34) *Porous Material:* A substance which has tiny openings, often microscopic, in which fluids may be absorbed or discharged.

(35) *Propellant:* A fluid under pressure which expels the contents of a container when a valve is opened.

(36) *Resilient Tile:* Vinyl composition, asphalt, solid vinyl or pure vinyl floor surfacing units.

(37) *Roofing Material:* Material meant for application on the top exterior of buildings to protect them from the weather.

(38) *Rubber Flooring:* Sheet or tile flooring materials in which both the top and back surfaces are made of synthetic rubber.

(39) *Rubber Foam:* Foam constructed of natural or synthetic rubber.

(40) *Solids:* The nonvolatile matter in adhesives, adhesive products, adhesive chemical constituents, and adhesive primers.

(41) *Space Vehicle:* A vehicle designed to travel beyond Earth's atmosphere.

(42) *Subfloor:* The materials, typically plywood over floor joists, which is covered by a finish surface flooring material.

(43) *Tire Rebuilding:* The tread strengthening, retreading and strengthening of casing of used tires.

(44) *Tire Repair:* The expanding of a hole, tear, fissure, or blemish in a tire casing by gringing or gouging, applying adhesive and filling the hole with rubber, nylon or other suitable material.

(45) *Tire Tread Manufacturing:* The making of the belts of tire tread, including the application of adhesive to the belt of tread.

(46) *Vinyl:* Plastic made by cross-linking of a double bond.

(47) *Volatile Organic Compounds (VOC):* Any volatile compounds which contain the element carbon:

excluding:
carbon monoxide
carbon dioxide
carbonic acid
carbonates
metallic carbides
exempt compounds.

(48) *Wash Primer:* A coating that contains no more than 12 percent solids, by weight, and is used to promote adhesion of subsequently applied adhesives.

(d) *Requirements and Limitations.* (1) A person shall not store, distribute, sell, or use adhesives, adhesive products, adhesive primers or adhesive chemical constituents, including combinations of substances which, when mixed in accordance with the manufacturer's directions, form adhesives, which are in excess of the limitations, as follows:

(i) For adhesives used in the manufacturing, rebuilding or installation of the following products:

LIMITS

VOC—LESS WATER AND LESS EXEMPT COMPOUNDS

Operations	Effective 1/1/92 (g/l) (lb/gal)	Effective 1/1/93 (g/l) (lb/gal)
Automobile, Truck and Trailer Tire Rebuilding	250 (2.1)	
Aircraft Tire Rebuilding	690 (2.8)	250 (2.1)
Tire Tread Manufacturing	250 (2.1)	
Landau Top Installation	250 (2.1)	
Roof Material Installation	250 (2.1)	
Footwear Manufacturing	650 (5.4)	250 (2.1)
Indoor Carpet Installation:		
Non-Vinyl Backed	150 (1.3)	
Vinyl Backed	250 (2.1)	
Outdoor Carpet Installation	250 (2.1)	
Carpet Pad Installation	150 (1.3)	
Composition Vinyl, Sheet Flooring Installation:		
Felt Backed	150 (1.3)	
Vinyl Backed	250 (2.1)	
Cove Base Installation	250 (2.1)	150 (1.3)
Wood Flooring Installation, Parquet and Plank	150 (1.3)	
Ceramic Tile (Floor, Wall, and Ceiling) Installation	200 (1.7)	130 (1.1)
Dry Wall, Subfloor, and Panel Installation	200 (1.7)	
Rubber Flooring Installation	150 (1.3)	
Resilient Tile Installation:		
Composition Vinyl Tile and Asphalt	150 (1.3)	
Vinyl Backed	250 (2.1)	
Plastic Pipe Bonding	850 (7.1)	250 (2.1)

(ii) For adhesives not regulated by paragraph (d)(1)(i) of this section and which are applied to the specific substrates:

LIMITS

VOC–LESS WATER AND LESS EXEMPT COMPOUNDS

Substrate	Effective 1/1/92 (g/l) (lb/gal)	Effective 1/1/93 (g/l) (lb/gal)
Metal (except metal to metal)	250 (2.1)	
Metal to Metal	30 (0.3)	
Rubber (Except Rubber Foam)	250 (2.1)	
Plastic (Except Plastic Foam)	550 (4.6)	250 (2.1)
Rubber Foam	250 (2.1)	
Plastic Foam	120 (1.0)	
Porous Materials (Except Wood)	120 (1.0)	
Wood	30 (0.3)	
Fiberglass	200 (1.7)	

If an adhesive is used to bond dissimilar substrates together, the adhesive with the highest VOC content shall be allowed.

(iii) For adhesives not regulated by the provisions of paragraphs (d)(1) (i) and/or (ii) of this section and primers, which have the following product classifications:

LIMITS

VOC–LESS WATER AND LESS EXEMPT COMPOUNDS

Product	Effective 1/1/92 (g/l) (lb/gal)	Effective 1/1/93 (g/l) (lb/gal)
Adhesive Primer	100 (0.8)	
Adhesive Bonding Primer	250 (2.1)	
Wash Primer	550 (4.6)	250 (2.1)
Footwear Primer	550 (4.6)	250 (2.1)
Edge Band primer	550 (4.6)	250 (2.1)
Any Other Primer	250 (2.1)	
Any Other Adhesive	250 (2.1)	

(iv) Air pollution capture and control equipment shall be provided, installed, properly operated and maintained in good working order at the permanent site of use of adhesive, adhesive constitutent compound and/or adhesive primer starting within one year of the date of recorded noncompliance with any of the limitations at of paragraphs (d)(1) (i), (ii), or (iii), of this section, at that site.

(A) The capture equipment shall collect at least 89.5 percent of the VOC emitted from the adhesive, adhesive constitutent compound, and adhesive primer, and any thinner or dilutent.

(B) The control equipment shall remove and/or destroy 89.5 percent of the emissions collected by the capture system.

(C) In lieu of complying with paragraphs (d)(1)(iv)(A) and (d)(1)(iv)(B), of this section, a composite capture and control efficiency of 80 percent or better on all VOC emissions from adhesives related operations shall be met on a continual basis.

(e) *Recordkeeping and reporting.* (1) A person who distributes, stores, sells, and/or uses adhesives, adhesive products, adhesive chemical constituents, and/or adhesive primers shall maintain a daily record of the type and amount of each different VOC-containing adhesive, adhesive constituent compound, and primer, which is on-hand, instock, as well as the amount of VOC in each.

(2) Also, for those who use any of the above, a daily record shall be kept of the type and amount of thinner or dilutent both in stock, and the type and amount added to specific adhesives, adhesive products, adhesive chemical constituents, and/or adhesive primers and the amount of VOC in each type of thinner or dilutent.

(3) Records shall be maintained on site for a minimum of two years and shall be made available to EPA upon request.

(4) A person who records an excessive daily gram per liter VOC usage shall notify the EPA, Region 9, Air and Toxics Division by letter of the location, date, type and magnitude of the violation by letter postmarked within two working days of the date of the incident.

(f) *Compliance.* Compliance shall be determined by means of the following:

(1) Determination of the VOC Content of all adhesives, adhesive products, adhesive chemical constituents, and adhesive primers including their thinners and dilutents. This determination shall be by EPA Reference Method 24 (40 CFR part 60, appendix A).

(2) Determination of the Amount of Exempt Compounds in adhesives, adhesive products, adhesive chemical constituents, and adhesive primers and their thinners and dilutents. This determination shall be by ASTM D4457–85

(3) Determination of the Capture Efficiency of a Collection System. This determination shall be made based on the method set forth at 40 CFR part 60, Subpart SSS, Standards of Performance for New Stationary Sources: Magnetic Tape Manufacturing Industry: final rule dated October 3, 1988, consistent with EPA's Guidelines for Protocols for Capture Efficiency Determinations.

(4) Determination of the Control Efficiency of a Destruction or Removal System. This determination shall be by EPA Reference Method 25A (40 CFR part 60, appendix A).

(g) *Prohibition of Solicitation of Violations.* A person shall not solicit or require any other person to store, distribute, or sell any adhesive, adhesive product, or combination of chemical compounds intended expressly to form an adhesive that does not meet the requirements and limitations of this rule.

(h) *Exemptions.* (1) The provisions of this rule shall not apply to adhesive, adhesive product, or combination of chemical compounds intended expressly to form an adhesive, when sold in quantities and contained in packages of 8 liquid ounces or less.

(2) The provisions of this rule shall not apply to any facility that uses less than a pint of adhesive, adhesive product, or combination of chemical compound intended expressly to form an adhesive per day, provided records are maintained pursuant to paragraph (e) of this section to document the usage.

(3) The provisions of this rule shall not apply to any adhesive, adhesive product, or combination of chemical compounds intended expressly to form an adhesive which contain zero solids, as applied.

(i) *Compliance Schedule.* (1) The provisions of paragraph (d)(1)(iv) of this section shall not apply until one year from the date of recorded use of a noncomplying adhesive, adhesive primer, thinner, dilutent, adhesive surface preparation or adhesive clean-up material with any of the provisions of paragraphs (d)(1)(i) through (d)(1)(iii) of this section, at that site.

(2) The remaining provisions of this rule shall be in full force and effect 6 months from the date of final rulemaking.

[FR Doc. 91–937 Filed 1–16–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–650, RM–7545]

Radio Broadcasting Services; Augusta, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Gregory Ray Steckline proposing the substitution of Channel 283C2 for Channel 283A in

Augusta, Kansas, and modification of the construction permit for Channel 283A to specify operation on Channel 283C2. The coordinates for Channel 283C2 at Augusta are 37–46–21 and 96–54–15.

DATES: Comments must be filed on or before March 4, 1991, and reply comments on or before March 19, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

James P. Riley, Lonna M. Thompson, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., suite 400, Washington, DC 20036–2679 (Counsel for the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–650, adopted December 24, 1990, and released January 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–1075 Filed 1–16–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–649, RM–7563]

Television Broadcasting Services; Roseburg, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by KMTR, Inc., to allot Channel 46+ to Roseburg, Oregon, as the community's third local commercial television service. Channel 46+ can be allotted to Roseburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.5 kilometers (10.3 miles) south to avoid the Portland "freeze" area. *See Order,* 52 FR 28346, July 29, 1987. The coordinates for Channel 46+ at Roseburg are North Latitude 43–04–15 and West Longitude 123–23–18.

DATES: Comments must be filed on or before March 4, 1991, and reply comments on or before March 19, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Crigler, Esq., James E. Dunstan, Esq., Haley, Bader & Potts, 2000 M Street, NW., suite 600, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–649, adopted December 24, 1990, and released January 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–1076 Filed 1–16–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–604; RM–7049]

Radio Broadcasting Services; Gordonsville and Orange, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document dismisses the petition of Radio Virginia Limited Partnership, licensee of Station WJMA–FM (formerly WVJZ–FM), Orange, Virginia, to reallot Channel 255A from Orange to Gordonsville, Virginia, and to modify its license accordingly, at petitioner's request. *See* 55 FR 884, January 10, 1990. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–604, adopted December 26, 1990, and released January 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–1077 Filed 1–16–91; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1033 and 1039

[Ex Parte No. 334 (Sub-No. 8), Ex Parte No. 334 (Sub-No. 8A)]

Joint Petition for Rulemaking on Railroad Car Hire Compensation; Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule and proposed exemption of car hire rate arbitration rule.

SUMMARY: Acting on a request initiated by numerous rail carriers and car leasing companies, the Commission proposes to add new car service rules to 49 CFR part 1033 and part 1039 to accomplish a 10-year, phased deprescription of the rates rail carriers charge each other for the use of cars. The Commission also requests comments on a petition seeking to exempt from 49 U.S.C. 10706, a rule requiring arbitration of car hire rates not negotiated successfully bilaterally, especially as it pertains to the right of carriers to take independent action to collectively filed rates. The Commission seeks comments on both the rulemaking and the exemption.

DATES: Comments are due March 18, 1991. Petitioners should supply prospective parties to this proceeding with copies of their petitions upon request. Replies are due April 17, 1991.

ADDRESSES: An original and 20 copies of all comments and replies must be sent to:

Office of the Secretary, Case Control Branch, ATTN: Ex Parte No. 334 (Sub-No. 8) and Ex Parte No. 334 (Sub-No. 8A), Interstate Commerce Commission, Washington, DC 20423.

One copy of all comments must be served on petitioners' representative:

Paul A. Cunningham, Pepper, Hamilton & Scheetz, 1300 Nineteenth Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: A significant number of major Class I and regional rail carriers, short line rail carriers, and rail leasing companies have proposed a change in freight car hire compensation practice. The formula for the rates that rail carriers charge each other for the use of cars was prescribed by the Commission in *Car Service Compensation—Basic Per Diem Charges*, 358 I.C.C. 714, 718 (1977).[1] By petition of October 19, 1990, petitioners ask us to institute a rulemaking to consider new car service rules resulting in a gradual elimination of our car hire prescription. They have also asked that we exempt, under 49 U.S.C. 10505, an amendment to the Association of American Railroads' Code of Car Hire Rules from the requirements of 49 U.S.C. 10706. (Section 10706 governs the Commission's approval of collective ratemaking agreements that would otherwise be subject to the antitrust laws.) The proposed amendment to the AAR rules would require subscribers to those rules to arbitrate any disputes concerning deprescribed car hire rates. Petitioners are particularly concerned that this rule might be construed as an infringement on the right of carriers to take independent action to collectively filed rates guaranteed by section 10706(d)(2)(C). The full text of petitioners' proposal, with editorial changes that comply with **Federal Register** practice, is set forth below.

By motion of November 14, 1990, another significant, although smaller, group of railroads and car leasing companies asks us to hold the proceedings in abeyance for 90 days or, in the alternative, to publish notice of the proceedings but postpone setting a procedural schedule for 90 days. Movants did not join in the petitioners' proposals and would like additional time to negotiate with the petitioners before we solicit comments on the proposal.

We are granting the petitioners' request to institute a rulemaking proceeding. The proposal is a result of a compromise reached by and among a number of significant interested and affected parties. While expressing no view on the merits of the proposal at this time, we invite comments on the proposed rules and also on the requested exemption. Although not granting either of movants' alternative requests, we shall provide an extended period of 60 days for filing initial comments. Movants therefore have more than 90 days following the filing of their motion to undertake negotiations with petitioners before comments are due on the petitions.

The Proposed Rules

The proposal can be summarized as follows:

1. New Cars Deprescribed

Rates for the use of new "railroad-marked" freight cars (those owned or leased by railroads), build on or after January 1, 1991, or ordered on or after July 1, 1991, would be deprescribed beginning one year after the rules take effect. Rates would be set as agreed by the carriers among themselves.

2. Arbitration System Established

Petitioners propose that the AAR's Code of Car Hire Rules be amended to establish a best and final offer, "baseball-style," arbitration system to resolve any disputes concerning rates for use of cars to which the prescription no longer applies. Arbitration would be conducted by the American Arbitration Association, which would issue awards within 90 days, binding the parties for one year. The arbitrator would determine which of two best and final offers more closely reflects the fair market rental value of the cars at issue.

Petitioners condition their support for deprescription on the adoption of this arbitration rule by the AAR in a form legally binding on the subscribers to the Car Hire Rules and that does not violate any applicable laws. They ask that our approval of the overall proposal be conditioned on that adoption.

3. Existing Cars Deprescribed After 10-Year Phase-In

Car hire rates on all railroad-marked freight cars, except for certain excluded boxcars,[2] would be deprescribed at the end of a 10-year transition period. During each of those years each rail carrier could designate up to 10 percent of its 1990 freight car fleet as not subject to the prescription.

4. Car Hire Rates Frozen During Transition Period

During the 10-year transition period, the Commission would freeze its prescribed car hire rates at 1990 levels, and these rates would not be reduced to reflect aging of the fleet.

The Requested Exemption

Petitioners also seek an exemption of the proposed arbitration rule from section 10706, particularly from the provision concerning the right of carriers to take independent action to collectively filed rate actions. Section 10706(d)(2)(C). Alternatively, they move to dismiss their petition for exemption

[1] When railroads provide through services, they interchange freight cars at line junctions rather than physically unload freight and reload it on the next carrier's cars. When a carrier uses another carrier's cars in providing through service, it pays car hire compensation to the owning carrier.

[2] Petitioners also propose an amendment to 49 CFR 1039.14 that would preclude increases in car hire rates on excluded boxcars that have been improved or repaired after December 31, 1990. *See* appendix A.

because section 10706 does not apply to the arbitration rule or because the right of "independent action" need not be made available with respect to the arbitration rule.

Petitioners explain that most of the nation's railroads subscribe to an agreement approved under section 10706 permitting collective action with respect to railroad car hire rates.[3] The railroads, under the aegis of AAR, adopted their Car Hire Rules pursuant to that Commission approved collective ratemaking agreement. Petitioners believe that the arbitration amendment can be enacted under the railroads' existing immunity. But they state that if we find that adoption of the arbitration rule is inconsistent with the act and we also deny the exemption, they will withdraw their support for the entire proposal. Petitioners claim that suspension of the right of independent action is necessary here to preclude individual parties from opting out of the rule retroactively.

Initial Regulatory Flexibility Analysis

We preliminarily conclude that the proposed action will not have a significant economic impact on a substantial number of small entities. The general purpose of the proposal is to permit rail carriers and car leasing companies more flexibility in reaching car hire agreements among themselves. Parties may comment on this issue.

List of Subjects

49 CFR Part 1033

Railroads.

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

Decided: January 9, 1991.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.

Secretary.

For reasons set forth in the preamble, title 49, chapter X, parts 1033 to 1039 of the Code of Federal Regulations are propsoed to be amended as follows:

1. Part 1033 is proposed to be revised to read as follows:

[3] *See* section 5b Agreement, dated April 6, 1986, as amended January 29, 1988, pursuant to the Commission's decision in section 5b Application No. 7, *Railroad Per Diem And Mileage Allowances Agreement* (not printed), served September 22, 1987 (10706 Agreement).

PART 1033—CAR SERVICE

Sec.

1033.1 Car Hire Rates

Authority: 49 U.S.C. 10321, 10326, 11121, and 11122; 5 U.S.C. 553.

Editorial Note: For service orders issued under this part before 1986 but not carried in the Code of Federal Regulations, see the List of CFR Sections Affected in the Finding Aids sections of this volume.

§ 1033.1 Car Hire Rates

(a) *Definitions applicable to this section*:

(1) *Car*: A freight car bearing railroad reporting marks, other than an excluded boxcar as defined in § 1039.14(c)(2) whenever it is owned or leased by any Class III carrier and bears a Class III carrier's reporting marks.

(2) *Car hire*: Compensation to be paid by a user to an owner for use of a car. Such compensation may include, but need not be limited to, hourly and mileage rates.

(3) *Fixed rate car*: Any car placed in service prior to January 1, 1991 or for which there was a written and binding contract to purchase or build prior to July 1, 1990, regardless of whether such car bore railroad reporting marks prior to January 1, 1991, provided, however, that for a period of one year from the effective date of these rules all cars shall be deemed to be fixed rate cars.

(4) *Market rate car*: Any car that is not a fixed rate car.

(5) *Owner*: A rail carrier entitled to receive car hire on cars bearing its reporting marks.

(6) *Prescribed rates*: The hourly and mileage rates in effect on December 31, 1990, as published in Association of American Railroads Circular No. OT–10.

(7) *User*: A rail carrier in possession of a car of which it is not the owner.

(b) *Fixed rate cars*. Car hire for fixed rate cars shall be determined as follows:

(1) Except as provided in paragraph (a)(3) of this section, for a 10-year period beginning with the effective date of these rules, the prescribed rates shall continue to apply to fixed rate cars without regard to the aging of such cars subsequent to December 31, 1990. Car hire shall not be increased for any work performed on such cars after December 31, 1990, including any OT–37 surcharge, Rule 88 rebuild, or additions and betterments. Any OT–37 surcharge to prescribed rates for work performed prior to January 1, 1991 shall expire upon the earlier of:

(i) The car becoming a market rate car or

(ii) The expiration date provided in Association of American Railroads Circular No. OT–37.

(2) Upon termination of the 10-year period specified in paragraph (b)(1) of this section, all fixed rate cars shall be deemed to be market rate cars and shall be governed by paragraph (c) of this section.

(3)(i) During each calendar year beginning one year after the effective date of these rules, a rail carrier may voluntarily elect to designate up to 10 percent of the fixed rate cars in its fleet as of January 1, 1991 to be treated as market rate cars for the purposes of this section. The 10 percent limitation shall apply each calendar year and shall be noncumulative. Cars designated to be treated as market rate cars shall be governed by paragraph (c) of this section. Such election shall be effective only in accordance with the following provisions:

(A) An election shall be irrevocable and binding as to the rail carrier making the election and all users and subsequent owners if

(*1*) The rail carrier making the election has legal title to the car, or

(*2*) The rail carrier making the election does not have legal title to the car but obtains written consent for such election from the party holding legal title, or

(*3*) The transaction pursuant to which the party holding legal title to the car has furnished the car to the rail carrier making the election was entered into after January 1, 1991;

(B) An election shall be irrevocable and binding only for the term of the transaction pursuant to which the car was furnished to the rail carrier making the election as to that rail carrier and all users and subsequent owners if:

(*1*) That rail carrier does not have legal title to the car and does into obtain written consent for such election from the party holding legal title;

(*2*) The transaction was entered into prior to January 1, 1991; and

(*3*) The transaction does not provide that the compensation to be paid to the party furnishing the car is be be based in whole or in part directly on the car hire earnings of the car; provided, however, that if the rail carrier making the election subsquently obtains legal title to the car, such election shall then be irrevocable and binding as to the rail carrier and all users and subsequent owners;

(C) The party holding legal title to the car may revoke an election subject to the provisions of paragraph (b)(3)(i)(B) only:

(*1*) At the time the transaction pursuant to which the car was furnished to the rail carrier making the election is first extended or renewed after January 1, 1991, or

(2) If such transaction is not extended or renewed, at the time such transaction terminates.

If such election is so revoked, a rail carrier may make a new election only with the written consent of the party holding legal title to the car, and such election shall be irrevocable and binding as to the rail carrier making the election and all users and subsequent owners.

(ii) Nothing in paragraph (b)(3)(i) of this section shall be construed to limit the rights of parties to any transaction to provide for the consent of any party to an election made pursuant to such paragraph.

(c) *Market rate cars.* (1) Market rate cars shall not be subject to prescribed rates or to the provisions of 49 CFR 1039.14(c)(1) (i) and (ii) and (c)(4).

(2)(i) The Commission shall not prescribe car hire for market rate cars.

(ii) The Code of Car Hire Rules referenced in the Association of American Railroads Car Service and Car Hire Agreement provides that owners and users party to that agreement shall resolve car hire disputes thereunder. The Commission may review allegations of abuse of the car hire dispute resolution process established under those rules.

(iii) Car hire disputes involving an owner or user not a party to that agreement may be resolved by the Commission.

(d) *Car hire agreements.* Rail carriers are authorized to negotiate and enter into agreements governing car hire.

(e) *Effective date.* This rule shall take effect on the first day of the first month following the expiration of 30 days from the date of publication of such rule in the **Federal Register.**

PART 1039—EXEMPTIONS

2. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10762 and 11105; 5 U.S.C. 553.

§ 1039.14 [Amended]

3. In § 1039.14, paragraph (c)(3) is proposed to be amended by adding the following language to the end of that paragraph:

(c) * * *

(3) * * * Any improvements or repairs subsequent to December 31, 1990, to the excluded boxcars performed under OT–37 criteria or under rebuilt criteria or any other criteria shall not result in any increases, additions, or surcharges in the car hire rates for such cars.

* * * * *

[FR Doc. 91–1154 Filed 1–16–91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 12
Thursday, January 17, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Proposed Amendment to Student Community Service Project Guidelines

AGENCY: ACTION.

ACTION: Notice of proposed amendment to the Student Community Service Project Guidelines.

SUMMARY: The following Notice sets out the amended guidelines under which Student Community Service Projects will operate, superseding the guidelines published in the **Federal Register** November 10, 1987 (Vol. 52, No. 178, pages 43211–43215). These guidelines set forth the overall program philosophy, responsibilities of the sponsor, staff, volunteers, and volunteer placement sites. Further, the guidelines provide basic data on the administration of a Student Community Service Project.

The proposed changes eliminate specific references to Federal dollar amounts available and the specific dollar amount of matching funds required for grants awarded in the Student Community Service Program. In order to reduce the paperwork burden on the public, reporting requirements have been reduced in accordance with the Paperwork Reduction Act of 1980. Finally, the list of ACTION offices has been deleted.

DATES: Written comments should be submitted no later than February 19, 19991, to Valerie Wheeler, ACTION, 1100 Vermont Avenue NW., room 8100, Washington, DC 20525.

SUPPLEMENTARY INFORMATION: Section 420 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5060) was amended in 1979 to define the term regulation and to detail the procedures to be followed in prescribing regulations. Through its broad definition of a regulation, the section requires that "any rule, regulation, guideline, interpretation, order, or requirement of general applicability" issued by the Director of ACTION must be published with a 30-day comment period except in certain limited circumstances. These Guidelines, although not regulations under the Administrative Procedure Act (5 U.S.C. 551 *et. seq.*), may, in whole or in part, be required by the DVSA to be published in proposed form for comments.

ACTION has determined that these guidelines are not major rules as defined in E.O. 12291. This determination is based on the proposed grants' size and purpose, neither of which will result in the economic impact of a major rule. These guidelines are noted in the Catalog of Federal Domestic Assistance, Number 72.005.

I. Introduction

This Notice sets forth the guidelines under which Student Community Service Projects will operate. Student Community Service Project guidelines are contained in seven parts:

Part I—Introduction
Part II—Purpose
Part III—Grantee Eligibility and Selection Criteria
Part IV—Grant Application Procedures
Part V—Project Management
Part VI—Student Volunteer Assignments
Part VII—Restrictions

These guidelines supersede Student Community Service Program Guidelines published in the **Federal Register**, dated November 10, 1987, and instructions and technical assistance provided to grants previously awarded under title I, part B, section 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, 42 U.S.C. 4974).

II. Purpose

Student Community Service Projects are authorized under title I, part B, Section 111 and Section 114 of the Domestic Volunteer Service Act of 1973, as amende (Pub. L. 93–113, 42 U.S.C. 4971, 4974). The statutory purpose of these projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experience through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve part-time and without a stipend.

Service opportunities must result in student volunteers gaining learning experiences through service in low-income communities, whether or not they receive academic credit.

The intent of Student Community Service Projects is to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be continued and expanded, if needed, after Federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources may be made available to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant finds are no longer provided. Technical assistance and training in project management, fundraising, and recruiting will be provided by ACTION as required.

III. Grantee Eligibility and Selection Criteria

The following criteria will be considered by ACTION in the selection and approval of Student Community Service Projects:

A. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student community service project grant.

B. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in Part II.

C. Grant funds must be used to initiate or expand a student volunteer community service project which addresses the needs of the low-income community.

D. The grantee must develop and maintain community support for the Student Community Service Project through a planned program including public awareness and communications.

E. Proposed community representation in the project's planning and operation, including representatives of youth groups, school systems, educational

institutions, etc., must be identified in the grant application.

F. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of student volunteers who will serve in the project and hours of service are to be included in project goals and objectives.

G. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

H. The grantee must identify resources which will permit continuation of the student community service project, if needed, upon the conclusion of Federal funding as outlined in Part II.

I. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government. This does not refer to agreements made with volunteer placement sites as discussed in Part VI.

J. The grantee must ensure compliance with the restrictions outlined in Part VII.

The Director of VISTA/Student Community Service Programs may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;
2. Availability of volunteer activities to students from all segments of society;
3. Applicants' accessibility to alternate resources, both technical and financial;
4. Allocation of Student Community Service resources in relation to other ACTION funds.

IV. Grant Application Procedures

A. Scope of Grant

Student Community Service Project grants are awarded for up to a twelve-month period. Requests for second- or third-year reduced funding can be sought by grantees. The levels of funding and matching requirements are published in **Federal Register** announcements of funding availability. The grantee is required to contribute a local share each year. Final determination of the actual amount of grant awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their Student Community Service Projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs" as set forth in 45 CFR part 1233. Contact the ACTION State Office for specific instructions on how to fulfill this requirement.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA/Student Community Service Projects.

B. Procedures for New Grantees

Project application forms are available from ACTION State offices, which will also establish schedules for application submission. Grant allowable costs are contained in ACTION Handbook 2650.2, Grants Management Handbook for Grantees, which is available from ACTION State or Regional offices.

Applications are to be submitted to the appropriate ACTION State Office for review and subsequently forwarded to the ACTION Regional office for comment prior to their submission to the Director of VISTA/Student Community Service Programs, who will make the final selection of new Student Community Service project grantees.

The Regional Directors will notify all applicants of the final decisions, and the Regional Grants and Contracts Officers will issue Notices of Grant Awards to the grantees upon notification from the Director of VISTA/Student Community Service Programs.

C. Procedures for Renewal Grantees

Applications for renewal projects will be evaluated using the factors identified in selecting initial grantees, as well as the grantee's compliance with these guidelines and the grantee's performance during the previous year(s), particularly in the achievement of measurable goals and objectives. All project renewals are subject to the availability of funds.

Applications for renewal for second and third years are reviewed at the ACTION State Office level and submitted to the ACTION Regional Director for final approval.

If the second- or third-year renewal application is denied, the sponsor will be notified that the ACTION Regional Director intends to deny the application for renewal; and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with 45 CFR part 1206. This regulation is available from ACTION State or Regional Offices.

V. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2650.2, Grants Management Handbook for Grantees, which will be furnished to the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

A. Local Support Contributions

The Student Community Service Project sponsor shall be responsible for providing a non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements

Sponsors must comply with fiscal reporting requirements specified in the Notice of Grant Award and must maintain records in accordance with generally accepted accounting principles. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Project progress reports shall also be submitted to the ACTION State Office. Sponsors are required by ACTION to provide accurate and timely preparation and submission of project reports.

C. Insurance

Grantees are responsible and must show evidence that student volunteers, while performing their assignments,

have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

D. Transportation

The sponsor should structure student volunteer assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

E. Project Staff

Each grantee will designate a person to serve as the project director. A full-time director is desirable. A rationale for less than a full-time project director must be included with the project application. The project director should be hired within 30 days of the project start date. Supervision of the project director is the responsibility of the sponsor.

Student Community Service Project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations

1. Community Support

A viable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board. Initial outreach to representatives of these groups, as evidenced by accompanying letters of support, is seen as an effective step toward the development of the application.

2. Volunteer Recognition

With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals. Specific recognition activities should be reflected in the application narrative and budget.

3. Public Awareness

A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and project director should inform community, city and county officials, and the media about development, growth and success of the student Community Service project.

VI. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged through the utilization of a Memorandum of Understanding, a Letter of Agreement, or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer recruitment, orientation/training, volunteer transportation, recognition and reporting of service hours, are functions outlined in this agreement.

VII. Restrictions

A. Special Restrictions on Student Community Service Project Grantees

1. Political Activities

a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any election; or

(3) Any voter registration activity.

2. Lobbying

a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(1) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) In connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and to communicate to staff and volunteers, the prohibitions included therein.

3. Special Restriction on State or Local Government Employees

If the sponsor receiving a grant from ACTION is a State or local government agency, certain restrictions contained in chapter 15 of title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff

member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to ACTION, Office of General Counsel, 1100 Vermont Avenue, NW., room 9200, Washington, DC 20525.

4. Non-discrimination

No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. Religious Activities

Volunteers and project staff funded by ACTION shall give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. Labor and Anti-Labor Activity

No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. Non-displacement of Employed Workers

A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. Non-compensation for Services

No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site or any member or cooperating organization shall be requested or required to contribute, or to solicit contributions, to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. Volunteer Status

Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

10. Nepotism

Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by ACTION.

Authority: 42 U.S.C. 4974.

Dated in Washington, DC on December 20, 1990.

Jane A. Kenny,

Director, ACTION.

[FR Doc. 91–1188 Filed 1–16–91; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 11, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

New Collection

• Food and Nutrition Service, Commodity Letter of Credit Modification Demonstration Evaluation, One-time data collection, State or local governments; Non-profit institutions; 500 responses; 1,901 hours, John R. Endahl, (703) 756–3115.

• Food Safety and Inspection Service, Preventing Cross-Contamination of Meat Products, On occasion, Businesses or other for-profit; 5,000 responses; 5,000 hours, Roy Purdie, Jr. (202) 447–5372.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 91–1093 Filed 1–16–91; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Gifford Pinchot National Forest; Mount St. Helens National Volcanic Monument; Minor Boundary Revision

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise boundary.

SUMMARY: The Forest Service hereby gives notice of a proposed minor boundary revision for the Mount St. Helens National Volcanic Monument, Gifford Pinchot National Forest, Cowlitz County, Washington. The Act of August 26, 1982, establishing the Monument requires public notice of proposed boundary revisions for a 60-day period prior to final approval by the Secretary of Agriculture.

DATES: The 60-day notice period expires March 18, 1991.

FOR FURTHER INFORMATION CONTACT: Phil Bayles, Lands Specialist, USDA, Forest Service, P.O. Box 96090, Washington, DC 20090–6090, (202) 453–9345 or Paul Prigge, Lands Staff Officer, Gifford Pinchot National Forest, Vancouver, Washington 98661–7299, (206) 696–7516.

SUPPLEMENTARY INFORMATION: In accordance with section 1(b)(2) of the Act of August 26, 1982 (96 Stat. 301), establishing the Mount St. Helens National Volcanic Monument, the Secretary of Agriculture proposes a minor revision of the boundary of the Monument from that originally adopted. The revision will add approximately 1,450 acres, or 1.3 percent, to the 110,000-acre Monument. Approximately 1,200 acres are privately owned and 250 acres are owned by the State of Washington.

The current boundary of the Monument follows aliquot part subdivision boundaries north of the Toutle River mudflow. The revision would move the Monument boundary approximately one-half mile north, to coincide with the south right-of-way line of the relocated State Route 504.

One purpose of the boundary revision is to permit Forest Service control of vegetation and management activities in the area between State Route 504 and the Mountain for recreational viewing of the Monument. Another purpose is to free the present owners from uneconomic remnants of land that have been or will be separated from its contiguous ownership by the relocation of the state road.

The private lands involved are added with the concurrence of the private land owner who has entered into a land exchange for comparable National Forest System lands within the Gifford

Pinchot and Snoqualmie National Forests. The State lands are added with the concurrence of the State of Washington who has proposed to exchange them with the Forest Service in the future.

The legal description of the boundary revision is as follows: All descriptions are for the Willamette Meridian, Cowlitz County, Washington.

Beginning at a point on the Mount St. Helens National Volcanic Monument boundary, which point is the west ¼ corner of section 36 of Township 10 North, Range 4 East, thence westerly along the east-west centerline of section 35, Township 10 North, Range 4 East, to the south right-of-way line of the proposed highway, State Route 504, thence westerly along the south right-of-way line of proposed State Route 504, over an across sections 35 and 34, Township 10 North, Range 4 East, section 3 and 4, Township 9 North, Range 4 East, section 33 and 32 of Township 10 North, Range 4 East, and section 5 of Township 9 North, Range 4 East, to a point where said south right-of-way line intersects the west line of section 5 of Township 9 North, Range 4 East; thence southerly along said section line to the west ¼ corner of said section 5 which is a point on the original National Volcanic Monument boundary.

The proposed revisions have been reviewed by the Mount St. Helens Scientific Advisory Board. Maps showing the revisions are available at the Office of the Forest Supervisor, Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd, Vancouver, Washington, and at the Office of the Monument Manager, Chelatchie, Washington. Notice has also been given to congressional committees as required by the Act. A notice of final action on this boundary revision will be published following the 60-day period.

Dated: January 9, 1991.

James C. Overbay,

Deputy Chief.

[FR Doc. 91–1084 Filed 1–16–91; 8:45 am]

BILLING CODE 3410–11–M

National Forest Lands in the Lake Tahoe Basin, California, Intention to Prepare and Environmental Impact Statement

In the matter of an off-highway vehicle and trnasportation plan for the national forest lands in the Lake Tahoe Basin, CA, Lake Tahoe Basin Management Unit, Eldorado and Placer Counties, California and Washoe and Douglas Counties and the Carson City Urban Area, Nevada; intent to prepare an environmental impact statement.

The Department of Agriculture, Forest Service, will prepare an environmental impact statement on its transportation system, with special attention to off-highway vehicle (OHV) policy.

Decisions on off-highway vehicles would implement direction in the Land and Resource Management Plan for the Lake Tahoe Basin Management Unit, adopted in 1988.

The draft EIS will examine five alternative plans for the Lake Tahoe Basin Management Unit transportation system.

Alternative "A" describes the present 235-mile network of roads and OHV trails presently in use.

Alternative "B" entails the closure (and restoration to a natural state) of a number of unneeded roads, together with the addition of connector trails and roads to improve their value for recreational travel. Snowmobiles would operate as at present, but with a requirement for a minimum 12" of snow for travel.

Alternative "C" is like "B", above, except that additional miles of backcountry roads would be closed, and no new construction of OHV trails would occur.

Alternative "D" minimizes the length of the road system in the Lake Tahoe Basin. Only the most essential roads would be open, and these roads would be surfaced to minimize and production of dust. The only recreational opportunity would be driving "street-legal" vehicles (conventional cars, trucks and four-wheel drives) on the surfaced roads.

Alternative "E" describes the system proposed in "B", with the addition of several OHV trails recommended by organized OHV groups, including a route connected the Tahoe Basin with the Toiyabe National Forest across Luther Pass.

Considerable scoping and analysis has revealed the principal issues in the proposed action: (1) Effects of the soils and water of Lake Tahoe Basin; (2) effects on residents living near an open OHV trail, and (3) effects on the resident OHV owners committed to the sport.

Because of the extensive scoping conducted in November, 1989, no public meetings will be held until the draft EIS has been completed.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public review by March 15, 1991. The final environmental impact statement is scheduled to be completed by August 15, 1991.

Written comments and suggestions concerning the anlaysis should be sent to the responsible official, Robert E. Harris, Forest Supervisor, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, South Lake Tahoe, CA 96150, by March 1, 1991.

Questions about the plan and the environmental impact statement should be directed to Robert A. McDowell, Recreation Staff Officer, or Gary Weigel, Off-highway Vehicle Program Manageer, at (916) 573–2600.

Dated: January 7, 1991.

Robert E. Harris,

Forest Supervisor.

[FR Doc. 91–1118 Filed 1–16–91; 8:45 am]

BILLING CODE 3410–11–M

Mendocino National Forest Land and Resource Management Plan; Intent to Prepare an Environmental Impact Statement

In the matter of Mendocino National Forest, Colusa, Glenn, Lake, Mendocino, Tehama, and Trinity Counties, California.

In September, 1986, the Department of Agriculture, Forest Service distributed a Draft Environmental Impact Statement (DEIS) and Proposed Forest Land and Resource Management Plan (Forest Plan) for public review and comment. Due to significant changes in the resource management situation, most notably the effects of major wildfires on the forest during the 1987 fire season and the listing of the Northern Spotted Owl as a "Threatened" species under the Endangered Species Act of 1973, it has become necessary to withdraw this DEIS and Proposed Forest Plan and to prepare a new DEIS and Forest Plan which reflects these changes.

This new DEIS and Proposed Forest Plan will reflect, to the extent still applicable, the comments received on the initial documents. The Forest Plan will provide policy and program direction for the National Forest lands under the administration of the Forest Supervisor for the Mendocino National Forest.

The Forest Plan will be selected from a range of alternatives including a "No Action" alternative which represents a continuation of current direction, and other alternatives formulated in response to identified major public issues and management concerns.

It is estimated that the new DEIS and Proposed Forest Plan will be available for public review in the Spring of 1991. Following a planned three month (90 day) public review period, a Final Environmental Impact Statement and Forest Plan will be prepared and distributed.

Ronald E. Stewart, Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

For further information about the planning process or the Environmental Impact Statement, contact Dick English, Forest Planning Staff, Mendocino National Forest, 420 E. Laurel Street, Willows, California 95988. Telephone (916) 934–3316.

Dated: January 8, 1991.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 91–1117 Filed 1–16–91; 8:45 am]

BILLING CODE 3410–11–M

Brush Creek, Hendricks Creek and Copet Creek Timber Sales, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for the proposed Brush Creek, Hendricks Creek, and Copet Creek Salvage Timber Sales, McCall Ranger District, Payette National Forest, Idaho. The proposed salvage sales would harvest dead and dying Engelmann spruce timber. The trees have been infested by the spruce bark beetle during the last several years. Some of the stands to be harvested lie within portions of two roadless areas that the Forest Plan allocated to timber management: the Secesh and the French Creek/Patrick Butte roadless areas. No new roads would be built in the roadless areas.

The agency invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the agency gives notice of the full environmental analysis and decision-making process that is beginning on the proposal so that interested and affected people know how they may participate and contribute to the final decision.

DATES: Comments on the scope of the analysis must be received by February 15, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Clark Lucas, EIS Team Leader, Payette National Forest, McCall Ranger District, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Clark Lucas, phone (208) 634–1445.

SUPPLEMENTARY INFORMATION: The Payette National Forest Plan (1988) provides Forest-wide direction for management of the resources of Payette National Forest. The environmental impact statement for the Forest Plan (1988) analyzed a range of development and non-development alternatives for the Secesh and French Creek/Patrick Butte roadless areas. The Plan allocates portions of the areas to timber management and assigns them to Management Areas #10, 11, and 18.

As well as Forest-wide direction, the Plan gives specific direction for these management areas. It requires integrated management of the multiple resources including recreation, range, soil and water, fish, wildlife, timber, and fire/fuels to meet the desired future condition of the Forest.

Engleman spruce stands on the Payette National Forest are experiencing a spruce beetle epidemic. Forest Entomologists estimate that 80 to 90 percent of sawtimber-sized spruce in the proposed sale areas will be killed within the next few years. The objective of this proposal is to salvage the dead and dying spruce timber before its market value is lost and to regenerate the affected areas to meet management goals and objectives in the Forest Plan.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and review of the DEIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and task assignment.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat.

The Forest Service has conducted internal and external scoping on the proposed timber sales and has identified preliminary issues and concerns that fall into these categories:

- Fisheries
- Water quality and quantity
- Economics
- Roadless/wilderness
- Recreation
- Wildlife
- Threatened, Endangered, and Sensitive Species
- Grazing
- Timber
- Soils
- Fire Management
- Wetlands and floodplains

The second major opportunity for public input is the DEIS. The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative and alternative amounts of salvage timber harvesting. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 1991. EPA will then publish a notice of availability of the DEIS in the **Federal Register**. Public comments are invited.

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is important that those interested in the management of the affected areas participate at that time. To be 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. Federal court decisions have established that reviewers of draft EIS's must structure their participation of the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's 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 in the final EIS (FEIS).

Comments on the DEIS will be analyzed and considered by the Forest Service in preparing the FEIS, which is scheduled to be completed in May 1991. In the FEIS 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 FEIS, and applicable laws, regulations, and policies in making the decision and stating the reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Veto J. LaSalle, Forest Supervisor of Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Dated: January 8, 1991.

Veto J. LaSalle,

Forest Supervisor.

[FR Doc. 91–1124 Filed 1–16–91; 8:45 am]

BILLING CODE 3410–11–M

White Mountain National Forest; Revised Draft Environmental Impact Statement for the Proposed Expansion of Loon Mountain Ski Area

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of the Revised Draft Environmental Impact Statement (RDEIS).

SUMMARY: The Department of Agriculture, Forest Service has prepared a RDEIS, which was previously issued as a Draft EIS (EPA No. 890025), and a Supplement (EPA No. 890328) thereto for the Loon Mountain Ski Area-South Mountain Expansion Project. The previously issued Draft and Supplement were withdrawn March 6, 1990, (**Federal Register**, Vol. 55, No. 44, p. 7925). A Final EIS will be issued after public review of the RDEIS.

The RDEIS is for the proposed action of amending the Special Use Permit for the Loon Mountain Ski Area to allow for the use and occupancy of approximately 940 additional acres of adjacent National Forest System land on South Mountain. The Forest Service is considering alternative locations to provide increased downhill skiing as well as alternative site designs for the South Mountain area and increased use of the area already under permit at Loon Mountain.

The agency gives notice that a full environmental analysis and decision-making process is occurring on the proposal so that interested persons are aware of how they may participate and contribute to the final decision.

This RDEIS is in response to comments received on the Draft EIS, Supplement to the DEIS, and notice of intent to prepare a RDEIS.

The agency encourages the public to provide written comments and attend public meetings on the content of the revised DEIS. Since the agency received voluminous public comment relating to the proposed action at Loon Mountain during preparation of the original DEIS and the Supplement, it urges that additional comments focus on new issues and the expanded range of alternatives and that earlier comments not be repeated. Comments on the RDEIS should be specific and may address the adequacy of the RDEIS 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.) After the comment period ends on the RDEIS, the comments will be analyzed and considered by the Agency in preparing the final EIS.

DATES: The Revised DEIS is available for public comment for 45 days from the date of availability as published by EPA in the **Federal Register**. Written comments must be received by March 4, 1991.

ADDRESSES: Mail comments to Forest Supervisor, White Mountain National Forest, P.O. Box 638, Laconia, NH 03247.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the Revised DEIS to Dain Maddox, Project Coordinator, Eastern Region, USDA, Forest Service, 310 West Wisconsin, Milwaukee, WI 53203, (414) 297–1055.

SUPPLEMENTARY INFORMATION: Public comment received on the original Loon Mountain Ski Area-South Mountain Expansion Project DEIS and the Supplement thereto has prompted the Forest Service to issue a revised DEIS to more clearly define the proposed action and more fully investigate reasonable alternatives.

The White Mountain National Forest presently provides, through special use permit ski area operation, approximately 212,000 visitor-days use in downhill skiing on about 2,000 acres of National Forest System land. By the end of the current 10-year planning period, the Forest's Land and Resource Management Plan (LRMP) calls for providing an additional 132,000 visitor-days of skiing opportunity on an additional 1,400 acres of land adjacent to existing ski areas. By the end of the decade, after the current 10-year plan, an additional 28,000 visitor-days on up to 1,000 more acres are projected to be needed. These second decade conclusions will be reviewed when the Plan is revisited at the end of the current 10-year period. The proposed action is consistent with the LRMP and furthers the management direction set forth therein.

The proposed expansion of the Loon Mountain Ski Area would place an additional 940 acres under permit. Approximately 348 acres of that would be cleared for ski lifts and trails. This expansion would provide for approximately 30% of the projected increased demand for downhill skiing opportunities on the White Mountain National Forest.

The original DEIS and the Supplement thereto only considered alternative levels of expansion at the proposed South Mountain site although it did include general discussion of the conditions on the existing permit area. The Revised DEIS considers alternative locations for meeting the need for increased downhill skiing opportunities on the Forest. The evaluation of these other sites enables the Forest Service to consider alternative locations for providing downhill skiing opportunities on the Forest and to evaluate the cumulative environmental effects of reasonably foreseeable expansion at those other areas.

The Revised DEIS also considers an expanded range of alternatives at the proposed South Mountain site and the existing Loon Mountain Ski Area which is adjusted to it.

Three public meetings are scheduled during the 45-day comment period:

Tuesday, February 12, 1991, 6 p.m., Legislative Office Building, 33 North State Street, room 201, Concord, New Hampshire.

Wednesday, February 13, 1991, 7 p.m., Lin-Wood Schoold Multi-Purpose room, Lincoln, New Hampshire.

Thursday, Feburary 14, 1991, 5 p.m., JFK Federal Building, Executive Dining room, E–226 (near Cafeteria), 2nd floor in Low Rise Building, Government Center (near City Hall), Boston, Massachusetts.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)] Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. [*Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980) Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so 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 environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action,

comments on the revised draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the statement. Comments may also address the adequacy of the reivsed draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Final EIS is scheduled to be completed and available to the public approximately four months following the close of the review period for the DEIS. The responsible Forest Service official will document the decision and the reasons supporting it in a Record of Decision. That decision will be subject to appeal pursuant to 36 CFR part 217.

The Forest Service official responsible for approving the proposed action is Forest Supervisor, White Mountain National Forest, P.O. Box 638, Laconia, NH, 03247.

Dated: December 14, 1990.

Rick D. Cables,

Forest Supervisor.

[FR Doc. 91–1124 Filed 1–16–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket I–91]

Foreign-Trade Zone 146—Lawrenceville, IL; Application for Subzone, Fedders Air Conditioner Plant, Effingham, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Bi-State Authority, grantee of FTZ 146, requesting special-purpose subzone status for the room air conditioner manufacturing plant of Fedders North America, Inc. (Fedders), located in Effingham, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 9, 1991.

The site (277 acres) is located at 415 Wabash Avenue in Effingham, Illinois, which is situated some 45 miles from Lawrenceville. The facility employs 1,700 persons and is used to produce residential room air conditioners. Some 20 percent of the air conditioner value consists of dutiable components, such as plastic parts, motors, copper loops and tubing, fasteners, capacitors, electric switches and rubber products. About 4 percent of the air conditioners are exported.

Zone procedures would exempt Fedders from Customs duty payments on the foreign components used in its exports. On domestic sales, the company would be able to choose the duty rate on finished room air conditioners (2.2%) for the foreign-sourced components (average duty rate 5.5%). The application indicates that the savings would help reduce costs and improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been approved to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Theodore Galantowicz, District Director, U.S. Customs Service, North Central Region, suite 625, 7911 Forsythe Blvd., St. Louis, Missouri 63105; and Colonel David E. Peixotto, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, Kentucky 40201–0059.

Comments concerning the proposed zone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 25, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director Federal Building, room 238, 101 NW Seventh Street, Evansville, Indiana 47708

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, room 4213, Washington, DC 20230.

Dated: January 10, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–1108 Filed 1–16–91; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 502]

Resolution and Order Approving the Application of the County of Oneida, NY, for a Foreign-Trade Zone in Oneida County Within the Utica Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the County of Oneida, New York, filed with the Foreign-Trade Zones Board on February 9, 1990, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Oneida County, New York, within the Utica Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish, Operate, and Maintain a Foreign-Trade Zone in Oneida County, NY Within the Utica Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the County of Oneida, New York (the Grantee), has made application (filed February 9, 1990, FTZ Docket 6–90, 55 FR 7354, 3/1/90) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Oneida County, within the Utica Customs port of entry;

Whereas, Notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisifed;

Now, therefore, The Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 172, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 8th day of January, 1991, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 91-1107 Filed 1-16-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 14-86]

Foreign-Trade Zone 45—Portland, Oregon; Withdrawal of Application for Subzone Status for Floating Point Systems, Inc.

Notice is hereby given of the withdrawal of the application of the Port of Portland, grantee of FTZ 45, requesting authority for subzone status for the computer service operation of Floating Point Systems, Inc. (presently FPS Computing) in Beaverton, Oregon (51 FR 16368, 5/2/86).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: January 9, 1991.

John J. Da Ponte,

Executive Secretary.

[FR Doc. 91-1109 Filed 1-16-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-401-061]

Animal Glue and Inedible Gelatin From Sweden; Revocation of Antidumping Finding

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce is revoking the antidumping finding on animal glue and inedible gelatin from Sweden because it is no longer of any interest to interested parties.

EFFECTIVE DATE: January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/3601.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 49930) its intent to revoke the antidumping finding on animal glue and inedible gelatin from Sweden (42 FR 64416, December 22, 1977).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this finding on each interested party on the service list. Interested parties who might object to the revocation were provided the opportunity to submit their comments not later than thirty days from the date of publication.

Scope of the Finding

Imports covered by the review are shipments of animal glue and inedible gelatin. Through 1988, such merchandise was classifiable under item numbers 445.4000 and 445.4200 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 3503.00.00. The TSUSA and HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Determination to Revoke

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for four consecutive review periods (19 CFR 353.25(d)(4)(i)) and when no interested party objects to revocation.

In this case we have received no requests for review for five consecutive review periods. Furthermore, no interested party has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding covering animal glue and inedible gelatin from Sweden is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of animal glue and inedible gelatin from Sweden entered, or withdrawn from warehouse, for consumption on or after December 3, 1990. Entries made during the period December 1, 1989 through December 2, 1990, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 3, 1990, without regard to antidumping duties, and to refund any

estimated antidumping duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.25(d)(4)(iii).

Dated: January 10, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-1110 Filed 1-16-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-025]

Clear Sheet Glass From Italy; Revocation of Antidumping Finding

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce is revoking the antidumping finding on clear sheet glass from Italy because it is no longer of any interest to interested parties.

EFFECTIVE DATE: January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/3601.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 49931) its intent to revoke the antidumping finding on clear sheet glass from Italy (36 FR 23360, December 9, 1971).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this finding on each interested party on the service list. Interested parties who might object to the revocation were provided the opportunity to submit their comments not later than thirty days from the date of publication.

Scope of the Finding

Imports covered by the review are shipments of clear sheet glass. Through 1988, such merchandise was classifiable under item numbers 542.3120 and 542.4835 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 7020.00.00. The TSUSA and HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Determination to Revoke

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for four consecutive review periods (19 CFR 353.25(d)(4)(i)) and when no interested party objects to revocation.

In this case we have received no requests for review for five consecutive review periods. Furthermore, no interested party has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding covering clear sheet glass from Italy is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of clear sheet glass from Italy entered, or withdrawn from warehouse, for consumption on or after December 3, 1990. Entries made during the period December 1, 1989 through December 2, 1990, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 3, 1990, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.25(1990).

Dated: January 10, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-1111 Filed 1-17-91; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with section §§ 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than January 31, 1991, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

Antidumping duty proceedings	Period
Brazil: Brass Sheet & Strip (A-351-603).	01/01/90-12/31/90
Canada: Brass Sheet & Strip (A-122-601).	01/01/90-12/31/90
Canada: Color Picture Tubes (A-122-605).	01/01/90-12/31/90
France: Anhydrous Sodium Metasilicate (A-427-098).	01/01/89-12/31/90
Japan: Color Picture Tubes (A-588-609).	01/01/90-12/31/90
Singapore: Color Picture Tubes (A-559-601).	01/01/90-12/31/90
Spain: Potassium Permanganate (A-469-007).	01/01/90-12/31/90
South Africa: Low-Fuming Brazing Copper Rod and Wire (A-791-502).	01/01/90-12/31/90
Taiwan: Certain Stainless Steel Cooking Ware (A-583-603).	01/01/90-12/31/90
The People's Republic of China: Potassium Permanganate (A-570-001).	01/01/90-12/31/90
The Republic of Korea: Brass Sheet & Strip (A-580-603).	01/01/90-12/31/90
The Republic of Korea: Color Picture Tubes (A-580-605).	01/01/90-12/31/90
The Republic of Korea: Stainless Steel Cooking Ware (A-580-601).	01/01/90-12/31/90

Suspended investigations	Period
Canada: Potassium Chloride (A-122-701).	01/01/90-12/31/90
Canada: Certain Red Raspberries (C-122-504).	01/01/90-12/31/90
Colombia: Miniature Carnations (C-301-601).	01/01/90-12/31/90
Colombia: Roses and Other Cut Flowers (C-301-003).	01/01/90-12/31/90
Costa Rica: Certain Fresh Cut Flowers (C-223-601).	01/01/90-12/31/90
Hungary: Truck Trailer Axle-and-Brake Assemblies (A-437-001).	01/01/90-12/31/90

Countervailing duty proceedings	Period
Argentina: Non-Rubber Footwear (C-357-052).	01/01/90-12/31/90
Brazil: Brass Sheet and Strip (C-351-604).	01/01/90-12/31/90
Ecuador: Fresh Cut Flowers (C-331-601).	01/01/90-12/31/90
Mexico: Fabricated Automotive Glass (C-201-406).	01/01/90-12/31/90
The Republic of Korea: Stainless Steel Cookware (C-580-602).	01/01/90-12/31/90
Spain: Stainless Steel Wire Rod (C-469-004).	01/01/90-12/31/90

Countervailing duty proceedings	Period
Taiwan: Stainless Steel Cookware (C-583-604).	01/01/90-12/31/90
Thailand: Butt-Weld Pipe Fittings (C-549-804).	11/03/90-12/31/90

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by January 31, 1991.

If the Department does not receive by January 31, 1991 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for comsumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-1175 Filed 1-16-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-601]

Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers From Mexico

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) has issued the final results of its administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The review covers three producers and/or exporters of this merchandise, and the period April 1, 1988, through March 31, 1989. The review indicates the existence of dumping margins for two firms, and the third we find did not ship the product, during the period.

EFFECTIVE DATE: January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4103 or (202) 377-1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1990, the Department published in the **Federal Register** the preliminary results of its adminstrative review of the antidumping duty order on certain fresh cut flowers from Mexico (55 FR 46695). On November 6, 1990, respondents Florex, Tzitzic Tareta, and Visaflor requested that a public hearing be held. On November 8, 1990, the Floral Trade Council, the petitoner, indicated that it would participate in any public hearing requested by respondents. On November 19, 1990, the Department published a notice of termination in part of the antidumping duty administrative review for five companies that had withdrawn their prior requests for review (55 FR 48143).

On December 3, 1990, Visaflor submitted further evidence to support its assetion that it had made no shipments for its own account of the subject merchandise during the period of review. For purposes of these final results, we have determined that Visaflor made no shipments for its own account of the subject merchandise to the United States during the period of review. Therefore, entries of flowers produced by Visaflor will continue to be assigned the cash deposit of estimated antidumping duties established in the prior review (55 FR 12696, April 5, 1990). For a complete discussion of this issue, see the Department's position in response to Comment 6.

Respondents filed a case brief on December 6, 1990, and petitioner filed a rebuttal brief on December 18, 1990. A public hearing was held on December 20, 1990. During the hearing, the Department requested comments from the interested parties regarding the modification of the Department's standard sales below cost test to account for the perishability of the product. On January 2, 1990, the Department received comments from petitioner and respondent regarding such a modification of the sales below cost test.

The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of standard carnations, standard chrysanthemums, and pompom chrysanthemums. During the period of review, such merchandise was classifiable under the "Tariff Schedules of the United States Annotated" (TSUSA) items 192.2130 (standard carnations), 192.2120 (standard chrysanthemums), and 192.2110 (pompom chrysanthemums). Beginning January 1, 1989, the subject merchandise is classifiable under Harmonized Tariff Schedule (HTS) numbers 0603.10.7010 (pompom chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers three producers and/or exporters of certain fresh cut flowers from Mexico to the United States and the period April 1, 1988, through March 31, 1989.

United States Price

As in the original fair value investigation and in the first administrative review, all United States prices were weight-averaged on a monthly basis in order to account for the perishability of the product.

Tzitzic Tareta

We based United States price on exporter's sales price (ESP) for all of Tzitzic Tareta's sales, in accordance with section 772(c) of the Act, because these sales were made to unrelated purchasers after the date of importation into the United States. These ESP transactions include Tzitzic Tareta's U.S. sales made through an unrelated consignee which were reported as purchase price sales.

We calculated ESP for Tzitzic Tareta's consignment sales based on packed, f.o.b. Houston airport prices through an unrelated consignee in the United States. We made deductions from these prices for foreign inland freight, U.S. and foreign brokerage and handling charges, air freight, and U.S. duty.

We calculated ESP for Tzitzic Tareta's sales through its related U.S. subsidiary based on packed, f.o.b. Mexico City airport, packed, f.o.b. Houston airport, packed, f.o.b. subsidiary offices, and packed, f.o.b. customer's offices, prices. We made deductions from these prices for foreign inland freight, U.S. and Mexican brokerage and handling charges, air freight charges, U.S. duty, and U.S. inland freight. As best information available (BIA), we

assumed that U.S. inland freight charges for those sales with terms "packed, f.o.b. subsidiary offices" and "packed, f.o.b. customer's offices" are included in the indirect selling expenses reported by Tzitzic Tareta for its related subsidiary. We reclassified those expenses reported by Tzitzic's subsidiary which are related to freight as movement charges and allocated them over all stems sold f.o.b. subsidiary and f.o.b. customer. For certain transactions, Tzitzic Tareta reported terms of sale as f.o.b. Houston Airport, f.o.b. subsidiary's offices or f.o.b. customer's offices, but did not report the corresponding air freight, U.S. duty, and U.S. brokerage and handling charges. For those transactions, the Department applied, as BIA, the weighted-average of these charges reported for all other U.S. transaction having similar terms of sale. In accordance with 19 CFR 353.41(e), we made further deductions to ESP for credit expenses and commissions.

For those sales through Tzitzic Tareta's related subsidiary, a duduction was made for those indirect selling expenses incurred on U.S. sales both by the related subsidiary in the United States and those incurred by Tzitzic Tareta in Mexico. Given that Tzitzic Tareta did not report indirect selling expenses incurred in Mexico for U.S. sales, we estimated those expenses using the selling expenses contained in Tzitzic Tareta's Section D (cost of production) questionnaire response, less commissions. For those sales made through an unrelated consignee, we deducted only those indirect selling expenses associated with Tzitzic Tareta in Mexico.

Florex

We based United States price on both purchase price and ESP because sales were made to unrelated purchasers both before and subsequent to importation. The sales made subsequent to importation were made through unrelated consignees in the United States and had been incorrectly reported by Florex as purchase price sales.

When sales were made to unrelated purchasers prior to importation, we calculated purchases price for Florex based on f.o.b. Mexico City airport prices. We made deductions for foreign inland freight. In its July 14, 1989, response to the Department's questionnaire, Florex reported that direct sales are f.o.b. Mexico City airport and that "consigned product expenses are born by Florex." Since the response to Section D includes line items for "vehicle maintenance" and "gasoline," it appears that Florex uses its own transportation to ship the merchandise from its offices in Puebla, Mexico, to the Mexico City airport, and that these expenses are included in the Mexican freight expenses reported in Section D. Respondent's case brief confirms this assumption. It states that "the same truck is used to carry flowers from the farm to the airport as is used in domestic sales." In its original response, Florex also stated that for home market sales, "delivery is at Florex expense." Thus, as BIA, we totalled all home market freight costs reported in the "Sales in the Home Market or to Third Countries" section of response to the Department's questionnaire (Section B) and deducted that amount from the total freight-related expenses reported in Section D. We assumed that the balance accounts for foreign inland freight from Puebla to the Mexico City airport. We then allocated this amount over total bunches sold to the United States. (*See* Comment 5).

Where sales were made subsequent to importation, we calculated ESP based on delivered prices. We made deductions for discounts, foreign inland freight, other freight charges, and U.S. duty. As BIA, we are assuming that the other freight charges reported by Florex include air freight, brokerage and handling charges, and U.S. inland freight charges. We calculated foreign inland freight using the same methodology discussed above for sales made prior to importation.

Because Florex reported that its terms of sale were f.o.b. consignee's offices, in those cases where Florex reported no freight charges, the Department used as BIA, the weighted-average of freight charges reported for all other consignment sales.

In accordance with 19 CFR 353.41(e), we made further deductions to ESP for credit expenses and commissions. (*See* Comment 5). We also deducted indirect selling expenses incurred by the parent company in Mexico, in accordance with 19 CFR 353.41(e). Although Florex did not report these indirect selling expenses in its sections B and C (Sales to the United States) questionnaire responses, it appears form Florex's section D questionnaire response that it did incur such expenses. Therefore, the Department used Florex's section D response to estimate indirect selling expenses. (*See* Comment 5).

Foreign Market Value

Foreign market value (FMV) was calculated based on home market prices or constructed value (CV), as appropriate.

Petitioner alleged that home market sales of both Tzitzic Tareta and Florex were made at prices below the cost of production (COP). Based on petitioner's allegation, we gathered and analyzed data on respondents' production costs.

We modified our standard sales below cost test to account for the perishability of the product, as was done in several previous case involving perishable products. (*See, e.g.*, "Certain Fresh Winter Vegetables From Mexico; Antidumping: Final Determination of Sales at Not Less Than Fair Value," 45 FR 20512, March 28, 1980, and "Final Determination of Sales at Less Than Fair Value; Fall-Harvested Round White Potatoes From Canada," 48 FR 51669, November 10, 1983.)

If less than 50 percent of a respondent's sales were at prices below the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities over an extended period of time. If between 50 and 90 percent of a respondent's sales were at prices below the COP, we disregarded only the below cost sales. In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time. If more than 90 percent of a respondent's sales were at prices below the COP, we determined that there were an insufficient number of sales to serve as the basis for determining FMV. Instead, we used CV as the basis for determining FMV for these sales.

In all cases except for Tzitzic Tareta's sales of standard carnations, we determined that there were a sufficient number of sales above the COP to permit the continued use of home market sales as the basis for determining FMV. Accordingly, we used CV as the basis for determining FMV only for Tzitzic Tareta's sales of standard carnations.

Tzitzic Tareta

In order to determine whether home market sales were above the COP, we calculated the COP on the basis of Tzitzic Tareta's cost of materials, labor, fabrication, and general expenses. The COP data submitted by Tzitzic Tareta was relied upon in our analysis, except in the following instances where the costs were not appropriately quantified or valued.

General and administrative expenses, as well as interest expenses reported in the Section D questionnaire response, were incorrectly valued because they were allocated over total flowers produced rather than total flowers sold. (*See* Comment 2). Therefore, we used Tzitzic Tareta's financial statements to

value general and administrative expenses as well as interest expenses. However, selling, general and administration expenses (SG&A) were reported as a single amount on Tzitzic Tareta's financial statements. We were, therefore, unable to use the selling expenses reported by Tzitzic Tareta in its Section B questionnaire response. (*See* Comment 2). We, therefore, used the total SG&A amount reported in Tzitzic Tareta's financial statements for calculating cost of production.

We used the quantity of sales of standard and pompom chrysanthemums as the denominator to compute a cost per unit for chrysanthemums rather than quantity of production as reported by the respondent. In addition, we used the quantity of sales of standard carnations as the denominator to compute a unit cost for carnations rather than quantity of production, as reported by the respondent.

We found that less than 50 percent of standard chrysanthemums and pompom chrysanthemums sold by Tzitzic Tareta in Mexico were sold at prices below the COP. Accordingly, we used all sales as the basis for determining FMV for these categories of such-or-similar merchandise.

We calculated FMV for both standard and pompom chrysanthemums based on packed, ex-hacienda prices to unrelated purchasers in Mexico. Because FMV is being compared to ESP, we made deductions for home market credit expenses.

Where monthly weighted-average commissions were paid in both markets, we deducted home market commissions paid to unrelated parties, pursuant to § 353.56(a)(2) of our regulations, and home market indirect selling expenses up to the amount of indirect selling expenses incurred on exporter's sales price sales, in accordance with § 353.56(b)(2) of the Department's regulations. Where monthly weighted-average commissions were paid on sales only in the U.S. market, we deducted home market indirect selling expenses up to the amount of the sum of indirect selling expenses and commissions incurred on ESP sales. Where monthly weighted-average commissions were paid on sales only in Mexico, we deducted the home market commissions paid to unrelated parties. We also deducted home market indirect selling expenses up to the amount of indirect selling expenses incurred on ESP sales. (*See* Comment 1). Where monthly weighted-average commissions were paid in neither market, we deducted the home market selling expenses up to the amount of indirect selling expenses incurred on ESP sales.

Because Tzitzic Tareta reported only indirect selling expenses incurred by its related U.S. subsidiary, the Department used BIA to estimate indirect selling expenses incurred in Mexico. Best information available was based on total selling expenses reported in Tzitizic Tareta's Section D questionnaire response, less commissions.

We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

We found that more than 90 percent of Tzitzic Tareta's sales of standard carnations in Mexico were made at prices below the COP. Accordingly, we disregarded all sales as the basis for determining FMV. In accordance with section 773(e) of the Act, we calculated FMV based on CV. CV includes cost of materials, fabrication, general expenses, profit, and packing. Actual general expenses were used since these exceeded the statutory minimum requirement of ten percent of the sum of materials and fabrication. The CV data submitted by Tzitzic Tareta was relied on, except in the following instances where costs were not appropriately quantified or valued.

General and administrative expenses, as well as interest expenses reported in section D, were incorrectly valued because they were allocated over total flowers produced rather than total flowers sold. (*See* Comment 2). Therefore, we used Tzitzic Tareta's financial statements to value general and administrative expenses as well as interest expenses. However, selling, general and administrative expenses (SG&A) were reported as a single amount on Tzitzic Tareta's financial statements. We were, therefore, unable to use the selling expenses reported by Tzitzic Tareta in its Section B questionnaire response. We therefore used the total SG&A amount reported in Tzitzic Tareta's financial statements for constructed value.

Because profit was not submitted, the statutory minimum of eight percent of the sum of general expenses and cost of materials and fabrication was used.

Packing expenses were reported in both section C and section D of Tzitizic Tareta's response. We used packing expenses as reported in section D for the calculation of CV, as BIA, because these appeared to be more complete than those reported in section C.

We deducted credit expenses from CV in accordance with 19 CFR 353.56(a)(2). Where monthly weighted-average commissions were paid on sales in the U.S. market, we deducted home market commissions paid to unrelated parties, pursuant to 19 CFR 353.56(a)(2), and home market indirect selling expenses up to the amount of the indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2). Where monthly weighted-average commissions were paid on sales only in Mexico, we deducted the home market commissions paid. We also deducted home market indirect selling expenses up to the amount of indirect selling expenses incurred on ESP sales. (*See* Comment 1).

Because Tzitzic Tareta reported only indirect selling expenses for its related U.S. subsidiary, the Department used BIA to estimate indirect selling expenses incurred in Mexico. Best information available was based on total selling expenses reported in Tzitzic Tareta's Section D reponse, less commissions.

Florex

In order to determine whether home market sales were above the COP, we calculated the COP on the basis of Florex's cost of materials, fabrication, and general expenses. The COP data submitted by Florex was relied on in our analysis, except in the following instances where the costs were not appropriately quantified or valued.

We adjusted the selling, general and administrative expenses to reflect the ratio of such expenses to the cost of sales on the company's income statements. Because Florex's section D response indicated indirect selling expenses not reported in its section B response, we used the selling expenses reported by Florex in its section D response. We also adjusted the interest expense to reflect the ratio of interest expense to the cost of sales on the company's income statements.

Since we found that less than 50 percent of Florex's sales were made at prices below the COP, we used all of Florex's home market sales as the basis for determining FMV. We calculated FMV based on delivered prices to unrelated purchasers. We made deductions for inland freight.

Where U.S. price was based on purchase price, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses. Because Florex did not report a short-term interest rate, home market credit expenses were calculated using the ranged, short-term Mexican interest rates reported by Tzitzic Tareta in the public version of its questionnaire response, as BIA. (*See* Comment 5). We also offset commissions incurred on home market sales with indirect selling expenses incurred on U.S. sales, pursuant to 19 CFR 353.56.

Although Florex did not report any indirect selling expenses in its sections B or C responses, it appears from Florex's section D response that Florex did incur such expenses. Therefore, using BIA, we estimated indirect selling expenses for Florex based on its section D response. (*See* Comment 5).

Where FMV was compared to ESP, we made deductions from the home market price, where appropriate, for credit expenses. Because Florex did not report a short-term interest rate, home market credit expenses were calculated using the ranged, short-term Mexican interest rates reported by Tzitzic Tareta in the public version of its questionnaire response, as BIA. (*See* Comment 5). Pursuant to 19 CFR 353.56(a)(2), we deducted commissions paid to unrelated parties. We also deducted indirect selling expenses capped by indirect selling expenses incurred on ESP sales, in accordance with § 353.56(b)(2) of the Department's regulations. These expenses were calculated as described above for purchase price sales.

Florex reported no packing expenses in its section B and C responses. However, Florex did report total packing materials expenses in its section D response. As BIA, we are assuming that the packing expenses reported by Florex in section D are associated solely with sales to the United States. Therefore, we are adding U.S. packing expenses to FMV in accordance with section 773(a)(1)(B) of the Act. (*See* Comment 5).

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. We received a case brief from the respondents and a rebuttal brief from the petitioner.

Comment 1: Respondents Tzitzic and Florex believe that the Department made certain methodological errors with respect to the treatment of commissions and indirect selling expenses. Respondents contend that when commissions are paid on home market sales, but no commissions are paid on U.S. sales, the Department incorrectly capped the home market deduction for commissions and indirect selling expenses by the amount of indirect selling expenses incurred on ESP sales. It appears to respondents that the Department's computer program combines home market commissions and indirect selling expenses for purposes of computing the ESP offset. Respondents argue that home market commissions are direct expenses which are not subject to the ESP cap. Respondents further argue that the Court of Appeals for the Federal Circuit has acknowledged that the ESP offset and cap relate only to indirect selling expenses. Respondents therefore believe that the Department should deduct from home market price both the full amount of the commissions of Tzitzic and Florex and the lesser of either the home market indirect selling expenses or U.S. indirect selling expenses.

Tzitzic also believes that the Department made the same methodological error when calculating its CV. Tzitzic states that in both cases the effect of this error is to increase the FMV. Tzitzic also believes that there could be a significant effect on home market viability.

Petitioner argues that home market commissions were properly included in the ESP offset. Petitioner believes that respondents' position misunderstands the Department's treatment of commissions and fails to take into account the commission offset described in 19 CFR 353.56(b)(1). Petitioner states that pursuant to that section of the Department's regulations, the home market commission offset is limited to the amount of indirect selling expenses in the U.S. market. Petitioner further contends that it makes no difference mathematically whether separate adjustments are made for commissions and indirect selling expenses because both are subject to offsets up to their full amounts.

DOC Position: We agree in part with respondents. Commissions are separately stated and deducted from FMV. When commissions are paid on sales in the home market, but not on ESP sales, then the full amount of home market commissions is deducted from FMV. Indirect selling expenses incurred on home market sales are then capped by U.S. indirect selling expenses in accordance with 19 CFR 353.56(b)(2). The final results were changed to reflect a separate deduction for commissions when they are incurred only in the home market.

Respondent's statement, however, that the Department's treatment of commissions may have an effect on home market viability is simply incorrect. Commissions play no role in the determination of home market viability. The Department compares the volume of sales made in the home market to the volume of sales in third countries to determine home market viability.

Comment 2: Tzitzic argues that the Department should have allocated its G&A expenses over its total production, since these expenses were incurred as part of its production. Tzitzic also argues that the Department failed to utilize its actual selling expense, even though these expenses were reported as part of G&A.

Petitioner states that the Department followed its consistent practice and allocated G&A and interest expenses over total flowers sold. Petitioner contends that any other approach incorrectly assigns costs to waste products and culls.

With regard to the use of actual selling expenses, petitioner claims that the Department properly used Tzitzic's total SG&A expenses as a proxy for selling expenses. Petitioner states that the Department was unable to use the selling expenses reported in Tzitzic's Section B response because it allocated its selling expenses over production, instead of flowers sold. Petitioner further states that Tzitzic reported SG&A as a single figure in its financial statements.

DOC Position: We agree with Petitioner. The allocation of Tzitzic's SG&A expenses over total flowers sold is entirely consistent with the Department's past practice. The Department uses actual costs incurred, allocated over total flowers sold, in order not to assign costs to waste products.

Respondent's comment that the Department failed to use Tzitzic's actual selling expenses, even though these expenses were reported as part of G&A, is unclear. Since the Department did use Tzitzic's SG&A as BIA for sales-specific selling expenses that Tzitzic failed to report, it is unclear what respondent would have the Department do.

Comment 3: Florex argues that the Department acted arbitrarily in failing to give it an extension of time to respond to the last deficiency letter prior to the issuance of the preliminary results. Florex claims that the additional time it requested was reasonable and that it would not have delayed the preliminary results. Respondent believes that the Department cited its need to issue timely preliminary results to deny sufficient time to Florex to respond to the complex questions in the last deficiency letter. Florex states that up until that point, it had complied with all the Department's procedural requirements. Respondent also believes that this constitutes an arbitrary application of strict time limits without reasonable justification, and as such, is a non-tariff barrier to trade and a violation of the GATT antidumping code. Florex maintains that the use of BIA as a result of the Department's deadlines is incorrect.

Respondents Tzitzic and Florex also argue that special rules need to be applied for small agricultural producers

due to their limited resources and methods of record keeping.

Respondents claim that the Department has refused to be flexible in allowing flower growers adequate time for responses to what respondents consider to be a lengthy and complicated questionnaire.

Petitioner maintains that the record in this case demonstrates that the Department gave Florex many opportunities to submit additional and supplemental information. Petitioner further states that the record demonstrates that Florex failed to take advantage of numerous opportunities to provide additional correct data and that the information it did submit was consistently deficient and ambiguous. Furthermore, petitioner maintains that given Florex's level of participation in the original investigation and in the first administrative review, it can hardly claim that it was surprised or unfairly burdened in this review by having to report the information required in the questionnaire in a timely manner. Thus, petitioner maintains that the Department was correct in its use of BIA.

DOC Position: We agree with petitioner. Virtually every request by Florex for additional time was granted by the Department. Respondent requested, and was granted, an extension to respond to the Department's deficiency letter of September 5, 1989. On January 8, 19990, respondent requested, and was granted, an extension to respond to section D of the Department's questionnaire. On March 7, 1990, respondent requested, and was granted, an extension to respond to the Department's deficiency letter in connection with respondent's section D responses. On September 28, 1990, respondent requested, and was granted, an extension to respond to another deficiency letter. Not until October 10, 1990, the date on which respondent requested a second extension to respond to the same deficiency letter did the Department deny the request.

The submission of inadequate responses to the Department's questionnaire and deficiency letters does not demonstrate compliance with "all the Department's procedural regulations" as respondent contends. We used BIA only as a last resort, when Florex's responses were incomplete, unintelligible, or untimely, and only after giving Florex the opportunity to correct these deficiencies. While we recognize that small agricultural producers may face additional difficulties in providing information, the Department adheres to the same deadlines regardless of the size of the producer. In addition, Florex requested this review, and knew from the previous review and the original investigation what the information requirements of the Department were.

Comment 4: Florex contends that the Department failed to adequately address its request for a level of trade adjustment. Florex maintains that because its sales in Mexico were retail, and sales in the U.S. were wholesale, it should receive a level of trade adjustment under § 353.58 of the Department's regulations.

Petitioner states that Florex has not provided any data to show that the difference in prices is attributable to differences in levels of trade.

DOC Position: We agree with petitioner. In order to quality for a level of trade adjustment, respondent must provide the Department with data sufficient to enable the Department to estimate those expenses which differ with respect to level of trade. As we said in the first administrative review of this order, "aside from claiming that flowers are sold to two different types of customers in the two markets, the respondent did not provide any evidence indicating that the difference in prices is attributable to different levels of trade." (*See* "Final Results of Antidumping Administrative Review: Certain Fresh Cut Flowers from Mexico", 55 FR 12696, April 5, 1990). The Department requested such information in its deficiency letter of September 25, 1990, to Florex. At no point did Florex even attempt to prove that such an adjustment is warranted. Accordingly, we denied the adjustment.

Comment 5: Florex claims that the Department improperly deducted indirect selling expenses, foreign inland freight, credit and packing expenses from ESP prices. Florex argues that because it reported no indirect selling expenses for ESP sales, the Department was incorrect in deducting such expenses from ESP. Florex claims that the Department double-counted foreign inland freight because it uses the same company truck to transport flowers for U.S. and home market sales. Respondent also argues that the Department assumed credit costs that it never incurred, since it does not "finance" shipments. And, because it makes deliveries in the home market in buckets and incurs no packing costs, Florex claims that the Department incorrectly created a home market packing expense that inflated home market prices.

Petitioner maintains that the Department was correct in using the indirect selling expenses in Florex's response to section D of the questionnaire, since that response indicated that Florex did incur such expenses. Petitioner states that, given Florex's failure to provide a complete and accurate response with regard to indirect selling expenses, the Department correctly used BIA to estimate these expenses. Petitioner further states that the courts have upheld the Department's use of BIA to fill in gaps in data submitted by respondents.

DOC Position: We agree with petitioner in all cases. According to Florex's section D response Florex did incur indirect selling expenses. Accordingly, we used these expenses as reported in section D to complete Florex's response.

With regard to freight expenses, the Department clearly stated in its preliminary results how it calculated BIA used for foreign inland freight expenses:

> As BIA, we totalled all home market freight costs reported in the "Sales in the Home Market or to Third Countries" section of the Department's questionnaire (section B) and deducted that amount from the total freight reported in section D. We assumed that the balance accounts for foreign inland freight from Puebla to the Mexico City airport. We then allocated this amount over total bunches sold to the United States.

Thus, the Department deducted home market freight from the total freight expenses. The remainder was then allocated over U.S. sales specifically to avoid double-counting freight expenses.

With regard to Florex's claim that it did not "finance" any shipments, it appears from its response to the Department's questionnaire that while Florex did not incur interest expenses on borrowed funds, it did extend credit to its customers. Extending credit on sales represents an opportunity cost to the seller; potential reveneus from an immediate cash-for-goods sale are exchanged for the receipt of payment after some extended period. Money that would have been received had the goods been sold for cash up front could have been deposited to accrue interest. It is this additional accrued revenue which is forgone in extending credit. We have, therefore, imputed credit expenses in accordance with 19 CFR 353.56(a)(2).

Finally, with regard to Florex's claim that it incurred no home market packing expenses, section 773(a)(1)(B) of the Act directs the Department to calculate home market sales as if packed for shipment to and sale in the U.S. market. The Department always does so by adding U.S. packing expenses to FMV as we did here

Comment 6: Visaflor claims that it did not export any of the subject merchandise to the United States for its own account during the period of review. Visaflor claims that its name appeared on entries of the subject merchandise during the period May through July, 1988, because Visaflor sometimes acted as an agent for other companies that consolidated small shipments with Visaflors' exports of flowers not subject to this review.

Visaflor contends that the information submitted shows that it only acted as a facilitator in exporting some flowers subject to this review. Visaflor maintains that the submitted documents demonstrate that the flowers were produced by growers other than Visaflor, that the payment for the sale of these flowers in the U.S. market went to these growers, and that these growers are unrelated to Visaflor.

Petitioner maintains that the evidence submitted by Visaflor and its U.S. importer proves little else than that flowers subject to the review were exported by Visaflor. Petitioner claims that the invoices, sales sheets, and canceled checks pertaining to the imports in question failed to explain the December 1988 entry reported by U.S. Customs.

Petitioner further states that Visaflor has not proved that it is not related to Jose Santa Maria Vilchis. Petitioner also claims that respondent's October 9, 1990, letter claiming that Visaflor and Fiestaflor are unrelated is questionable. Petitioner alleges that because respondent's documents show that Fiestaflor and Visaflor share the same address, the same telephone numbers, the same invoice form, and the same official signs their respective invoices, Fiestaflor was incorporated to evade the sumping duties imposed on Visaflor. Petitioner also points out that some entries of the subject merchandise from Fiestaflor were subjected to Visaflor's duty deposit rate while no deposits were required on others.

DOC Position: We agree with respondent. After numerous meetings and deficiency letters, Visaflor has submitted documents illustrating the nature of the exports reported by U.S. Customs. Respondent's December 3, 1990, submission includes invoices, sales sheets, canceled checks, U.S. Customs summaries, entries into the growers' books and information tracing the payment for the subject merchandise.

Jose Santa Maria Vilchis and Fiestaflor submitted documents which indicate that they received the funds generated from the sales of their flowers; specifically, respondent's October 24, 1990, submission includes deposit slips which show that the funds were deposited in the accounts of the two Mexican producers. After considering the totality of information on the record, we have determined that Visaflor did not export the subject merchandise to the United States for its own account during the period of review.

Regarding petitioner's contention that Jose Santa Maria Vilchis and Fiestaflor have not adequately proved that they are unrelated to Visaflor, the Department notes that Jose Santa Maria Vilchis has submitted documentation that he is incorporated in the state of Mexico. Moreover, he does not appear on the list of Visaflor's company officers. Fiestaflor has provided a list of its company officers and none are included in Visaflor's list of officers. The fact that Visaflor and Fiestaflor may share the same address, telephone numbers, and invoice forms does not prove that they are related. Short of verification there is nothing the Department could do further to elicit additional information that would resolve this issue. The Department, therefore, determines that neither Fiestaflor nor Jose Santa Maria Vilchis are related to Visaflor.

It should be noted that Visaflor was not forthcoming in submitting documentation necessary to support its claim. Visaflor was informed of the Customs reports regarding entries of the subject merchandise during the period of review in June 1990. It was not until December 3, 1990, after numerous requests for information, that Visaflor submitted adequate documentation to support its claim that it did not ship the merchandise under review to the United States for its own account. It is for this reason that Visaflor was determined to have exported the subject merchandise for the preliminary results of this review.

Because we determine that Visaflor did not export the subject merchandise during the period of review, the margin assigned to Visaflor is for cash deposit purposes only, and is that received by Visaflor in the previous review (87–88).

Final Results of the Review

As a result of our review, we determine the margins to be:

Manufacturer/Exporter	Margin (Percent)
Tzitzic Tareta	39.95
Florex	38.00
Visaflor	* 1.39

* No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States prices and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions concerning Tzitzic Tareta and Florex directly to the Customs Service.

Furthermore, as provided for in section 751(a)(1) of the Act, the Department will require a cash deposit of estimated antidumping duties based on the above margins on entries of this merchandise from Mexico.

For any future entries of this merchandise from a new producer and/or exporter, not covered in this review, the previous review, or in the original investigation, whose first shipments occurred after March 31, 1989, and who is unrelated to the reviewed firms, any previously reviewed firm, or any firm subject to the original investigation, a cash deposit of 39.95 percent shall be required.

These deposit requirements are effective for all shipments of certain fresh cut flowers from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(8)(1990).

Dated: January 10, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–1173 Filed 1–16–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–046]

Polychloroprene Rubber From Japan; Revocation of Antidumping Finding

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce is revoking the antidumping finding on polychloroprene rubber from Japan because it is no longer of any interest to interested parties.

EFFECTIVE DATE: January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Antidumping Compliance,

International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–8312/ 3601.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 49930) its intent to revoke the antidumping finding on polychloroprene rubber from Japan (38 FR 33593, December 9, 1971).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this finding on each interested party on the service list. Interested parties who might object to the revocation were provided the opportunity to submit their comments not later than thirty days from the date of publication.

Scope of the Finding

Imports covered by the review are shipments of polychloroprene rubber. Through 1988, such merchandise was classifiable under item numbers 446.1521 and 446.2000 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under HTS item numbers 4002.41.00 and 4002.49.00. The TSUSA and HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Determination to Revoke

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for four consecutive review periods (19 CFR 353.25(d)(4)(i)) and when no interested party objects to revocation.

In this case we have received no requests for review for five consecutive review periods. Furthermore, no interested party has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding covering polychloroprene rubber from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of polychloroprene rubber from Japan entered, or withdrawn from warehouse, for consumption on or after December 3, 1990. Entries made during the period December 1, 1989 through December 2, 1990, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 3, 1990, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.25(1990).

Dated: January 11, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–1174 Filed 1–16–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–007]

Postponement of Final Antidumping Duty Determination; Sheet Piling From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is postponing the date it intends to reach a final determination as to whether sales of sheet piling from Canada have been made at less than fair value until not later than April 15, 1991.

EFFECTIVE DATE: January 17, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra at (202) 377–3965, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On December 27, 1990, counsel for the respondents requested that the Department postpone the date it intends to reach a final determination as to whether sales of sheet piling from Canada have been made at less than fair value until not later than 135 days after the date of publication of the preliminary determination. Accordingly, we intend to issue the final determination not later than April 15, 1991. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than March 25, 1991, and rebuttal briefs no later than April 1, 1991. In accordance with 19 CFR 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on April 2, 1991, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

Dated: January 10, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–1113 Filed 1–16–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–549–401]

Initiation of Countervailing Duty Administrative Review; Certain Yarn Products From Thailand

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of initiation of countervailing duty administrative review.

SUMMARY: The Department of Commerce has received a request to conduct an administrative review of a countervailing duty suspension agreement. In accordance with the Commerce Regulations, we are initiating this administrative review.

EFFECTIVE DATE: January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received a timely request, in accordance with § 355.22(a)(1) of the Department's regulations (19 CFR 355.22(a)(1) (1990)), for an administrative review of the countervailing duty suspension agreement covering certain yarn products from Thailand. On November

23, 1990, the Department published a notice to "Terminate the Suspended Countervailing Duty Investigation in Part on Certain Textile Mill Products from Thailand" (55 FR 48885). Due to a lack of standing on the part of the requesting person, the Department terminated the suspended countervailing duty investigation with respect to all non-yarn products (fabrics, special construction fabrics, textile furnishings, and miscellaneous textile mill products). However, the Department has retained the suspended investigation with respect to yarn. Consequently, the name of this proceeding has been changed from Certain Textile Mill Products from Thailand to Certain Yarn Products from Thailand. The Department has retained this proceeding's case number: C–549–401. Therefore, this administrative review will only be with respect to yarn products.

Initiation of Review

In accordance with § 353.22(c) of the Department's regulations, we are initiating an administrative review for the countervailing duty suspension agreement covering certain yarn products. We intend to issue the final results of this review no later than October 31, 1991.

COUNTERVAILING DUTY PROCEEDING

	Period to be reviewed
Thailand:	
Certain Yarn Products	01/01/89–12/31/89

Interested parties must submit applications for administrative protective orders in accordance with § 335.34(b) of the Department's regulations.

This initiation and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989) and § 355.22(c) (1988).

Dated: January 7, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–1114 Filed 1–16–91; 8:45 am]

BILLING CODE 3510–DS–M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting; Correction

In the notice published in the **Federal Register** on January 10, 1991 (56 FR 995), correct the meeting date from Thursday, January 25, 1990, to Friday, January 25, 1991.

Dated: January 14, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–1104 Filed 1–16–91; 8:45 am]

BILLING CODE 3510–DR–M

Management-Labor Textile Advisory Committee; Partially Closed Meeting; Correction

In the notice published in the **Federal Register** on January 10, 1991 (56 FR 995), correct the meeting date from Wednesday, January 25, 1991, to Friday, January 25, 1991.

Dated: January 14, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation for Textile Agreements.

[FR Doc. 91–1105 Filed 1–16–91; 8:45 am]

BILLING CODE 3510–DR–M

Scope Rulings

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of scope rulings.

SUMMARY: The International Trade Administration (ITA) hereby publishes a list of scope rulings completed between October 1, 1990 and December 31, 1990. In conjunction with this list, the ITA is also publishing a list of pending scope inquiries. The ITA intends to publish future lists within thirty days of the end of each quarter.

EFFECTIVE DATE: January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–4851.

BACKGROUND: Sections 353.29(d)(8) and 355.29(d)(8) of the Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months. The lists are to include the case name, reference number, and brief description of the ruling.

This notice lists scope rulings completed between October 1, 1990 and December 31, 1990, and pending scope clarification requests. The ITA intends to publish in April 1991 a notice of scope rulings completed between January 1, 1991 and March 31, 1991.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

Scope Rulings Completed Between October 1, 1990 and December 31, 1990

Country: Republic of Korea.

A–580–501: Photo Albums and Filler Pages:

Bowon Trading Co.—photo frame/albums (models 101257, 201257, 200957, 214357, 279757, 301457, 401357, 200857, 201057, and 318357) are outside the scope of the order—10/24/90.

A–580–803: Certain Small Business Telephone Systems and Subassemblies Thereof:

Inter-Tel, Incorporated—ESP DX telephone system and its subassemblies are outside the scope of the order—12/20/90.

Country: Taiwan.

A–583–808: Sweaters Wholly or in Chief Weight of Man-Made Fibers:

Saxony Sportswear Company—sweaters containing both leather and man-made fibers are within the scope of the order—10/24/90.

Country: Japan.

A–588–041: Synthetic Methionine:

Mitsui—lactet is within the scope of the order—12/21/90.

A–588–087: Portable Electric Typewriters:

Smith Corona—"later developed" typewriters, if they meet the following seven physical criteria: be easily portable, with a handle and/or carrying case or similar mechanism to facilitate its portability; be electric, regardless of source of power; be comprised of a single, integrated unit; have a keyboard embedded in the chassis or frame of the machine; have a built-in printer; have a platten (roller) to accommodate paper; and only accommodate its own dedicated or captive software, are within the scope of the order—11/13/90.

Silver Reed/Silver Seiko—typewriter models EX–200, EX–300, and EZ–50 are "office" typewriters and are outside the scope of the order and typewriter models EX–30 (85–EP), EX–32 (87–EP), EX–34 (89–EP), EX–36 (89–SP), EX–42, EX–43, EX–44, and EZ–30 are within the scope of the order—12/21/90.

A–588–405: Cellular Mobile Telephones and Subassemblies:

Fujitsu Limited and Fujitsu America, Inc.—Model F80P–171 and subassemblies dedicated exclusively for use in the F80P–171 are outside the scope of the order—12/12/90.

A–588–702: Stainless Steel Butt Weld Pipefittings:

Benkan Corporation—superclean or ultraclean pipe fittings—are within the scope of the order—10/24/90.

IMEX, Inc.—sanitary pipe fittings are within the scope of the order—11/29/90.

Pending Scope Inquiries as of December 31, 1990

Country: Federal Republic of Germany.

A–428–801: Antifriction Bearings:

FAG Kugelfischer Georg Schaefer KGaA—certain textile machinery components.

FAG Kugelfischer Georg Schaefer KGaA—certain needle roller bearings.

SKF Textilmaschinen-Komponenten GmbH and SKF Textile Products, Inc.—textile machinery component (rotor assembly number TE 226–0036225).

Wafios Machinery Corporation—"machine parts".

Country: Italy

A–475–801 Antifriction Bearings

SKF Component System Co.—7/32" chrome steel balls.

Country: People's Republic of China.

A–570–504: Petroleum Wax Candles.

Fabri-centers of America, Inc.—citronella candles.

A–570–506 Porcelain-on-Steel Cookware.

CGS International—high quality, hand finished cookware.

Country: Korea.

A–580–008: Color Television Receivers:

Goldstar—TV/Radio model RCV–0615.

Goldstar—TV/VCR model KMV–9002.

Commodore Business Machines—computer monitor model 1084(D).

A–580–501: Photo Albums and Filler Pages:

U.S. Customs inquiry—unfinished filler pages.

U.S. Customs inquiry—baseball card albums.

A–580–605: Color Picture Tubes:

Penn-Ray Sutra Corp.—video game displays.

A–580–803: Certain Small Business Telephone Systems and Subassemblies Thereof:

TT Systems Corporation—Simtel 420 telephone set.

Country: Japan.

A–588–007: Certain High Capacity Pagers:

Motorola—components and subassemblies.

A–588–015: Television Receiving Sets, Monochrome and Color:

NEC—Subassemblies: W5A–1 (HE), W4A–1 (HE), W3A–1 (HE), W5A–1, and W4A–1.

Sharp—LCD TV/Radio/Cassette model JC–AV1.

Teknika Electronics Corp.—P.C.B. subassemblies.

Sharp—LCD TV/VCR model VC–V542U.

Casio Computer Co., Ltd., Casio, Inc., Citizen Watch Co., Ltd, Hitachi, Ltd., Hitachi Sales Corporation of America, Hitachi Sales Corporation of Hawaii, Inc., Matsushita Electric Industrial Co., Ltd., Matsushita Electric Corporation of America, NEC Corporation, NEC Home Electronics (U.S.A.), Inc., Seiko Epson Corporation, Toshiba Corporation, and Toshiba America, Inc.—certain hand-held liquid crystal display televisions (Casio Computer Co., Ltd. models TV–400T, TV–500, TV–1400, TV–3100, TV–8500; Citizen Watch Co., Ltd. models 06TA, 08TA, TB20, TA80, TC50, TC53, DD–T126, DD–P226, TC52; Matsushita Electric Industrial Co., Inc. models CT–301E/302B, CT–311E/312B; and Seiko Epson Corporation models LVD–602, LVD–702, LVD–802) and all other LCD TVs under 6" in screen size imported into the United States

Manhattan Electric—dual voltage Hitachi TVs.

P.T. Imports, Inc.—multiple voltage and receiving system TVs, JVC series "ME" and "MU".

A–588–087: Portable Electric Typewriters:

Tokyo Juki—"office" typewriter models: Juki Seirra 4500, Sierra 3300, Sierra 3400, Sierra 3400C, Sierra 3500, Siera 3500XL, Sierra Officewriter, Remington Rand 770, Remington Rand 775, Remington Rand 880, Avanti 1400, and Avanti 1500.

Swintec/Nakajima—"office" typewriter models: 8000, 8000SP, 8011, 8011SP, 8012, 8014S, 8014KSR, 8016, 8017, 1145CM, 1146CM, 1146CMA, 1146CMP, 1146CMSp, 1186CM, and 1186CMP.

A–588–405: Cellular Mobile Telephones and Subassemblies:

Mitsubishi Electric Corporation—RF power semiconductor amplifiers.

Murata Manufacturing Co., Ltd., and Murata Erie North America, Inc.—voltage control oscillators (VCOs), active filters, and duplexers.

A–588–802: 3.5" Microdisks and Coated Media Thereof:

Kao Infosystems Company—certain unprepared media.

A–588–806: Electrolytic Manganese Dioxide:

Sumitomo—High-grade chemical manganese dioxide (CMD–U).

A–588–809: Certain Small Business Telephone Systems and Subassemblies Thereof:

Iwatsu Electric Co., Ltd., and Iwatsu America, Inc.—Iwatsu ADIX–450.

A–588–810: Mechanical Transfer Presses; Aida Engineering—spare and replacement parts.

The following requests were withdrawn:

Country: Federal Republic of Germany.

A–428–801: Antifriction Bearings:

Sachs Automotive Products Company—clutch releasers—request withdrawn—9/14/90.

Country: Korea.

A–588–008: Color Television Receivers:

Orion Electric Co.—TV/Radio—request withdrawn—10/29/90.

Country: Japan.

A–588–087: Portable Electric Typewriters:

Matsushita—penwriter models X–Y Writer, RK–P200C, RK–P240, RK–P300, RK–P400, RK–P400C, and RK–P440—request withdrawn—10/10/90.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

Dated: January 10, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–1176 Filed 1–16–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Pelagic Task Force will hold public meetings in Hawaii during the month of January 1991 as indicated below. The Pelagic Task Force will discuss area closures and other management measures for allocation between pelagic user groups and to minimize gear conflicts.

January 23—6:30 p.m., to 9:30 p.m.—Wilcox Elementary School, 4319 Hardy Avenue, Lihue, Kauai, HI

January 24—6:30 p.m., to 9:30 p.m.—Maalaea Fishing Clubhouse, Maalaea, Maui, HI

January 25—1:30 p.m., to 4:30 p.m.—Wailoa State Park Pavilion, Hilo, HI

January 26—6:30 p.m., to 9:30 p.m.—Konawaena High and Intermediate School Cafeteria, Kealakekua Bay, HI

January 28—6 p.m., to 9 p.m.—Waianae Regional Park, Waianae, Oahu, HI

January 29—6:30 p.m., to 9:30 p.m.—Alii Beach Park Recreational Center, Haleiwa, Oahu, HI

January 30—6:30 p.m., to 9:30 p.m.—Dole Cannery, 650 Iwilei Road, Honolulu, HI

FOR MORE INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368; fax: (808) 526–0824.

Dated: January 11, 1991.

David S. Crestin,

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

[FR Doc. 91–1100 Filed 1–16–91; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Citrus Associates of the New York Cotton Exchange: Proposed Amendment to the Frozen Concentrated Orange Juice Futures Contracts Adding California as a Delivery Area

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Citrus Associates of the New York Cotton Exchange ("CANYCE" or "Exchange") has submitted proposed amendments to Exchange Rule 57 governing delivery points for the Exchange's frozen concentrated orange juice ("FCOJ") futures contracts. The proposal would add the California counties of San Bernardino and Tulare to the delivery areas for both the FCOJ–1 and FCOJ–2 futures contracts. All deliveries in the California counties would be at a discount of 13 cents per pound. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before February 19, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the CANYCE FCOJ futures contracts adding San Bernardino county and Tulare county, California as delivery areas.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581; telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The proposed amendments would modify the current terms and conditions of both FCOJ futures contracts for which the Exchange has been designated as a contract market by the Commission.[1] Currently, the Exchange's actively traded FCOJ–1 futures contract provides for delivery at par at Exchange-licensed delivery facilities located within any of sixteen contiguous Florida counties, as specified by the Exchange.[2]

The proposed amendments would permit the delivery of FCOJ on the Exchange's FCOJ futures contracts at Exchange-licensed delivery facilities located in the California counties of San Bernardino and Tulare. Under the proposal, FCOJ delivered on the Exchange's futures contracts in San Bernardino and Tulare counties would be subject to a discount of 13 cents per pound.

The Exchange has indicated that it intends to make the proposed amendments effective for all contracts listed for trading following Commission approval of the proposed amendments.

The Commission is seeking comment on the proposed amendments. In particular, the Commission is requesting comment on the extent to which the proposed discount of 13 cents per pound reflects cash market pricing relationships between each potential delivery location in the proposed new delivery area in California and futures delivery locations in the contracts' existing par delivery area in Florida.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions of the FCOJ futures contracts can be obtained through the Office of the Secretariat by mail at the above address, or by telephone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such material to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on January 14, 1991.

Gerald Gay,

Director, Division of Economic Analysis.

[FR Doc. 91–1120 Filed 1–16–91; 8:45 am]

BILLING CODE 6351-01-M

[1] Presently, the Exchange is designated as a contract market in FCOJ–1 and FCOJ–2 futures. However, the Exchange has not listed the FCOJ–2 futures contract for trading.

[2] The FCOJ–2 futures contract also currently provides for delivery at par in Wilmington, Delaware; and Port Elizabeth and Newark, New Jersey, in addition to the same sixteen Florida counties currently specified in the FCOJ–1 contract.

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Notice of Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on February 1, 1991, in Washington, DC. The purpose of the meeting is to discuss recent research on ignition propensity of cigarettes; future research on this topic; and administrative and operational plans for implementation of the Fire Safe Cigarette Act of 1990.

DATES: The meeting will be from 10 a.m. to 5:00 p.m. on February 1, 1991.

ADDRESSES: The meeting will be in room 729G, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC.

FOR A RECORDED MESSAGE CONTAINING THE LATEST INFORMATION ABOUT THE TIME AND LOCATION OF THE MEETING CALL: (301) 492–5709.

FOR FURTHER INFORMATION CONTACT: Colin B. Church, Office of the Executive Director, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6800.

SUPPLEMENTARY INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101–352, 104 Stat. 405) directs the Commission, with assistance from the

National Institute for Standards and Technology (NIST) and the Department of Health and Human Services to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will have its first meeting on February 1, 1991, to discuss recent research on the ignition propensity of cigarettes; future research on this topic; and administrative and operational plans for implementation of the FSCA.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: January 14, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-1220 Filed 1-16-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 11, 1991.

The USAF Scientific Advisory Board Ad Hoc Committee on Off-Board Sensors for Air Combat Operations will meet on 7-8 Feb. 91 from 8 am to 5 pm at the ANSER Corporation, 1215 Jefferson-Davis Hwy, Arlington, VA 22202.

The purpose of this meeting will be to review the Task Statement and develop a plan for conducting the study. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-1122 Filed 1-16-91; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order with Mt. Airy Refining Company, et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) has determined that a proposed consent order between the DOE and Mt. Airy Refining Company (Mt. Airy) and its former shareholders William P. Boswell, W. Luke Boswell, Lindsay B. McLean, David P. Boswell, P. Wilson Boswell II, and Ellen W. Boswell (collectively, Respondents), which was executed on November 8, 1990 and published for comment in 55 FR 49104 (November 26, 1990), shall be made final. The consent order resolves matters relating to Mt. Airy's compliance with the federal petroleum price and allocation regulations for the period January 1, 1977 through January 27, 1981. To resolve these matters, the Respondents will pay to the DOE $2,000,000, plus interest over a period of three years. To distribute the settlement monies, the Economic Regulatory Administration (ERA) will petition DOE's Office of Hearings and Appeals (OHA) to implement Special Refund Procedures pursuant to 10 CFR part 205 subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges will have the opportunity to submit claims for payment.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Office of Enforcement Litigation, Economic Regulatory Administration, Department of Energy, room 3H-017, RG-32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1699.

Copies of the consent order may be obtained free of charge by written request to "Mt. Airy Consent Order Request" at the above address or by calling Dorothy Hamid at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comment Received
III. Analysis of Comment
IV. Decision

I. Introduction

On November 26, 1990, DOE published notice in the **Federal Register,** Vol. 55 at page 49104, announcing the execution of a proposed consent order between Mt. Airy and its former shareholders and the DOE, which would resolve matters relating to Mt. Airy's compliance with the federal petroleum price and allocation regulations during the period January 1, 1977 through January 27, 1981. That notice both summarized and contained the complete text of the proposed consent order, which requires the Repondents to pay to DOE the principal sum of $2 million, plus interest over a period of three years. The November 26 notice also provided information regarding the Repondents' potential overcharge liability arising from Mt. Airy's failure to report to DOE's Entitlements Program certain volumes of price-controlled crude oil at issue in a Proposed Remedial Order issued July 25, 1986, as amended; and detailed the considerations which underlay ERA's preliminary view that the settlement is favorable to the government and in the public interest. The notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement and whether the settlement should be made final.

II. Comment Received

ERA received one written comment. That comment was considered in making the decision whether to issue the proposed consent order as a final order. The comment, which was submitted by the Controller of the State of California, addressed the failure of the consent order to specify the manner in which OHA will distribute the settlement monies in a Subpart V proceeding. The Controller expressed concern that silence in this respect may suggest or permit a departure from DOE's Modified Restitutionary Policy in Crude Oil Cases, issued in connection with the Final Settlement Agreement approved by the district court in *In Re the Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378. See 51 FR 27899 (August 4, 1986).

III. Analysis of Comment

The November 26 notice solicited written comments to enable the ERA to

receive information from the public relevant to the decision whether the proposed Consent Order should be finalized as proposed, modified or rejected. To ensure public understanding of the basis for the proposed settlement, the November 26 notice provided detailed information regarding the Respondents' potential overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

The Controller's comment relating to the distribution of the overcharge funds if the Mt. Airy consent order is finalized was not germane to the basis or adequacy of the settlement. Rather, as DOE previously explained in, *inter alia*, the Exxon **Federal Register** Notice, 51 FR 36052 (October 8, 1986), in response to similar comments, including one by the Controller, views regarding the disbursement of consent order monies are appropriately presented in the Subpart V proceeding to be convened by OHA. Therefore, the lack of specificity in the consent order does not imply any departure from applicable DOE policy.

ERA's review and analysis of the comment received in response to the November 26 notice did not provide any information that would support the modification or rejection of the proposed consent order with the Respondents. Accordingly, ERA concludes that the consent order is in the public interest and should be made final.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed consent order between the Respondents and DOE is made a final Order of the Department of Energy, effective the date of publication of this notice in the **Federal Register**.

Issued in Washington, DC, on January 9, 1991.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 91-1180 Filed 1-16-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

U.S./U.S.S.R. Fossil Energy Workshop Involving Department of Energy, U.S.S.R. and U.S. Industry Representatives

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Fossil Energy Workshop involving Department of Energy, U.S.S.R. and U.S. industry representatives.

SUMMARY: For the period of February 13–15, 1991, a U.S./U.S.S.R. Fossil Energy Workshop will be held to explore the respective technologies and programs in oil, gas, shale and coal development. Specific areas of interest include environmentally clean technologies and power generation plants, development of oil and gas fields including hydrocarbon resources on the Continental Shelf, and enhanced oil recovery. Programs to be discussed will include the respective utilization of coal; the prospecting, exploration and development of oil and gas fields; and the construction and operation of power facilities.

BACKGROUND: Previous fact-finding meetings and discussions in the Fossil Energy area have been held between the U.S. DOE and the U.S.S.R. Bureau of Fuels and Energy Complex (BFEC) in response to specific requests from the BFEC to consider reestablishment of formal energy cooperation. As part of early discussions, the Soviets have also proposed approximately fifty (50) projects which they have provided for U.S. consideration. A copy of these proposals is available upon request to the contact person identified below.

The fossil energy workshop will afford U.S. Government and industry an opportunity to participate in technology discussion with the Soviet Energy Sector representatives. The opening session of the workshop will be held at the Morgantown Energy Technology Center, Morgantown, West Virginia, on February 13, 1991. This session will include keynote addresses by Congressional, Soviet, DOE and U.S. industry representatives.

Workshop sessions will continue on February 14 and February 15 at both the Morgantown Energy Technology Center and the Pittsburgh Energy Technology Center in Pittsburgh, Pennsylvania. The workshop session at Morgantown will focus on oil and gas technology areas. Specific areas of discussion will include: Structure of U.S. supply and service industry; drilling completion and stimulation; enhanced oil recovery technologies; discovery and definition of resources; gas processing, transportation and distribution; shale oil recovery and use; and refining of crude oil, and financial aspects of establishing resource development projects in the U.S. and in the USSR.

The concurrent workshop at Pittsburgh will focus on coal fueled power generation and coal fuels production/oil shale utilization, such as, Magnetohydrodynamics (MHD), Integrated Gasification Combined Cycle (IGCC), Coal Combustor Development, Circulating Fluidized-Bed Combustion, Retrofits/Repowering, Flue Gas Cleanup, Hot Gas Clean-up, Heat Engines; and Coal Liquefaction (Direct and Indirect), Mild-Gasification, Coal Preparation, and Oil Shale Utilization.

The closing session of the Fossil Energy workshop will be held at Pittsburgh on February 15. To be placed on the mailing list for the detailed agenda and registration information, contact the person identified below.

FOR FURTHER INFORMATION CONTACT: L. Carol Roberson, Technology Transfer Manager, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26505, (304) 291–4308, FTS 923–4308.

Dated: January 10, 1991.

Robert H. Gentile,

Assistant Secretary, Fossil Energy.

[FR Doc. 91-1178 Filed 1-16-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-109-NG]

Catamount Natural Gas, Inc.; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 11, 1990, of an application filed by Catamount Natural Gas, Inc. (Catamount), requesting blanket authorization to import and export a combined total of 150 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year period commencing with the date of first import or export. Catamount intends to use existing facilities for the importation and exportation of gas supplies, and states that it will advise DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable. requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., February 19, 1991.

ADDRESSES: Office of Fuels Programs Fossil Energy, U.S. Department of Energy, room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:
Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington DC 20585, (202) 586–7751
Lot Cooke, Office of the Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–0503

SUPPLEMENTARY INFORMATION:
Catamount, a corporation organized under the laws of the State of Delaware, with its principal place of business located in Boston, Massachusetts, is a natural gas and petroleum marketing and trading company. Catamount requests authorizaion to import and export natural gas, including LNG, on a short-term or spot market basis for its own account, as well as for the accounts of others for which Catamount may agree to act as agent. Although Catamount is primarily interested in importing and exporting natural gas from and to Canada, it also seeks authority to import and export natural gas from and to other countries.

The proposed imports would be sold on a short-term basis to U.S. pipelines, distribution companies, marketers, and commercial and industrial end-users. The proposed export authority would enable Catamount to make natural gas available on a short-term or spot-market basis to various Canadian purchasers. In addition, the proposed authorization may be used to undertake transactions involving the initial importation of Canadian volumes to the United States and the subsequent exportation to Canadian consumers. The specific pricing terms of each import and export arrangement would be determined by competitive factors in the markets served through arms-length negotiations between Catamount and its suppliers.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and therefore in the public interest and that there is no current need for the domestic gas proposed to be exported. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments ond replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Catamount's application is available for inspection and copying in the Office of Fuels Programs Docket Room, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 10, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–1179 Filed 1–16–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearing and Appeals

Cases Filed During the Week of November 9 Through November 16, 1990

During the Week of November 9 through November 16, 1990, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of

publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 8, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 9 through November 16, 1990]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 13, 1990	David DeKok, Harrisburg, PA	LFA-0080	Appeal of an information request denial. *If Granted:* The October 25, 1990 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and David DeKok would receive access to documents pertaining to the Three Mile Island nuclear accident of March 28, 1979.
Nov. 13, 1990	Robert D. Labes, Cleveland, OH	LFA-0081	Appeal of an information request denial. *If Granted:* Robert D. Labes would receive data concerning the Free on Board prices from June 1977 through June 1985 for certain crude oil streams imported into the United States.
Nov. 13, 1990	Texaco/Gibson's Texaco, Garlund, TX	RR321-32	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The September 12, 1990 Decisions and Order (Case Nos. RF321-290 and RF321-7250) issued to Gibson's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Nov. 13, 1990	Texaco/Vince Eastside Texaco, Baton Rouge, LA	RR321-30	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The August 2, 1990 Decision and Order (Case Nos. RF321-1457 and RF321-1458) issued to Vince Eastside Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Nov. 13, 1990	Texaco/Wade Lee Grace Texaco Station, Dallas, TX	RR321-31	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The November 13, 1990 Decision and Order (Case No. RF321-1467 and RF321-5877) issued to Wade Lee Grace Texaco Station would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Nov. 14, 1990	Hanford Education Action League, Spokane, WA	LFA-0082	Appeal of an information request denial. *If Granted:* The October 25, 1990 Freedom of Information Request Denial issued by the Office of Defense Programs would be rescinded, and Hanford Education Action League would receive access to documents relating to certain activities by the U.S. Government at the Hanford facility near Richland, Washington.
Nov. 16, 1991	Los Angeles Dept. of Water & Power, Hardin, KY	RR272-59	Request for modification/rescission in the Crude Oil Refund Proceeding. *If Granted:* The October 16, 1990 Decision and Order (Case No. RF272-59) issued to the Los Angeles Department of Water & Power would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Nov. 16, 1990	The Lowry Coalition, Denver, Colorado	LFA-0083	Appeal of an information request denial. *If Granted:* The October 16, 1990 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and The Lowry Coalition would receive access to all documents regarding waste at the Lowry Landfill.

REFUND APPLICATIONS RECEIVED

[Week of November 9 through November 16, 1990]

Date received	Name of refund proceeding/name of refund application	Case number
11/9/90 thru 11/16/90	Crude oil refund applications received	RF272-84366 thru RF272-84492.
11/9/90 thru 11/16/90	Gulf oil refund applications received	RF300-13474 thru RF300-13652.
11/9/90 thru 11/16/90	Texaco refund applications received	RF321-11218 thru RF321-11430.
11/9/90 thru 11/16/90	Tesoro oil refund applications received	RF326-150 thru RF326-167.
11/9/90 thru 11/16/90	Atlantic Richfield applications received	RF304-12123 thru RF304-12144.
11/9/90	South and Primrose Shell	RF315-10082
11/9/90	Poole's Michigan Ave. Shell Inc.	RF315-10083.
11/13/90	Colonial Oil Industries, Inc.	RF313-328.
11/13/90	Don's Grocery	RF307-10163.
11/19/90	Brookfield Bus Tours, Inc.	RF307-10164.

[FR Doc. 91-1181 Filed 1-16-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals Cases Filed During the Week of November 23, Through November 30, 1990

During the Week of November 23 through November 30, 1990, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the

procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 8, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of November 23 through November 30, 1990]

Date	Name and location of applicant	Case No.	Type of submission
November 26, 1990	Morgan, Lewis & Bockius, Washington, DC	LFA-0087	Appeal of an information request denial. *If Granted:* Morgan, Lewis & Bockius would receive access to information concerning RFP No. RL 90-22 from the DOE's Richland Operations Office.
November 26, 1990	The Oak Ridger, Oak Ridge, TN	LFA-0086	Appeal of an information request Denial. *If Granted:* The 11/7/90 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and The Oak Ridger would receive access to a document entitled "Issues for Consideration Prior to Negotiations," and the excised portions of requested information.
January 28, 1990	Economic Regulatory Administration, Amarillo, TX	LRD-0004	Motion for discovery, *If Granted:* Discovery would be granted to the Economic Regulatory Administration in the Richome Oil & Gas Company proceeding concerning the financial condition of Richome and its owners.
November 28, 1990	Texaco/West End Texaco, Beaumont, TX	RR321-35	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The 8/8/90 Decision and Order (Case Nos. RF321-278, RF321-279, RF321-5405 and RF321-5406) issued to West End Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
November 28, 1990	Texaco/Kinerd's Texaco, Hardin, KY	RR321-34	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The 10/22/90 Decision and Order (Case No. RF321-1653 & RF321-5974) issued to Kinerd's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
November 29, 1990	James E. Phelps, Knoxville, TN	LFA-0088	Appeal of an information request denial. *If Granted:* The 11/7/90 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and James E. Phelps would receive access to a more complete report on the 1988 audits of the ORNL I&C Division.
November 29, 1990	Texaco/Robinson Texaco, Hardin, KY	RR321-36	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The 10/2/90 Decision and Order (Case Nos. RF321-1771 & RF321-6361) issued to Robinson Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
November 29, 1990	Texaco/Leo's Texaco Service, Sacramento, CA	FR321-37	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The 9/10/90 Decision and Order (Case No. RF321-2095 & RF321-5542) issued to Leo's Texaco Service would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
November 30, 1990	Totem Ocean Trailer Express, Inc., Washington, DC	RR272-60	Request for modification/rescission in the Crude oil refund proceeding. *If Granted:* The 11/1/90 Decision and Order (Case No. RF272-41453) issued to Totem Ocean Trailer Express, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

Refund Applications Received

Date received	Name of refund proceeding/name of refund application	Case number
11/20/89	Ever Clean Car Wash	RF304-12151.
11/20/90	Dave's Arco	RF304-12152.
11/20/90	Kelley's Service Center	RF304-12153.
11/20/90	George Brox, Inc.	RD272-78567.
11/23/90 thru 11/30/90	Crude oil refund applications received	RF272-84583 thru RF272-84685.
11/23/90 thru 11/30/90	Gulf oil refund applications received	RF300-13761 thru RF300-13911.
11/23/90 thru 11/30/90	Texaco refund applications received	RF321-11640 thru RF321-11730.
11/23/90 thru 11/30/90	Tesoro refund applications received	RF326-172 thru RF326-182.
11/27/90	Cantro Petroleum Corp.	RF225-11095.
11/28/90	Posillico Bros. Asphalt Co.	RA272-32.
11/28/90	Edson Inc.	RF315-10096.
11/28/90	Knorr's Arco Mini-Shop	RF304-12154.
11/29/90	Halliburton Company	RF304-12155.
11/29/90	Bob Shell	RF315-10097.
11/29/90	Hudson Van Oil Company	RF315-10098.
12/4/90	Angus L. Hines	RF315-10099.

[FR Doc. 91-1182 Filed 1-16-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of November 12 Through November 16, 1990

During the week of November 12 through November 16, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Carol A. Terry, 11/15/90, LFA–0074

Carol A. Terry filed an Appeal from a denial by the Department of Energy of a Request for Information which she had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that customer lists of several companies subject to special refund proceedings had been properly withheld under Exemptions 2 and 4.

Gannett News Service, 11/12/90, LFA–0073

The DOE issued a Decision and Order concerning a Freedom of Information Act Appeal filed by Gannett News Service (Gannett) on October 15, 1990. In its original request, Gannett requested the names, addresses, and generator numbers of firms that dispose of low level radioactive waste at each of the DOE's three disposal sites. The Office of Administrative Services (OAS) denied Gannett's request, claiming that it was unable to locate any responsive documents. Gannett appealed the adequacy of the search. The Authorizing Office agreed that a more thorough search was appropriate. The DOE granted Gannett's Appeal and remanded it to the OAS for another search.

Refund Applications

City of Baytown, 11/16/90, RF272–61711

The Department of Energy (DOE) issued a Decision and Order considering the crude oil refund application filed by the City of Baytown, based upon its purchases of fourteen different petroleum products. Eight of the products included in this Application were explicitly covered by the Emergency Petroleum Allocation Act. Torque fluid and hydraulic fluid were found to be types of hydraulic oil, and eligible product, and mineral spirit solution was found to be a type of mineral spirits, which is also an eligible product. In addition, it was determined that Romex MP and Varsol are brand names of lubricating oils and aliphatic solvents, both of which are eligible products. Baytown was not granted a refund based on its purchases of antifreeze because antifreeze is not refined from crude oil. Baytown was granted a refund of $2,143.

Eastland Woolen Mill, Inc., 11/14/90, RF272–3162 and RD272–3162

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Eastland Woolen Mill, Inc. based on the company's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Since the applicant was a textile manufacturer and an end-user of the products claimed, it was presumed injured. A consortium of thirty states and two territories filed a "Statement of Objections" and "Motion for Discovery" with respect to the applicant's refund claim. The DOE found that the states' filings did not refer to whether the applicant was able to pass through crude oil overcharges, but only made generalized statements regarding whether increased fuel costs could be passed through. The DOE concluded that these arguments were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to Eastland Woolen Mill, Inc. was $19,269.

Exxon Corp., Babcock & Wilcox, The Lubrizol Corp. 11/13/90, RB307–6041, RF307–8847

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was an end-user whose refund was based on its full allocable share. The sum of the refunds granted in this Decision is $12,370 ($9,237 principal plus $3,133 interest).

Exxon Corp., G&H Grocery, Bailey Bros. Auto Service, 11/13/90 RF307–5366 and RF307–8889

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to one-half of its full allocable share, since each applicant was a partner of a firm in which the remaining partner had not applied for a refund in the proceeding. The sum of the refunds granted in this Decision is $288 ($215 principal plus $73 interest).

Exxon Corp., Webber Tanks, Inc., 11/14/90, RF307–9146

The DOE issued a Decision and Order concerning an Application for Refund in the Exxon Corporation special refund proceeding filed by Webber Tanks, Inc., a reseller of petroleum products. Webber is owned in equal 50 percent shares by Dead River Petroleum Company (Dead River) and Webber Oil Company (Webber Oil), two firms that previously received medium-range presumption of injury refunds in the Exxon proceeding. In accordance with the agency's policy of treating affiliated firms as one firm for purposes of applying the presumptions of injury, the DOE decided to attribute one-half of Webber Tanks' purchases, and therefore one-half of its allocable share, to each of its two owners, and to subject these allocable shares to the 40 percent medium-range presumption of injury. One half of Webber Tanks' allocable share multiplied by 0.4 is $13,279, which was held to be the portion of Webber Tanks' refund attributable to Webber Oil. However, because the maximum medium-range refund is $50,000 and Dead River's previous refund was $40,824, the portion of Webber Tanks' refund attrtibutable to Dead River was held to be $9,176 ($50,000–$40,824). Webber Tanks therefore was granted a refund of $22,455 ($13,279 + $9,176) plus accrued interest in the amount of $7,830.

Gulf Oil Corp./Gulf Gas & Go, United Gulf, Logan Gulf, Brooklyn Gulf, 11/16/90, RF300–7255, RF300–7283, RF300–7284 and RF300–7285

The DOE issued a Decision and Order concerning Applications for Refund submitted on behalf of four service stations in the Gulf Oil Corporation special refund proceeding. The four service stations were under common ownership and control during the Gulf consent order period. However, the applicant was unable to substantiate the gallonage claims included in the four applications or to demonstrate that the stations purchased the Gulf refined petroleum products. Accordingly, because the OHA was unable to find that the applicant was injured by Gulf's alleged overcharges, the four Applications for Refund were denied.

Jim Smith Contracting Co., Inc., 11/14/90, RD272–399, and RF272–399

The Department of Energy (DOE) issued a Decision and Order granting a

refund from crude oil overcharge funds to Jim Smith Contracting Co., Inc. based on its purchases of 36,603,853 gallons of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant was an end-user of the products it claimed for a refund and was therefore presumed injured. However, the total gallonage claimed by Smith in the original application was reduced by 669,773 gallons because Smith indicated that these purchases were affected by price escalation clauses. A consortium of states and territories of the United States filed a Statement of Objections and Motion for Discovery with respect to the applicant. The DOE found that this filing was insufficient to rebut the presumption of injury for end-users and the Motion for Discovery was denied. The total refund granted was $29,283.

Potter Paint Co., Inc., 11/15/90, RF272–56496

The DOE issued a Decisioin and Order granting an Application for Refund filed by Potter Paint Co., Inc., in the subpart V crude oil special refund proceeding. The Applicant is a manufacturer of industrial paints and thinners and based its refund claim on the purchases of many different refined products. The DOE determined that the products solvesso #100 and #150, vmp naphtha, toluene, mineral spirits, xylene, naphtha, isopar H, heavy aromatic naphtha, and heptane are covered products. The products isobutyl isobutyrate, butyl cellosolve, n butyl alcohol, methyl isoamyl ketone, butyl acetate, isopropyl alcohol, methyl isobutyl ketone, acetone, diacetone alcohol, methyl ethyl ketone, methylene chloride, chlorothene nu, and cellosolve acetate were determined to be ineligible, because they were too remote from crude oil or because they were finished petrochemicals.

Premium Gas Service, Inc., 11/16/90, RF272–19944

The DOE issued a Decision and Order considering an Application for Refund filed by Premium Gas Service, Inc. (Premium), in the subpart V crude oil special refund proceeding. The Applicant, a reseller of petroleum products, attempted to prove injury by submitting cost bank records. The DOE determined that the information provided failed to demonstrate that Premium was unable to pass through the crude oil overcharges as a result of the generally higher market prices which followed these cost increases. Accordingly, the Application was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Company/Blue Flame Gas Co., Inc., *et al.*	RF304-0010	11/16/90
Atlantic Richfield Company/Dennis Thompson *et al.*	RF304-2409	11/15/90
Atlantic Richfield Company/Pollard's Arco Service *et al.*	RF304-4002	11/14/90
Atlantic Richfield Company/Rocky Fork Truck Stop *et al.*	RF304-88094	11/16/90
Atlantic Richfield Company/South Shore Arco *et al.*	RF304-3901	11/13/90
City of Jetmore *et al*	RF272-26131	11/16/90
Exxon Corporation/ T.L. James & Co., Inc.	RF307-10162	11/14/90
Gulf Oil Corp./ Battlefield Trading Post Gulf *et al.*	RF300-11032	11/16/90
Gulf Oil Corp./Hinder Gulf Service *et al.*	RF300-8847	11/14/90
J.D. Abrams, Inc. *et al.*	RF272-24494	11/14/90
Murphy Oil Corp./ Mark Oil, Inc.	RF309-487	11/14/90
Olin Corporation	RF309-568	
Shell Oil Company/ Kellogg-Moore Oil Co., Inc. *et al.*	RF315-6050	11/16/90
Shell Oil Company/ Lykes Bros. Steamship Co., Inc. *et al.*	RF315-5206	11/15/90
Shell Oil Company/ Pelke Shell *et al.*	RF315-2104	11/13/90
Shell Oil Company/ People's Oil and Gas Company *et al.*	RF315-5278	11/13/90
Shell Oil Company/ RYF Oil Company *et al.*	RF315-5275	11/13/90
State of Texas	RF272-67313	11/14/90
Stevens Oil Company, Inc..	RF272-62309	11/16/90
Hometown Oil Company, Inc.	RF272-62528	
Texaco Inc./Bob's Texaco Service *et al.*	RF321-4	11/16/90
Texaco Inc./John Lovelace Texaco.	RF321-11125	11/14/90
Tran-Star Trucking, Inc.	RA272-28	11/15/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Bradley Bourbonnais C HS D	RF272-81406
Dudley Miller	RF321-5177
Lancaster County Public Schools	RF272-80459
Madison District Public Schools	RF272-82351
Olympic Fuel, Inc.	RF315-356
Sandwich School District	RF272-81801
Texas Dept. of Public Safety	RF321-3281
Timothy H. Miller	RF321-8305
University of Arizona Garage/ Motor Pool.	RF321-3967
White's Exxon	RF307-8751
Winter Park Recreation Assn.	RF272-70316
Zinn Petroleum Company	KEE-0173

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m, except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 8, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91–1183 Filed 1–16–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180838; FRL 3874–2]

Receipt of Application for Emergency Exemption To Use Benomyl; Solicitation of Public Comment

AGENCY: Environmental Protection Agency(EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Kentucky Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide benomyl (CAS 17804–35–2) to control Sclerotinia stem rot on up to 15,000 acres of canola in Kentucky. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 1, 1991.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180838," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway,

Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–4360).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide, benomyl, available as Benlate 50DF (EPA Reg. No. 352–447) from E. I. du Pont de Nemours Co., to control Sclerotinia stem rot, caused by *Sclerotinia sclerotiorum*, on up to 15,000 acres of canola in Kentucky. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, Sclerotinia has a broad host range, including weed hosts and vegetable crops, which are commonly grown in rotation with canola. The fungus produces hard resting structures, sclerotia, that live from four to six years in the soil. Short rotations of susceptible crops have resulted in a buildup of Sclerotinia in the soil, which can result in a severe stem rot outbreak if weather during the two weeks prior to flowering (usually mid to late April) is cool and wet. Under these conditions, the sclerotia germinate, producing small mushroom-like fruiting bodies, known as apothecia, that release millions of airborne spores, which infect the canola blossoms.

According to the Applicant, there are no pesticides currently registered for the control of Sclerotinia stem rot on canola in the United States, and without an effective control, yield losses of up to sixty percent could result if stem rot outbreaks occur this season. The potential dollar loss without benomyl during the 1991 season could approach $1 million.

A single ground or aerial application of benomyl will be applied at a maximum rate of 0.75 pounds of active ingredient per acre. Ground applications will be made in ten to twelve gallons of water per acre. Aerial applications will be made using five gallons of water per acre. A maximum of 11,250 pounds of active ingredient may be needed to treat a maximum of 15,000 acres. Applications will be completed by June 1, 1991.

Benomyl was referred to Special Review in December of 1977 because of its mutagenic, teratogenic, spermatogenic, and acute aquatic effects. The Special Review process was completed on October 20, 1982, and the decision was made to require use of either cloth or commercially available disposable dust masks by mixer/loaders of benomyl intended for aerial application and to require that registrants of benomyl products conduct field monitoring studies to identify residues that may enter aquatic sites after use on rice. Registrants completed the field monitoring study and submitted it to the Agency in November of 1984. The study was determined to be inadequate and a new study was required by the Registration Standard issued in June of 1987.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review (40 CFR 166.24 (a)(5)).

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Kentucky Department of Agriculture.

Dated: January 10, 1991

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–1142 Filed 1–16–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180839; FRL 3874–1]

Receipt of Application for Emergency Exemption to Use Fenpropathrin; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arizona Office of the State Chemist (hereafter referred to as the "Applicant") for use of the pesticide fenpropathrin (Danitol) (CAS 39515–41–8) to control citrus thrips (Scirtothrips citri) on up to 30,000 acres of citrus in Yuma County, Pinal County, and the portion of Maricopa County south of Baseline Road. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 1, 1991.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180839," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–4359).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the insecticide, fenpropathrin, manufactured as Danitol 2 EC, by Valent U.S.A. Corporation, to control citrus thrips, on up to 30,000 acres of citrus. Information in accordance with 40 CFR part 166 was submitted as part of this request. The Applicant indicates that over the last few years many citrus growers have experienced increasing difficulty in controlling citrus thrips and have suffered significant economic losses. An emergency situation has been created primarily by the development of resistance in the thrips population to dimethoate and formetanate hydrochloride which previously were effective in controlling citrus thrips. Avermectin has become available and is the only registered material to which thrips lack resistance. Citrus growers fear that if avermectin is used alone, avermectin will soon become as ineffective as the old compounds. The other available insecticides have little effectiveness against the thrips, and generally cause more acute side effects on beneficial organisms.

The Applicant is requesting the use of fenpropathrin to provide a different mode of action from avermectin, dimethoate, and formetanate hydrochloride, which can be used in rotation to preserve their efficacy. In addition to the resistance problem, there has been a persistent problem with bee kills associated with the production of citrus. The bee kills arises from the fact that fields of vegetables being grown for seed are intermingled with the citrus orchards. These vegetable seed crops require bees for pollination at the same time that citrus are in bloom. Citrus bloom is highly attractive to bees and has created a hazardous situation for bees in the area. The Applicant submitted data showing that limiting applications of fenpropathrin to citrus in the slot from one hour after sunset to three hours before sunrise will reduce bee mortality to a minimum.

Danitol will be applied by ground at a maximum rate of 16 fluid ounces of product (0.3 pounds active ingredient) per acre. A maximum of two applications, a minimum of 30-days apart, may be made per growing season. A second application of Danitol is prohibited unless a non-pyrethroid insecticide appropriately labeled to control citrus thrips has been applied since the first application of Danitol in the current growing season. A 14-day preharvest interval will be observed. This is the second year that the Applicant has requested this use of fenpropathrin. The Applicant was granted a specific exemption for this use on March 23, 1990. The exemption expired on June 15, 1990. The Applicant indicates that the use of fenpropathrin on citrus for managing citrus thrips populations was very successful.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing the first food use of an active ingredient. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arizona State Chemist.

Dated: January 10, 1991

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–1141 Filed 1–16–91; 8:45 am]

BILLING CODE 6560–50–F

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.: 203–009976–008.

Title: Mediterranean Associated Conferences Agreement.

Parties:

Greece Westbound Conference
Mediterranean/North Pacific Coast Freight Conference
South Europe/U.S.A. Freight Conference

Synopsis: The proposed amendment would add the Mediterranean/Puerto Rican Conference and the Turkey/U.S. Atlantic and Gulf Rate Agreement as parties to the Agreement. It would also amend the Agreement by incorporating the geographic scope served by these two Conferences. It would also make other nonsubstantive changes.

Agreement No.: 203–011075–014.

Title: Central America Discussion Agreement.

Parties:

United States/Central America Liner Association
Nexos Line, Inc.
Nordana Line, Inc.
Concorde Shipping, Inc.
Tropical Shipping and Construction Co. Ltd.
Central America Shippers, Inc.
Naviera Consolidada S.A.
Empresa Naviera Santa
Thompson Shipping Co., Ltd.
Norwegian American Enterprises, Inc.

Synopsis: The proposed amendment would add Great White Fleet, Ltd. as a party to the Agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: January 11, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–1106 Filed 1–16–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers

or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 122490 AND 123190

Name of acquiring person, name of acquired person, name of acquired entity,	PMN Number	Date Terminated
LASMO plc, Phillips Petroleum Company, Phillips Natural Gas Company and Phillips 66 Natural	91-0232	12/24/90
Tele-Communications, Inc., Liberty Media Corporation, Liberty Media Corporation	91-0263	12/24/90
Sears, Roebuck and Co., The Mutual Life Insurance Company of New York, U.S. 1 & Bristol Associates	91-0268	12/24/90
Pennsylvania Blue Shield, "BlueCo", "BlueCo"	91-0282	12/24/90
Independence Blue Cross, "BlueCo", "BlueCo"	91-0283	12/24/90
Kansas City Southern Industries, Inc., Policyholder Service Corporation, Policyholder Service Corporation	91-0322	12/24/90
WICOR, Inc., Alcpex Holdings, Inc., Polaris Pool Systems, Inc	91-0332	12/24/90
Atlantic Richfield Company, Oryx Energy Company, Sun Operating Limited Partnership	91-0353	12/24/90
Gold Kist, Inc., Campbell Soup Company, Campbell Soup Company and Herider Farms, Inc	91-0365	12/24/90
Amerada Hess Corporation, Oryx Energy Company, Sun Operating Limited Partnership	91-0390	12/24/90
Agway Inc., AgriMark, Inc., AgriMark, Inc	91-0304	12/26/90
Forest Laboratories, Inc., Rhone-Poulenc, S.A., Rhone-Poulenc Rorer, Inc	91-0334	12/26/90
ISS International Service System A/S, Aktiebolaget Electrolux, Swan Services, Inc	91-0386	12/26/90
Acadia Partners, L.P., The Kapaco Group, Inc., Detroit River Paper Company	91-0394	12/26/90
Melvin Simon, Provident Life & Accident Insurance Company of America, The Anderson Mall Shopping Center Company	91-0399	12/26/90
Melvin Simon, Melvin Simon, The Anderson Mall Shopping Center Company	91-0400	12/26/90
General Motors Corporation, Vincent A. Wasik, National Car Rental System, Inc	91-0327	12/27/90
General Motors Corporation, Marc E. Berson, National Car Rental System, Inc	91-0328	12/27/90
James Hardie Industries Limited, The Black & Decker Corporation, GardenAmerica Corporation	91-0064	12/28/90
Capricorn Investors, L.P., Mr. Ralph R. Feuerring, Ralstan Trading and Development Corporation	91-0384	12/28/90
Merrill Lynch & Co., Inc., Monarch Capital Corporation, Monarch Life Insurance Company	91-0401	12/28/90
Contel Corporation, Alltel Corporation, Alltel Mobile Communications Inc	91-0410	12/28/90
Tyler Corporation, Jill and Arnold Bellowe, Forest City Auto Parts Co., South Main Auto Parts, Inc	91-0414	12/28/90
Corporate Property Investors, Edward J. DeBartolo, Ocean County Mall, Inc	91-0417	12/28/90
Gary L. Voss, Atlantis Group, Inc., Western Pioneer Insurance Company	91-0324	12/30/90
The Kassar Family Trust, The Kassar Family Trust, The Vista Organization Partnership, L.P	91-0372	12/31/90
Primerica Corporation, MNC Financial, Inc., Landmark Financial Services, Inc	91-0413	12/31/90
Nestle S.A., May-Wash Associates L.P., May-Wash Associates L.P	91-0415	12/31/90
Trivest Institutional Fund, Ltd., Atlantis Group, Inc., Loewenstein, Inc., Southern Wood Products, Inc	91-0406	01/02/91
Norwest Corporation, Shawmut National Corporation, Shawmut Bank, N.A. and Connecticut National Bank	91-0408	01/02/91

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-1144 Filed 1-16-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 901 0089]

Kreepy Krauly USA, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, amont other things, a Florida manufacturer of automatic swimming pool cleaning devices from engaging in or enforcing any agreement with any dealer to establish or maintain resale prices in the future. The consent would require the respondent to descind the paragraph of its dealer agreements that requires dealers to agree to maintain resale prices, to refrain from maintaining resale prices, and to allow dealers to determine their own selling prices.

DATES: Comments must be received on or before March 18, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Karen Mills, FTC/S-2308, Washington, DC 20580. (202) 326-2052.

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

The Federal Trade Commission having initiated an investigation of certain acts and practices of Kreepy Krauly, USA, Inc., a corporation, hereinafter sometimes referred to as proposed respondent or "Kreepy Krauly", and it now appearing that Kreepy Krauly is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is Hereby agreed by and between Kreepy Krauly, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondnet Kreepy Krauly, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 13801 NW. 4th St., in the City of Sunrise, State of Florida.

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

3. Proposed respondent waives:

(a) Any further procedural steps;

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

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

(d) Any claim under the Equal Access to Justice Act.

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

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

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, and Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

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

Order

I

For proposes of this order, the following definitions shall apply:

(1) *Kreepy Krauly* or *respondent* means Kreepy Krauly, USA, Inc., its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Kreepy Krauly USA, Inc., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(2) *Product* means any swimming pool cleaning device or part for such device.

(3) *Dealer* means any person, partnership or corporation, not owned by Kreepy Krauly, that sells any product in the course of its business.

(4) *Resale price* means any price, price floor, price ceiling, price range, or any mark-up, formula, margin of profit, or any other technique for pricing any product at retail. Such term includes, but is not limited to, any suggested, established, or customary resale price as well as the retail price at any dealer.

II

It is ordered That respondent Kreepy Krauly, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the manufacture, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, attempting to enter into, maintaining, or attempting to enforce any agreements with any dealer fixing, establishing, controlling or maintaining, directly or indirectly, the resale price at which any dealer may sell any product, or otherwise coercing or requiring any dealer to maintain or adhere to any resale price.

III

It is further ordered That, for a period of five years from the date on which this order becomes final, respondent Kreepy Krauly shall clearly and conspicuously state the following on each page of any list, advertising, book, catalogue or promotional material where respondent has suggested any resale price to any dealer:

ALTHOUGH KREEPY MAY SUGGEST RESALE PRICES FOR PRODUCTS, DEALER IS FREE TO DETERMINE ON ITS OWN THE PRICES AT WHICH IT WILL SELL THE PRODUCTS.

IV

It is further ordered That respondent do forthwith cease and desist from including in dealer agreements paragraph III.D. and the reference to paragraph III.D. in paragraph VIII.B.3., and shall, within thirty days from the date on which this order becomes final, by sending to dealers the letter attached as exhibit A, cancel, rescind, and sever paragraph III.D. of each of respondent's dealer agreements, and the reference to paragraph III.D. in paragraph VIII.B.3. of each of respondent's dealer agreements.

V

It is further ordered That within thirty days of the date on which this order becomes final, respondent shall mail a copy of the letter attached as exhibit A, together with a copy of this order, to all of respondent's present dealers, to all present officers and sales personnel of respondent, and to all distributors of respondent.

VI

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

VII

It is further ordered That respondent shall within sixty days from the date on which this order becomes final, and annually thereafter for five years on the anniversary date of this order, file with

the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order.

Dear Retailer:

Kreepy Krauly USA, Inc. ("Kreepy Krauly") has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain pricing practices. A copy of the Order is enclosed herewith.

The Order specifies that you are free to make your own determination as to the price at which you sell our products. Kreepy Krauly may not take any action to coerce you to maintain or adhere to the suggested retail price or any resale price or price level. In addition, Paragraph III.D. of the Kreepy Krauly Dealer Agreement is hereby cancelled and rescinded.

Should you have any questions concerning this letter or the enclosed Order, please feel free to contact me.

Sincerely,

Ted Mignone,

Executive Vice President, Kreepy Krauly USA, Inc.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Kreepy Krauly USA, Inc.

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

The complaint alleges that Kreepy Krauly USA, Inc., a manufacturer of automatic swimming pool cleaning devices, entered into written agreements with dealers to maintain resale prices, which violate section 5 of the Federal Trade Commission Act. The written dealer agreements commit dealers to use their best efforts to maintain the manufacturer's suggested retail prices.

Kreepy Krauly USA, Inc. has signed a proposed consent agreement that requires it to rescind the paragraph of its dealer agreements that requires dealers to agree to maintain resale prices, and to cease including that paragraph in dealer agreements. The proposed consent order requires Kreepy Krauly USA, Inc. to refrain from entering into, attempting to enter into, maintaining, or attempting to enforce agreements with dealers to maintain resale prices, or coercing dealers to maintain or adhere to any resale price. The proposed consent order requires Kreepy Krauly USA, Inc. to notify its current dealers, its distributors and sales personnel of its dealers' right to set their own prices independently. For a five year period of time, the proposed order requires Kreepy Krauly USA, Inc. to state on any suggested price lists that the prices are suggested only and that dealers are free to determine their own selling price, so that dealers will not be confused about the significance of suggested retail prices.

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

Donald S. Clark,

Secretary.

[FR Doc. 91-1145 Filed 1-16-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Reassessment of Medical Technology

The Public Health Service (PHS), Agency for Health Care Policy and Research (AHCPR), through its Office of Health Technology Assessment (OHTA), announces that it is coordinating a *reassessment of cardiac output monitoring by electrical bioimpedance.*

Specifically, AHCPR is interested in:

1. The accuracy of bioimpedance measurements and how the measurements of electrical bioimpedance compare to the measurements of thermodilution, and other methods of measuring cardiac output;

2. The clinical utility of electrical bioimpedance; and

3. The appropriateness of measuring cardiac output on an outpatient basis.

The PHS assessment consists of a synthesis of published literature and information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are conducted in accordance with section 904(b) of the PHS Act (42 U.S.C. 299a-2(b)). Based on the assessment, a PHS recommendation will be formulated, pursuant to 904(d) of the PHS Act, to assist the Health Care Financing Administration (HCFA) in establishing coverage policy. The information being sought by this notice is a review and assessment of past, current, and planned research related to electrical bioimpedance, as well as a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characteristics of the patient population most likely to benefit from cardiac output measurements by electrical bioimpedance, as well as information on the clinical acceptability, the effectiveness, and the extent of use of this technology, is also being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than April 29, 1991, or within 90 days from the date of publication of this notice.

To enable the interested scientific community to evaluate the information relied upon in the formulation of its assessment, OHTA will discuss in the assessment only that data and analysis for which it can cite the source(s). Respondents therefore are encouraged to include with their submission a written consent permitting OHTA to cite the source of the data and comments provided. Otherwise, in accordance with the confidentiality statute governing information collected by AHCPR, 42 U.S.C. 299a-1(c), no information received will be published or disclosed which could identify any individual described in the information or supplying it.

Written material should be submitted to: Director, Office of Health Technology Assessment, 5600 Fishers Lane, room 18-40, Rockville, MD 20857, (301) 443-4990.

Dated: January 10, 1991.

J. Jarrett Clinton,

Assistant Surgeon General, Acting Administrator.

[FR Doc. 91-1086 Filed 1-16-91; 8:45 am]

BILLING CODE 4160-90-M

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS) Work Group on Community Health Statistics: Cancellation of Meeting

This notice announces the cancellation of a previously announced meeting.

Federal Register Citation of Previous Announcement: 55 FR 53056-53057, December 26, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE: 8:30 a.m.-5 p.m. January 17, 1991

CHANGE IN THE MEETING: This meeting has been cancelled.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, room 1100, Presidential Building, 6525 Belcrest

Road, Hyattsville, Maryland 20782, telephone 301/436–7050 or FTS 436–7050.

Dated: January 14, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–1259 Filed 1–15–91; 10:51 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Allergenic Products Advisory Committee

Date, time, and place. February 4, 1991, 8 a.m., Holiday Inn Crowne Plaza, Plaza I, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Introduction and orientation, 8 a.m. to 9:15 a.m.; open public hearing, 9:15 a.m. to 10:15 a.m., unless public participation does not last that long; open committee discussion, 10:15 a.m. to 5 p.m. Gretchen Hascall, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695. A meeting agenda and list of committee members will be available upon request.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 30, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approxmate time required to make their comments.

Open committee discussion. The committee will discuss: (1) Standardization procedures for allergenic extracts, (2) implementation of potency testing of allergenic extracts, (3) status of standardization of mite extracts, (4) status of standardization of grass extracts, (5) status of standardization of cat extracts, (6) labeling of standardized extracts, (7) introduction of standardized extracts into practice, (8) status of patch test allergens, and (9) use of perchlorethylene in manufacture of pollen extracts.

Drug Abuse Advisory Committee

Date, time, and place. February 4 and 5, 1991, 9 a.m. to 5 p.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 4, 1991, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, February 5, 1991, 9 a.m. to 5 p.m.; Khairy W. Malek, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0335.

General function of the committee. The committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 28, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 4, 1991, the committee will discuss: (1) The status of dezocine (Dalgan® injection, Astra) postmarketing surveillance to target abuse and diversion; (2) the abuse liability of Stadol® (butorphanol tartrate) nasal spray, new drug application 19–890, Bristol-Myers Squibb Co.; and (3) general procedures for filing investigational new drug applications and amendments. On February 5, 1991, the committee will discuss the status of guideline development to assess abuse liability of drugs and the status of guideline development for medications to treat drug dependence and abuse which includes review of the National Institute on Drug Abuse studies related to preclinical and phase I issues.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. February 8, 1991, 9 a.m., Conferences rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 25, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a proposal to improve patient package insert instructions for taking oral contraceptives.

Antiviral Drugs Advisory Committee

Date, time, and place. February 13 and 14, 1991, 8:30 a.m., Holiday Inn Crowne Plaza, Plaza II, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 13, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; February 14, 8:30 a.m. to 4:30 p.m. Gretchen Hascall, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695. A meeting agenda and list of committee members will be available upon request.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immunodeficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 8, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 13, 1991, the committee will discuss endpoints in AIDS trails: The role of CD4 and other laboratory markers as indicators of clinical benefit. On February 14, 1991, the committee will discuss the followup of trials that supported approval of zidovudine in patients with moderately symptomatic and asymptomatic disease.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 10, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–1088 Filed 1–16–91; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Boston District Office, chaired by Edward J. McDonnell, District Director. The topic to be discussed is food labeling.

DATES: Friday, February 8, 1991, 10 a.m. to 11:30 a.m.

ADDRESSES: Cooperative Extension Center, 70 Pierce St., East Greenwich, RI 02818.

FOR FURTHER INFORMATION CONTACT: Paula B. Fairfield, or Joseph Raulinaitis, Consumer Affairs Officers, Food and Drug Administration, One Montvale Ave., Stoneham, MA 02180, 617–279–1479.

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: January 10, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–1087 Filed 1–16–91; 8:45 am]

BILLING CODE 4160–01–M

Indian Health Service

Tribal Management Grant Program for American Indians/Alaska Natives; Technical Assistance Workshop Announcement

AGENCY: Indian Health Service, HHS.

ACTION: Change of Dates and Locations of Technical Assistance Workshops.

SUMMARY: The Indian Health Service (IHS) announces that dates and locations for some of the technical assistance workshops for the Tribal Management Grant Program announced in the **Federal Register** on December 13, 1990, 55 FR 51343, have been changed.

DATES: Technical assistance workshops scheduled for January 15–17, 1991, in Sioux Falls, South Dakota; and January 29–31, 1991, in Billings, Montana, are cancelled and rescheduled for February 5–7, 1991, in Denver, Colorado.

Note: Technical assistance workshops scheduled January 15–17, 1991, in

Albuquerque, New Mexico; and January 29–31, 1991, in San Francisco, California will be conducted as scheduled.

FOR FURTHER INFORMATION CONTACT: Bea Bowman, Director, Division of Community Services, Office of Tribal Activities, Room 6A–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6840; M. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grants Operations, Suite 6–03, 2101 E. Jefferson, Maxima Building, Rockville, Maryland 20852, (301) 443–5204. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Office of Tribal Activities, Division of Community Services; and Division of Acquisition and Grants Operations, Grants Management Branch will provide potential applicants an opportunity to receive technical assistance for Tribal Management including participation in grant writing workshops to assist applicants in developing and submitting competitive proposals. The purpose is to: (a) Establish communication between the IHS and the applicants, (b) determine the applicants eligibility, and (c) to provide technical assistance to increase the ability of an applicant to successfully compete. Applicants will prepare preapplications for constructive review and feedback during the workshop.

Dated: January 11, 1991.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 91–1116 Filed 1–16–91; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health

Alcohol, Drug Abuse and Mental Health Administration

Availability of Training Fellowships Under the Intramural Research Training Award (IRTA) Program

AGENCY: National Institutes of Health and Alcohol, Drug Abuse and Mental Health Administration, PHS, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) and the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) announce the availability of training fellowships under the Intramural Research Training Award (IRTA) Program, created pursuant to section 405(b)(1)(C) of the Public Health Service (PHS) Act (42 U.S.C. 284(b)(1)(C)), section 484 of the PHS Act (42 U.S.C. 287c–1), and section 501 of the PHS Act (42 U.S.C. 290aa). Women and minorities are encouraged to apply.

FOR FURTHER INFORMATION CONTACT: Office of Education, National Institutes of Health, Building 10, room 1C129, 9000 Rockville Pike, Bethesda, Maryland 20892, Telephone (301) 496–2427.

SUPPLEMENTARY INFORMATION: The IRTA Program is designed to provide opportunities for developmental training and practical research experience in laboratories of the NIH, and laboratories of the National Institute of Mental Health (NIMH) and the National Institute on Alcohol Abuse and Alcoholism (NIAAA), as components of ADAMHA.

Training fellowships are available to postdoctoral scientists at the beginning stages of their professional research careers, and to high school, college, graduate and professional (e.g., medical, dental, etc.) school students pursuing studies in academic disciplines related to biomedical research. Candidates must be U.S. citizens, noncitizen nationals of the United States, or individuals lawfully admitted for permanent residence in the U.S. Applicants may not be excluded from consideration for the IRTA Program on the basis of race, color, religion, sex, handicap, age, national origin, political affiliation, or any other nonmerit factor. IRTA Fellowship awards are granted subject to the availability of funds. Recipients are not Federal employees.

Fellowship awards are granted in the following three categories:

Postdoctoral IRTA Fellowship Awards

Postdoctoral Fellowships are awarded to promising physicians and Ph.D. level investigators, to enhance their research capabilities in the early postdoctoral stage of their careers. Postdoctoral Fellowships may be awarded to individuals with Ph.D., M.D., D.D.S., D.M.D., D.V.M., or equivalent degrees, and three years or less of relevant postdoctoral research experience. Awards are made initially for one or two years, and may be renewed in one-year increments up to a maximum of three years in the Program. The initial stipend is $25,000 per annum for investigators with less than one year of postdoctoral experience, $26,500 for investigators with one to two years of postdoctoral experience, and $28,000 for investigators with two to three years of postdoctoral experience.

Predoctoral IRTA Fellowship Awards

Predoctoral Fellowships are awarded to students enrilled in Ph.D., M.D., D.D.S., D.M.D., D.V.M., or equivalent degree programs at fully accredited U.S. universities. Predoctoral Fellowships are designed to support a period of full-time research training in NIH, NIMH, and NIAAA laboratories, undertaken as an integral part of participants' academic programs. Awards are generally granted for the purpose of developing and writing a thesis in an NIH, NIMH, or NIAAA intramural laboratory. For students pursuing a degree for which a thesis is not required (e.g., M.D., D.V.M., etc.), a full-time training program in biomedical research will be designed.

Students must be admitted to graduate or professional school and be a doctoral degree candidate before they can be considered. Normally, most students will have completed their first year of graduate course work before beginning the Program. Written agreement from the school is required. IRTA awards are not intended as grants to support academic training, and Predoctoral IRTA Fellows are expected to devote full-time to their NIH training assignments and to pay any university tuition, fees, or other costs themselves.

Predoctoral awards are made initially for one or two years, and may be renewed in one-year increments. The maximum duration is normally three years or until students receive their doctoral degree, whichever comes first. In individual cases, renewals beyond three years may be approved provided the student is making reasonable and acceptable progress towards obtaining the doctoral degree.

Per annum stipends are paid to participants based on the number of years of post-baccalaureate education: $12,000 for one year or less post-baccalaureate education; $13,000 for one to two years post-baccalaureate education; $14,000 for 2 to 3 years post-baccalaureate education; $15,000 for 3 to 4 years post-baccalaureate education; $16,000 for 4 to 5 years post-baccalaureate education; and $17,000 for more than 5 years post-baccalaureate education.

Summer IRTA Fellowship Awards

Summer IRTA Fellowships are awarded to promising high school, undergraduate, graduate, or professional (e.g., medical, dental, etc.) school students who have a strong interest or are pursuing studies in biomedical disciplines. Research training activities are designed to supplement and give practical meaning to students' academic course work. Students must be at least 16 years old, in good academic standing, and enrolled at least half-time in a degree granting program.

Fellowships begin between May 1 and June 30 of the given year, and must end

by September 30. Participants are paid a monthly stipend, based on the amount of education completed at the time the Fellowship begins. Rates are: $800 per month before high school graduation and $900 after graduation; $1,000 after completion of one undergraduate year of college, $1,100 after two years, and $1,200 after three years; and $1,400 with a bachelor's degree and less than one year of graduate education, $1,600 after one graduate year of education, $1,800 after two years, and $2,000 after three years.

How to Apply

Interested persons may apply directly to a specific NIH research institute, to NIMH, or to NIAAA, or to the Office of Education, Building 10, Room 1C129, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, for concurrent referral to all research institutes (including NIMH and NIAAA) having possible interest. Interested individuals may apply at any time by submitting the following:

Applicants for Predoctoral and Postdoctoral Fellowship Awards

—Curriculum Vitae
—Bibliography
—Three letters of reference emphasizing research potential
—Applicant's statement of research goals and type and purpose of training desired
—Official copy of graduate or medical school transcripts
—For Predoctoral Fellowship applicants, verification from the university that the applicant is in good academic standing, is enrolled in a doctoral degree program, and that the university agrees to the applicant's participation in the IRTA Program
—For Postdoctoral Fellowship applicants, official copy of the doctoral degree
—Brief summary of doctoral dissertation, if applicable

Applicants For Summer Fellowship Awards

—Curriculum Vitae
—Bibliography (if applicable)
—Two letters of reference from school officials having direct knowledge of the applicant's scientific interest and abilities
—Applicant's statement describing future academic plans, interest in biomedical sciences, and reasons for seeking an NIH Summer IRTA Fellowship
—Information on honors and achievements (both academic and nonacademic), hobbies and outside interests
—Official school transcript or list of courses, including grade point average
—Verification from the school that the applicant is in good academic standing and is or will be enrolled at least half-time in a degree granting program

This information must be submitted in order to receive due consideration for an award and will be used to determine the eligibility and quality of potential awardees. The requested information will be available only to NIH and ADAMHA program officials unless otherwise required by law. The information collection requirements associated with the IRTA Program have been approved by the Office of Management and Budget (OMB) under the requirements of 5 CFR 1320, and assigned OMB #0925–0299.

Dated: August 14, 1990.

J.E. Rall,

Acting Director, NIH.

Dated: November 13, 1990.

Frederick K. Goodwin,

Administrator, ADAMHA.

[FR Doc. 91–1159 Filed 1–16–91; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the End-Stage Renal Disease Data Advisory Committee on February 1, 1991, Building 31, Conference room 9, National Institutes of Health, Bethesda, Maryland, which was published in the **Federal Register** on December 18, (55 FR 51964).

The meeting was cancelled due to complications of other commitments of several members of the committee and will be rescheduled at a later date.

Dated: January 11, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–1158 Filed 1–16–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–91–4130–09–2519]

Elko District; Availability of Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft environmental impact statement on the Betze Mining Plan-of-development in northeastern Nevada.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior has prepared, by a third party contractor, a draft environmental impact statement (EIS) on the Betze plan-of-development in Northeastern Nevada, and has made copies of the document available for public review.

The draft EIS analyzes the environmental impacts that would result from the expansion of an existing open pit mining operation and the alternatives to that project.

DATES: Written comments on the draft EIS will be accepted until March 11, 1991. Public meetings to accept oral and written comments have been scheduled for the following dates, places, and times: a. February 27th in Elko in the Bureau of Land Management District Office; 7 p.m.–9 p.m. b. February 28th in Reno at the Holiday Inn on 1000 E. Sixth Street; 7 p.m.–9 p.m.

ADDRESSES: A copy of the draft EIS and associated Technical Reports (Air Quality, Socioeconomic, and Water Resources) can be obtained from: District Manager, Bureau of Land Management, ATTN: Betze Coordinator, P.O. Box 831, Elko, NV 89801.

The draft EIS is available for inspection at the following locations: BLM State Office (Reno), Carson City, Ely, and Elko County Libraries, and the University of Nevada libraries in Reno and Las Vegas.

Written responses may be sent to the above address on or before closing on March 11, 1991.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Nick Rieger at (702) 738–4071.

Dated: January 10, 1991.

Fred Wolf,

Acting State Director, Nevada.

[FR Doc. 91–1103 Filed 1–16–91; 8:45 am]

BILLING CODE 4310–HC–M

[ES–030–1–4212–18]

Public Lands in Minnesota Determined Eligible for Transfer to the State of Minnesota Pursuant to Minnesota Public Lands Improvement Act of 1990

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Public notice relative to filing claims of ownership.

SUMMARY: Notice is hereby given that certain public lands located in Minnesota have been determined to be eligible for transfer to the State of Minnesota. Transfer will be pursuant to the Minnesota Public Lands Improvement Act of 1990 (104 Stat. 1019, Pub. L. 101–442) (Act) which grants certain specified unclaimed islands and uplands and certain other public lands to the State of Minnesota for the purposes of public recreation, protection of fish, wildlife, and plants, and the protection of resources and values. It also authorizes the Secretary of the Interior (Secretary) to resolve claims of ownership of non-mineral interests in certain other public lands in Minnesota and to transfer such lands to claimants thereof on terms that recognize the equities of such claimants in such lands.

The public lands (89 islands) which were withdrawn by the Shipstead-Nolan Act of July 10, 1930 located in northeast Minnesota will not be transferred by Public Law 101–442. These public lands include 65 islands in Lake Vermilion, 4 islands each in Elbow and Blackduck Lakes, 3 islands in Kabetogama Lake, 3 islands in the Pigeon River, 2 islands each in Susan, Ban, Long and Chub Lakes, and 1 island each in Kjostad and Tom Lakes.

The purpose of this public notice is twofold: (1) To notify residents of the State of Minnesota as to the location of the public lands to be granted or otherwise transferred to Minnesota under the Minnesota Public Lands Improvement Act of 1990 (Act), and (2) to identify any person(s) who has a claim of ownership of the non-mineral interests in the identified public lands.

A list of the public lands by County, number of parcels, and total acreage follows:

County	No. of parcels	Acres
Aitkin	34	44.18
Anoka	7	1.50
Becker	65	139.51
Beltrami	3	1.11
Benton	9	36.11
Big Stone	7	9.00
Blue Earth	1	16.60
Brown	1	0.02
Carlton	20	184.59
Carver	1	0.04
Cass	44	76.97
Chisago	7	8.30
Clay	9	5.99
Clearwater	1	20.60
Cook	19	7.59
Cottonwood	2	3.00
Crow Wing	50	76.44
Dakota	4	27.60
Faribault	2	3.00
Fillmore	1	23.43
Goodhue	2	14.50
Grant	3	8.50
Hennepin	13	14.80
Hubbard	39	65.43
Isanti	1	0.50
Itasca	80	190.19
Jackson	2	13.30
Kandiyohi	16	73.60
Koochiching	39	171.05
Lake	6	1.20
Lake of the Woods	11	4,623.35
Le Sueur	3	4.70
Lincoln	2	1.90
Lyon	1	2.40
Martin	1	1.80
McLeod	9	18.21
Meeker	15	44.06
Mille Lacs	1	40.00
Morrison	58	158.67
Murray	3	0.21
Nicollet	1	1.70
Norman	3	1.50
Ottertail	70	156.98
Pennington	1	2.30
Pine	7	49.02
Polk	8	36.79
Pope	7	14.11
Ramsey	1	0.50
Red Lake	8	10.92
Red Wood	1	0.80
Renville	1	4.80
Rice	3	7.33
Roseau	13	1,037.95
Scott	4	6.30
Sherburne	17	68.02
St. Louis	103	116.84
Stearns	17	130.04
Swift	3	1.05
Todd	13	12.08
Wabasha	3	0.73
Wadena	14	53.71
Waseca	1	11.70
Washington	1	4.00
Watonwan	1	13.60
Wilkin	8	9.28
Wright	30	177.94
	931	8,064.14

Copies of the land list and maps showing the legal descriptions, nature, and locations of the public lands by County are available for inspection only at the County Auditor's Office in each County Courthouse in Minnesota and the following offices of BLM and Minnesota Department of Natural Resources:

Milwaukee District Office, Bureau of Land Management, Reuss Federal Plaza, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203

Regional Headquarters, Region 1, Minnesota Department of Natural Resources, 2115 Birchmont Beach Road NE., Bemidji, Minnesota 56601

Regional Headquarters, Region 2, Minnesota Department of Natural Resources, 1201 East Highway 2, Grand Rapids, Minnesota 55744

Regional Headquarters, Region 3, Minnesota Department of Natural Resources, 1601 Minnesota Drive, Brainerd, Minnesota 56401

Regional Headquarters, Region 4, Minnesota Department of Natural Resources, Box 756, Highway 15 South, New Ulm, Minnesota 56703

Regional Headquarters, Region 5, Minnesota Department of Natural Resources, Box 6247, 2300 Silver Creek Road NE., Rochester, Minnesota 55904

Bureau of Real Estate Management, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155.

Any person who believes that he/she has a claim of ownership of non-mineral interest in any of the public lands contained on the list should notify BLM at the address listed below. No special application form is required, but the claim should be in writing and the tract being claimed should be identified. The claimant's letter should also contain a statement explaining his/her claim. Supporting documents (e.g., deeds, tax receipts) should not be sent with the initial letter. The claimants will be notified by BLM as to the Secretary's authority for the resolution of their claim prior to publishing the final notice of land transferred under the Act.

DATES: Written claims of ownership will be accepted on or before April 18, 1991. Mailed claims which are postmarked as of that date will be accepted if received on or before April 28, 1991.

ADDRESSES: Written claims of ownership should be sent to District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Realty Specialist, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631; telephone 414–297–4413 or FTS 362–4413.

SUPPLEMENTARY INFORMATION: The Congressional grant will be effective on October 18, 1991 and only unclaimed public lands will be transferred subject to the terms and conditions of the Act. Pursuant to the Act, the State of Minnesota will receive the public lands identified on the list described in this notice. A second public notice will be published in the **Federal Register** prior to the granting of public lands to the State and will constitute the final list of public lands eligible for transfer. Under section 206 of the Act, the United States would retain the minerals in the lands and the title of the State of Minnesota would be subject reversion of title to the United States if the State uses the lands for purposes other than those specified in the Act.

Section 205 of the Act authorizes the Secretary to resolve any claim of ownership of non-mineral interest in these identified public lands. The Secretary has a period of ten years from the date of the grant in which to resolve the claims identified during the period specified in this notice. If a claim is not

resolved within the ten year period, the public land(s) subject to the claim would be transferred to the State of Minnesota. After that transfer, any non-federal claimant would be required to deal directly with the State of Minnesota, rather than the United States, utilizing State courts or other facilities for resolving any remaining disputes over ownership of the non-mineral interests in the affected lands.

Gary D. Bauer,

District Manager.

[FR Doc. 91-581 Filed 1-16-91; 8:45 am]

BILLING CODE 4310-GJ

[AZ-020-01-4333-12]

Phoenix District, Arizona; Public Land Use Restriction (Discharge of Firearms)

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice of Public Land Use Restriction (Discharge of Firearms).

SUMMARY: This notice is to inform the public of the Bureau of Land Management's (BLM) decision to prohibit the discharge of firearms on public land at Snyder Hill (T. 15 S., R. 12 E., sections 3 and 4, comprising 280 acres, more or less) and Saginaw Hill (T. 15 S., R. 12 E., sections 1, 11 and 12, comprising 500 acres, more or less), Pima County, Arizona to protect persons, property and public land and resources. No person shall be exempt from this restriction except certified law enforcement personnel acting in the line of duty to enforce local, state or federal laws.

DATES: This is permanent restriction and is effective January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Tucson Field Office, 675 North Freeman Road, Tucson, Arizona 85748 (602) 670-5320 or Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027 (602) 863-4464.

SUPPLEMENTARY INFORMATION: Authority for this action is contained in 43 Code of Federal Regulations 8364.1. This action is taken to protect life and property and allow for safe public land use.

Discharge of firearms at Snyder Hill has resulted in significant damage to a nearby fire station and the virtual elimination of other public use. Additionally, public land adjacent to Saginaw Hill now contains an elementary school, creating the need for the restriction to protect life and property in the area.

Failure to comply with the above restriction order may result in a penalty of imprisonment not to exceed 12 months and/or a fine in accordance with the Sentencing Reform Act of 1986.

Dated: January 9, 1991.

Arthur E. Tower,

Phoenix Resource Area Manager.

[FR Doc. 91-1131 Filed 1-16-91; 8:45 am]

BILLING CODE 4310-32-M

[CO-050-4214-12]

Termination of Classifications and Opening of Public Lands; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order; this order opens public lands segregated by classification under the Recreation and Public Purposes Act.

SUMMARY: The lands described below have been in leases under the Recreaction and Public Purposes Act. The leases have terminated and the classifications are hereby terminated as authorized by 43 CFR 2741.5(h)(2):

New Mexico Principal Meridian

T.35N., R.8E, Section 20, N½SE¼NE¼NE¼
The area described contains 5.0 acres in Conejos County, Colorado; C-1670.

T.40N., R.3E, Section 26, E½W½NE¼NW¼ SW¼, W½E½NE¼NW¼SW¼
The area described contains 5.0 acres in Rio Grande County, Colorado; C-083375.

Sixth Principal Meridian

T.8S., R.80W., Section 21, NE½SE¼ (within)
The area described contains approximately 3.24 acres in Lake County, Colorado; C-34413.

At 10 a.m. on February 19, 1991, the lands described shall be open to operation of the public lands laws, including the United States mining laws, subject to valid existing rights. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. All of the lands have been, and continue to be, open to operation of the mineral leasing laws.

DATES: Effective February 19, 1991, at 10 a.m.

ADDRESSES: Bureau of Land Management, Canon City District Office, P.O. Box 2200, Canon City, Colorado 81215-2200.

FOR FURTHER INFORMATION CONTACT: Stu Parker at the above address or phone (719) 275-0631.

Donnie R. Sparks,

District Manager.

[FR Doc. 91-1133 Filed 1-16-91; 8:45 am]

BILLING CODE 4310-JB-01

[CO-942-91-4730-12]

Colorado; Filing of Plats of Survey

January 9, 1991.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., January 9, 1991.

The plat (in 11 sheets) representing the corrective dependent resurvey of the subdivisional line between sections 15 and 16, and the dependent resurvey of mineral claims in section 16, T. 3 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 679, was accepted November 27, 1990.

This survey was executed to meet certain administrative needs of the U.S. Forest Service and of this Bureau.

The plat representing the dependent resurvey of portions of the south boundary, the subdivisional lines, and the subdivision of section 17, and the subdivision of certain sections, T. 1 S., R. 78 W., Sixth Principal Meridian, Colorado, Group No. 921, was accepted October 26, 1990.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Darryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 91-1134 Filed 1-16-91; 8:45 am]

BILLING CODE 4310-JB-M

[ID-943-01-4214-11; IDI-15255]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Bureau of Reclamation, Department of the Interior,

proposes that the withdrawal of 89.00 acres for the Minidoka Reclamation Project in Power County be continued for an additional 16 years. The land is still being used for the purpose for which it was withdrawn. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

DATES: Comments should be received up to and including April 17, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Bureau of Reclamation proposes that the existing land withdrawal made by the Reclamation Order dated May 16, 1956, be continued for a period of 16 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

T 8 S., R. 30 E.,
Sec. 15, lots 3 and 4;
Sec. 21, lot 1.

The areas described aggregate 89.00 acres in Power County

The withdrawal is essential for continued river access and control, future material needs, protection against mineral entry, and to protect fish and wildlife values. The withdrawal closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: January 31, 1991.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 91–1132 Filed 1–16–91; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–474–475 (Preliminary)]

Chrome-Plated Lug Nuts From the People's Republic of China and Taiwan

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China and Taiwan of chrome-plated lug nuts, provided for in subheading 7318.16.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 1, 1990, a petition was filed with the Commission and the Department of Commerce by Consolidated International Automotive, Inc., Los Angeles, CA, alleging that an industry in the United States is materially injured by reason of LTFV imports of chrome-plated lug nuts from the People's Repubic of China and Taiwan. Accordingly, effective November 1, 1990, the Commission instituted preliminary antidumping investigations Nos. 731–TA–474–475 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 6, 1990 (55 FR 46778). The conference was held in Washington, DC, on November 21, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce of December 17, 1991. The views of the Commission are contained in USITC Publication 2342 (December 1990), entitled "Chromeplated Lug Nuts from the People's Republic of China and Taiwan: Determination of the Commission in Investigation No. 731–TA–474–475 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: January 11, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–1127 Filed 1–16–91; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Commission Rohr did not participate.

[Investigation No. 337–TA–316]

Certain Power Transmission Chains, Chain Assemblies, Components Thereof, and Products Containing the Same; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Magna International of America, Inc., Mimco Inc., Magna Interenational Inc. and Tesma International Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on January 4, 1991.

Copies of the initial determination, the settlement agreement, 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 individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW, Washington, DC 20436, no

later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1805.

Issued: January 14, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–1162 Filed 1–16–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–52 (Final)]

Sheet Piling From Canada

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: January 10, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–252–1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION: On November 29, 1990, the Commission instituted the subject investigation and established a schedule for its conduct (55 FR 52106). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from February 12, 1991 to April 15, 1991. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than April 9, 1991; the prehearing conference will be held at the U.S. International Trade Commission Building on April 12, 1991; the prehearing staff report will be placed in the nonpublic record on April 2, 1991; the deadline for filing prehearing briefs is April 12, 1991 (nonbusiness proprietary version due April 15, 1991); the hearing will be held at the U.S. International Trade Commission Building on April 17, 1991; the deadline for filing posthearing briefs is April 23, 1991 (nonbusiness proprietary version due April 24, 1991), and the deadline for parties to file additional written comments on business proprietary information is April 30, 1991 (nonbusiness proprietary version due May 1, 1991).

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

AUTHORITY: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

Issued: January 11, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–1128 Filed 16—91; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Darlene Proctor (202) 275–7233. Comments regarding this information collection should be addressed to Darlene Proctor, Interstate Commerce Commission, room 2203, Washington, DC 20423 and to Wayne Brough, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Bureau/Office: Office of Proceedings/Motor Section.

Title of Form: Application for Approval Under 49 U.S.C. 10530 of Certificates of Registration for Certain Foreign Carriers.

OMB Form Number: OMB–3120–0124.

Agency Form No: OP–2.

Frequency: Initial filing only.

No. of Respondents: 420.

Total Burden Hours: 420.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–1156 Filed 1–16–91; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31769]

Consolidated Grain and Barge Company and River & Rail, Inc.; Control Exemption; MG Rail, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts Consolidated Grain and Barge Company and River & Rail, Inc., from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, for their control of MG Rail, Inc., subject to the conditions for the protection of railroad employees in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

DATES: This notice is effective on February 16, 1991. Petitions for stay must be filed by January 28, 1991, and petitions for reconsideration must be filed by January 28, 1991, and petitions for reconsideration must be filed by February 6, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31769 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representative: Peter A. Greene, Thompson, Hine and Flory, 1920 N Street, NW., Washington, DC 20423.

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)

289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: December 28, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–1068 Filed 1–16–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 363X)]

CSX Transportation, Inc.—Abandonment Exemption—in Taylor County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. (CSXT) of a 5.66-mile line of railroad in Taylor County, FL, subject to standard labor protective conditions.

EFFECTIVE DATE: This exemption will be effective on February 16, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 363X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

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 pickup 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 services (202) 275–1721].

Decided: January 4, 1991.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–1155 Filed 1–16–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application of Norac Company, Inc.

Pursuant to § 1301.43(a) of title 21 of the code of Federal Regulations (CFR), this is notice that on November 14, 1990, Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20357, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 19, 1991.

Dated: January 8, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–1092 Filed 1–16–91; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application of UpJohn Co.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on November 5, 1990, UpJohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance 2,5-dimethoxyamphetamine (DMA) (7396).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20357, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 19, 1991.

Dated: January 8, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91–1091 Filed 1–16–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of December 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,027; Cytemp Specialty Steel Div., Lawrenceville, PA
TA–W–24,986; Winchester Mold, Inc., Winchester, IN
TA–W–24,998; Gem Industries, Inc., Gardner, MA
TA–W–25,037; KOP-Coat, Inc., Newark, NJ
TA–W–24,970; Donora Sportswear Co., Inc., Donora, PA
TA–W–24,889; Webb-Rack Storage Systems, Div., Port Huron, MI
TA–W–24,849; Goody Products, Inc., Kearney, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–25,009; R & S Supply Co., Portage, MI

The workers' firm does not produce an article as required for certification under section 22 of the Trade Act of 1974.

TA–W–25,051; SESA Fluorspar, Inc., Eagle Pass, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,060; Skagit Manufacturing, Sedro Woolley, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,016; White Plywood, Lebanon, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,030; G.A.F. Corp., Linden, NJ

Aggregate imports of products like or directly competitive with soaps and detergents are negligible.

TA–W–24,840; Spartan Engineered Products, Inc., White Cloud, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–24,914; Mecon Manufacturing, Inc., Oxford, ME

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,014; Stateline Foundry, Inc., Roscoe, IL

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA–W–25,029; Electri-Cord Manufacturing Co., Westfield, PA

A certification was issued covering all workers separated on or after October 21, 1989.

TA–W–24,881; Radel Leather Co., Newark, NJ

A certification was issued covering all workers separated on or after August 27, 1989.

TA–W–25,011; Russell-Newman, Inc., Seymour, TX

A certification was issued covering all workers separated on or after October 18, 1989.

TA–W–25,003; Johnson Controls, Inc., Lexington, KY

A certification was issued covering all workers separated on or after October 17, 1989.

TA–W–24,870; Cardinal Knitting Mills, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after September 5, 1989 and before September 15, 1990.

TA–W–24,842; Tektronix, Inc., Integrated Circuit Operations, Beaverton, OR

A certification was issued covering all workers separated on or after August 30, 1989.

TA–W–24,922; Saf-T-Bak, Inc., Altoona, PA

A certification was issued covering all workers separated on or after September 14, 1989.

TA–W–25,038; Kubar Bearings, Inc., Troy, NY

A certification was issued covering all workers separated on or after October 23, 1989.

I hereby certify that the aforementioned determinations were issued during the month of December 1990. Copies of these determinations are available for inspection in room C4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 7, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–1163 Filed 1–16–91; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The addresses of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the attestation process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–535–0163 (this is not a toll-free number).

Regarding the complaint process: Chief, Farm Labor Programs, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a persons wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Statndards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, D.C., this 11th day of January, 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

Division of Foreign Labor Certifications

Approved Attestations, 12/31/90 to 01/04/91

CEO-Name	Phone	Facility name	St.	Approval date
Ms. Carolyn McDermot	None	U. of Southern CA. Med. Ctr., 1200 North State Street, Los Angeles, CA, 90003.	CA	01/04/91
Ms. Carolyn McDermot	818-364-1555	Olive View Med. Ctr., 14445 Olive View Dr., Sylmar, CA, 91342	CA	01/04/91
Ms. Carolyn McDermot	213-603-5201	Martin Luther King Jr./Drew, 12021 S. Wilmington Ave., Los Angeles, CA, 90059.	CA	01/04/91
Mr. Lewis Lippner	203-426-2531	Fairfield Hills Hosp., Box 5525, Newtown, Conn., 06470	CT	01/04/91
Sister Patricia Lync	201-833-3000	Holy Name Hosp., 718 Teaneck Road, Teaneck, NJ, 07666	NY	01/04/91
Mr. Luis G. Silva	409-985-0470	Lifemark Hosps. TX, Inc., 3050 39th St., Port Arthur, TX, 77642	TX	01/04/91
NUMBER OF ATTESTATIONS 6				

[FR Doc. 91-1165 Filed 1-16-91; 8:45 am]

BILLING CODE 4510-30-M

National Advisory Commission on Work-Based Learning; Open Meeting

SUMMARY: The National Advisory Commission on Work-Based Learning was established in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) on December 14, 1990 (**Federal Register** December 26, 1990 pg. 53063). The Commission will have broad responsibility to advise the Secretary of Labor on ways to increase the skill levels of the American work force and expand access to work-based training. The Commission will: propose alternative methods for developing voluntary systems for accrediting work-based learning programs and credentialing individual trainees; assist in the development of agreements between educational providers and businesses which formalize relationships to facilitate the transition from school to work for non-college bound youth; advise on the incentives necessary to encourage training and development; and advise on the formulation of national policy regarding human resource development.

TIME AND PLACE: The first meeting will be held on February 12, 1990 from 9 a.m. until 4:30 p.m. in room V at the Grand Hotel, 2350 M St. NW., Washington, DC 20037.

AGENDA: The agenda for the meeting is as follows:

1. Welcome and Introductions.
2. Background Information.
3. Mission of the Commission.
4. Discussion of Action Agenda.

The meeting will be open to the public. Thirty minutes 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 Office of Work-Based Learning in advance, so that staff can make appropriate accommodations. Individuals or organizations wishing to submit written statements should send 10 copies to Dr. James D. Van Erden, Administrator, Office of Work-Based Learning, FPB N4649, 200 Constitution Ave. NW., Washington, DC 20210, by February 5, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. James D. Van Erden, Administrator, Office of Work-Based Learning, FPB N4649, 200 Constitution Ave. NW., Washington, DC 20210; Tel. (202) 535-0540.

Signed at Washington, DC, this 11th day of January, 1991.

Roderick A. DeArment,

Acting Secretary of Labor.

[FR Doc. 91-1164 Filed 1-16-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-203-C]

Southern Ohio Coal Co., Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, Route 3, State Route 689, Albany, Ohio 45710 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Meigs No. 2 Mine (I.D. No. 33-01173) located in Meigs County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that high-voltage cables be kept at least 150 feet from pillar workings.

2. Petitioner operates permissible longwall face equipment with an a.c. power system limited to 1000 volts. In order to supply such power to a longwall system from a power system limited to 1000 volts, the following problems arise:

(a) The ampacity requirement at 1000 volts are such that very large and heavy cables are required. These large, heavy cables can cause congested work space, handling problems, which may present a hazard;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be supplied to the face conveyor; and

(c) At 1000 volts, the interrupting limits of the available circuit breakers are approached resulting in a diminished safety factor.

3. As an alternate method, petitioner proposes to use high voltage cables inby the last open crosscut with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Requests for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Officer of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 19, 1991. Copies of the petition are available for inspection at that address.

Dated: January 8, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91–1166 Filed 1–16–91; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL COMMISSION ON CHILDREN

Hearing

Background

The National Commission on Children was created by Public Law 100–203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President

2. Twelve members appointed by the Speaker of the House of Representatives

3. Twelve members appointed by the President pro tempore of the Senate

This notice announces a meeting of the National Commission on Children to be held in Williamsburg, Virginia.

Meeting

Time: 9 a.m.–4 p.m., Monday, January 14, 1991, 9 a.m.–4 p.m., Tuesday, January 15, 1991, 9 a.m.–4 p.m., Wednesday, January 16, 1991, 9 a.m.–4 p.m., Thursday, January 17, 1991.

Place: Providence Hall, Directors Lounge, Williamsburg, Virginia.

Status: Open to the public.

Agenda: Commission meeting.

Contact: Jeannine Atalay, (202) 254–3800.

Dated: January 10, 1991.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 91–1112 Filed 1–16–91; 8:45 am]

BILLING CODE 6820–37–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

President's Drug Advisory Council; Meeting

AGENCY: President's Drug Advisory Council; Office of National Drug Control Policy.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix), of a meetinug of the President's Drug Advisory Council.

DATE AND TIME: January 30, 1991 from 9 a.m. to 4:30 p.m. (with a two hour lunch break at 12).

PLACE: Room 180, Old Executive Office Building (OEOB), Washington, DC 20500.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Cooney, Staff Assistant, President's Drug Advisory Council, Executive Office of the President, Washington, DC 20503, (202) 466–3100.

SUPPLEMENTARY INFORMATION: The President's Drug Advisory Council was created by Executive Order 12696 of November 13, 1989 (54 FR 47507, November 15, 1989), with the general purpose of advising the President and the Director of the Office of National Drug Control Policy on the development, dissemination, explanation and promotion of national drug policy.

In the morning session of the meeting on January 30, the Council will receive a report from the National Coalition Committee regarding the National Leadership Forum which it held on November 9 and 10, 1990. The Council will also receive reports from the Volunteer Organizations Committee and the Drug-Free Workplace Committee. In the afternoon session, the Council will have a discussion on drug data and surveys with several pollsters and survey experts. This will be the fourth meeting of the President's Drug Advisory Council. Public notice of this meeting has been delayed due to delays in scheduling the meeting.

Members of the public interested in attending the meeting should contact the President's Drug Advisory Council, (202) 466–3100, at least one day prior to the meeting. Callers should be prepared to give their birthdate and social security number over the telephone, in order to facilitate clearance into the Old Executive Office Building.

John Walters,

Chief of Staff and Acting Director, Office of National Drug Control Policy.

[FR Doc. 91–1187 Filed 1–16–91; 8:45 am]

BILLING CODE 3810–02–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type submission, new, revision, or extension: New (Expedited Review—OMB approval is requested within 30 days of receipt of the "Request for OMB Review")

2. The title of the information collection: Evaluation of Operator Stress During Requalification Examinations under 10 CFR 55.59.

3. The form if applicable: Not applicable.

4. How often the collection is required: As necessary in order for NRC to evaluate operator stress during requalification. Current evaluation will be completed in approximately one year.

5. Who will be required or asked to report: Plant and utility personnel.

6. An estimate of the number of responses: Approximately 400 responses to questionnaires; approximately 50 interviews.

7. An estimate of the total number of hours needed to complete the requirement or request: 250 hours (approximately 30 minutes per questionnaire; approximately 1 hour per interview).

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: Industry is concerned that failure to pass requalification examinations may be a result of high levels of stress experienced by the operators rather than a lack of knowledge. The Human Factors Branch of the Office of Nuclear Reactor Regulation, U.S. NRC, has agreed to conduct an assessment of this issue utilizing observations, interviews, and questionnaires for examiners and operators.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20037.

FOR FURTHER INFORMATION: Comments and questions can be directed by mail to the OMB reviewer:

Ronald Minsk, Paperwork Reduction Project (3150–), Office of Information and Regulatory Affairs (NEOB–3019), Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland this 9th day of January, 1991.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 91–1150 Filed 1–6–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–267]

Public Service Company of Colorado; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the required onsite primary property damage insurance requirement of 10 CFR 50.54(w)(1) to the Public Service Company of Colorado (PSC) the licensee for the Fort St. Vrain Nuclear Generating Station (FSV) located in Weld County, Colorado.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.54(w)(1) to reduce the full amount of required onsite primary property damage insurance. By letter dated August 8, 1990, the licensee requested an exemption to reduce the amount of primary property damage insurance from $1.06 billion to $169 million. The reduction in the amount of required onsite primary property damage insurance is the proposed action being considered by the staff.

The Need for the Proposed Action

The licensee's August 8, 1990 letter provided technical justification that $169 million of primary property damage insurance provides an adequate level of coverage to return the FSV plant to a condition ready for decommissioning following an accident considering the shutdown condition. Granting the exemption request relieves the licensee from the unnecessary financial burden of carrying insurance coverage of $1.06 billion as required by 10 CFR 50.54(w)(1).

Environmental Impacts of the Proposed Action

The proposed exemption affects only the amount of onsite primary property damage insurance coverage and does not affect the manner of normal facility operation or the risk of facility accidents. While the change in insurance coverage may affect the financial arrangements of the licensee and have some economic consequences, the possibility that the environmental impact of licensed activities would be altered by changes in insurance coverage is extremely remote. The staff has determined that a reduction in the amount of required onsite damage insurance, from $1.06 billion to $169 million is commensurate with the clean-up cost associated with a postulated accident with the FSV reactor shutdown and partially defueled. Thus, the reduced coverage authorized by the proposed exemption is sufficient to fund clean-up of radiological impacts associated with any accident in the present condition. In addition, the exemption in question would not authorize construction or operation, would not authorize a change in licensed activities nor effect changes in the permitted types or amounts of radiological effluents. Post-accident radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternatives to the exemption are to require the licensee to carry $1.06 billion of onsite primary propety damage insurance or another amount greater than $169 million. However, the NRC staff had determined that $169 million is sufficient to fund clean-up of radiological impacts associated with any accident at FSV. Requiring more than $169 million would impose an unnecessary financial burden and would not enhance protection of the environment.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Fort St. Vrain Nuclear Generating Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letter dated August 8, 1990. This letter is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and the Greeley Public Library, City Complex Building, Greeley, Colorado 80631.

Dated at Rockville, Maryland, this 11th day of January 1991.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–1147 Filed 1–16–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Defueling/Fuel Pool Storage; Meeting

The Subcommittee on Defueling/Fuel Pool Storage will hold a meeting on January 29, 1991, 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:

Tuesday, January 29, 1991—8:30 a.m. until 12 Noon.

The Subcommittee will discuss the proposed standard review plan for reviewing safety analysis reports for dry metallic spent fuel storage casks.

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 portions 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 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 Designated Federal Official, Mr. Herman Alderman (telephone 301/492–7750) 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: January 10, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–1148 Filed 1–16–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The Subcommittee on Human Factors will hold a meeting on January 29, 1991, 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:

Tuesday, January 29, 1991—1 p.m. until 5:00 p.m.

The Subcommittee will discuss rulemaking on training and qualification of civilian NPP personnel.

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 portions 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 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 Designated Federal Official, Mr. Herman Alderman (telephone 301/492–7750) 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: January 10, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–1149 Filed 1–16–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co. and San Diego Gas and Electric Co.; San Onofre Nuclear Generating Station, Unit No. 1; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of the amendment to Provisional Operating License No. DPR–13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensee), for operation of the San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

The proposed amendment would revise the technical specifications (TS) to incorporate changes to the maintenance and surveillance requirements that were necessitated by the addition of a redundant isolation valve on the outlet of the Volume Control Tank. The redundant valve was added during refueling outage 11 to reduce the likelihood of a single component failure from disabling both primary system charging pumps.

The associated TS changes consist of an addition to section 3.3.1.B to regulate maintenance of the redundant isolation valves and the deletion of surveillance requirement 11 from Table 4.1.2. The surveillance requirement is associated with an electrical power transfer switch that was functionally replaced by the second isolation valve. The transfer switch was removed from the system as part of the modification.

The proposed amendment also corrects an editorial error in Table 4.1.2. The editorial error was inadvertently introduced by TS Amendment 134.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any

accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The NRC staff evaluated each of three criteria in the following manner: (1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment incorporates revised maintenance and surveillance requirements to reflect hardware changes on the outlet of the Volume Control Tank. The hardware changes consist of the addition of a redundant valve to decrease single failure susceptibility. The changes were designed to decrease the probability and consequences of previously evaluated accidents. (2) The proposed amendment does not create the possibility of a new or different kind of accident perviously evaluated. The TS maintenance and surveillance requirements and the hardware changes to reduce single failure susceptibility are enhancements to the facility that reflect current safety standards. They do not create possibilities for new or different kinds of accidents. (3) The proposed amendment does not involve a significant reduction in a margin of safety. The plant modifications were designed to increase the margin of safety. There do not appear to be any negative safety features associated with the hardware modifications or with the proposed TS Amendment.

Therefore, based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 19, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving any contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for

example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide the opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identificaton Number 3737 and the following message addressed to James E. Dyer: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 21, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room, Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland this 10th day of January 1991.

For the Nuclear Regulatory Commission.

George Kalman,

Senior Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–1146 Filed 1–16–91; 8:45 am]

BILLING CODE 7590–01–M

OVERSIGHT BOARD

Regions 1 and 2 Advisory Board Meetings

AGENCY: Oversight Board.

ACTION: Meeting Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the regional advisory board meetings for Regions 1 and 2. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. January 29, 1991, 10 a.m. to 3:30 p.m., Boston, MA, Region 1 Advisory Board.
2. February 1, 1991, 10 a.m. to 3:30 p.m., Miami, FL, Region 2 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Boston, MA—Federal Reserve Bank of Boston, New England Room, 600 Atlantic Ave.
2. Miami, FL—Miami-Dade Community College, Wolfson Campus, Rm 1101, Bldg 1, 300 NE. Second Ave.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Oversight Board/RTC, 1777 F Street, NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (The ACT), Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The advisory boards provide the Resolution Trust Corporation (RTC) with information and recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda: A detailed agenda will be available at the meeting. Discussions will center around the activities of each region as related to the results of seller financing and the Standard Asset Management Disposition Agreement (SAMDA), the sale of multi-family properties in the affordable housing program, assessment of economic conditions of local real estate markets, and review and advise on the returns of RTC's delinquent real estate mortgages. In addition, there will be briefings by the RTC on activity pertaining to that region and policy updates by the Oversight Board.

Statements: Interested persons may present data, information, or views in writing on the issues pending before the advisory board. Persons wishing to make oral statements are to notify the contact person 10 days before each meeting giving a brief statement on the nature of the remarks. Time permitting, oral comments will be limited to approximately five minutes. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: January 14, 1991.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 91–1152 Filed 1–16–91; 8:45 am]

BILLING CODE 2222–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28767; File No. SR–CBOE–90–31]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the Time Period for Declared Opening Delay in Index Options

On November 21, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Exchange Rule 24.13 to decrease from 15 minutes to 5 minutes the time period a delayed opening in index options will last.

The proposed rule change was published for comment in Securities Exchange Act Release No. 28689 (December 10, 1990), 55 FR 51781 (December 17, 1990). No comments were received on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1990).

Currently, the Exchange's delayed opening procedure for index options requires that once such a delay is declared, the Exchange must wait 15 minutes to begin the opening rotation. If, during those 15 minutes, it is determined that another delay should be imposed, an additional 15 minutes must pass prior to the beginning of the opening rotation. The Exchange believes that these 15 minutes intervals place the Exchange in a difficult competitive position because neither the futures markets nor the stock markets require that a declared delay be of a specified time duration. Thus, the Exchange believes that imposing a delay in 15 minute intervals disadvantages traders in the Standard and Poor's 100 ("OEX") and the Standard and Poor's 500 ("SPX/NSX") index options because other markets are open during the delay, and these markets are creating and/or responding to price fluctuations that investors in CBOE-traded index options cannot react to.

The current proposal reduces from 15 minutes to 5 minutes the time period a delayed opening in index options will last. Under the proposal, if an opening delay is declared by the CBOE, the CBOE can open at 8:35 a.m. (central standard time), 8:40 a.m., or any of the next succeeding 5 minute intervals. Under current procedures, the CBOE can only open at 8:45 a.m., 9:00 a.m., or any of the next succeeding 15 minute intervals. Accordingly, the Exchange believes that this reduction will limit unnecessary delays in the opening of index options. Further, the Exchange surveyed ten retail member firms and a overwhelming majority agreed that 5 minutes was a reasonable time delay and that the change from 15 minutes would not adversely impact retail customers.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[3] Specifically, the Commission finds that the proposed reduction in the time the delayed open will last is consistent with section 6(b)(5) in that it will perfect the mechanism of a free and open market by limiting unnecessary delays in the opening of index options. For example, if the CBOE has delayed an opening because futures on the Standard and Poor's 500 Stock Index, traded on the Chicago Mercantile Exchange, have hit their five point opening price limit, but soon thereafter these futures trade off-limit, under the proposed rule change, the CBOE will be able to begin more quickly trading in OEX and SPX/NSX options. Similarly, the CBOE will be able to reduce the time period during which trading in the underlying stock market has commenced but the opening of the index options markets is still delayed.

In sum, the Commission believes that the proposed five minute delay is reasonable and will provide the Exchange with more flexibility in declaring delayed openings in index options. Moreover, the proposal will likely reduce instance where the cash and futures markets are subject to free trading and the stock index options market is dormant because of an opening delay, thereby ensuring that the stock, options and futures markets remain linked. Finally, the Commission believes the proposal will benefit investors in CBOE-traded index options by reducing their exposure to price fluctuations when the index options markets have a delayed opening and the stock and futures markets are open.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. As discussed above, the proposal provides the important benefit of ensuring that the stock, options, and futures markets are trading simultaneously, thereby facilitating pricing efficiency and protecting investors in CBOE-traded index options by allowing them to react better to price flucuations at the opening. Further, the Commission notes that the proposal was subject to the full notice and comment period and did not receive any comments. Accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve the proposed rule change on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change (SR–CBOE–90–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: January 11, 1991.

[FR Doc. 91–1168 Filed 1–16–91; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f (1988).

[4] 15 U.S.C. 78s(b)(2) (1988).

[5] 17 CFR 200.30–3(a)(12) (1990).

[Release No. 28765; File No. SR–DTC–90–10]

Self-Regulatory Organizations: Depository Trust Co.; Order Approving a Proposed Rule Change Relating to Procedures for Processing Repurchase Transactions

January 10, 1991.

On June 26, 1990, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (SR–DTC–90–10) pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will allow DTC to establish a system ("repo tracking system") for tracking participants' position balances that are subject to a repurchase agreement ("repo").[2] Notice of the proposal was published in the **Federal Register** on August 1, 1990.[3] On September 14, 1990, DTC filed an amendment to its proposed rule change relating to the repo tracking system. Notice of the amendment was published in the **Federal Register** on October 31, 1990.[4] The Commission did not receive any comments.[5]

This order approves the amended proposal.

I. Description

Under the proposed rule change, DTC will create three new instructions for participants to use to facilitate DTC's processing of repos and will amend its rules to clarify participants' rights and responsibilities relating to repos.

Generally, DTC will allocate distributions on the underlying securities subject to the repo according to the selling participant's instructions. Under the proposed rule change DTC will create a repo delivery order instruction, a repo reclaim instruction, and a repo adjustment instruction to help insure that distributions on the underlying securities will be paid to the

[1] 15 U.S.C. 78s(b).

[2] A repurchase agreement consists of a sale of securities with a simultaneous agreement by the original seller to repurchase the securities at a later date.

[3] Securities Exchange Act Release No. 28258 (July 24, 1990), 55 FR 31262.

[4] Securities Exchange Act Release No. 28579 (October 25, 1990), 55 FR 45896.

[5] DTC received written comment letters expressing agreement with DTC's design of the repo tracking system from Morgan Stanley & Co. Incorporated, dated May 8, 1990, and from Smith Barney, Harris Upham & Co. Inc., dated April 5, 1990. Subsequently, Dean Witter Reynolds Inc. submitted to DTC a comment letter, dated May 10, 1990, supporting the proposed system and requesting clarification on two elements of the proposal. DTC responded to these comments in its letter, dated June 15, 1990, to Dean Witter Reynolds, Inc.

proper party.[6] Currently, when DTC receives a payment of principal or interest on the underlying securities, DTC credits the distributions to the participant having a long position in the CUSIP [7] on record date without regard to the repo position.[8]

Using the repo deliver order instruction, the seller will be able to instruct DTC to make a book-entry delivery of the securities to the counterparty.[9] At the same time the seller may instruct DTC to credit future distributions on the underlying securities to the seller's account. DTC will create a repo position for the participant and counterparty. Repo positions will be isolated from participants' other account balances, enabling DTC to maintain repo balances for each participant. DTC will maintain two repo balances for each participant, one reflecting the participant's net repo balance in each CUSIP and the other reflecting the participant's net repo balance as to each individual counterparty.

When distributions are paid on the underlying securities, DTC will allocate the distribution, pursuant to the seller's repo delivery instruction, based on the repo position in the underlying CUSIP. The only instance in which DTC will not credit the distribution to the seller (other than when DTC ceases to act for the seller) is when the final distribution at maturity is due prior to reversal of the repo.[10] In such a case, DTC will credit the final distribution to the participant with a long position in the security without regard to the repo position.[11]

The repo reclaim institution may be used by the delivering participant to reverse a book-entry delivery of the securities subject to the repo. As with other deliveries, the sender of a repo deliver order may reclaim a delivery on the day the delivery originated. This new instruction is needed because an ordinary reclaim instruction will not affect the participant's repo balance.[12]

The repo adjustment instruction may be used to create a standing instruction to pay future distributions to another DTC participant's account. This instruction is similar to the repo delivery instruction. However, it will not cause DTC to effect book-entry movement of securities. The instruction may be used, among other things, to reverse instructions given to DTC pursuant to a repo deliver instruction.[13] Only the party forfeiting the right to receive a distribution may validly issue a repo adjustment instruction.

DTC also will add provisions to Rules 10 and 12 to eliminate DTC's obligations to allocate automatically future distributions created by repo tracking system transactions when DTC ceases to act for a particiant or a participant becomes insolvent.[14] The revised Rules will provide that any distributions are subject to DTC's authority to cease to act for a participant and will provide that once DTC has ceased to act for a participant, DTC will not execute pending instructions or accept future instructions regarding the transfer of securities or principal and interest payments. In effect, if DTC ceases to act for a participant, DTC will reverse the participant's repo positions and will adjust counterparty's repo positions accordingly. The resulting balances will appear as if the repo was never executed. A historical record of the repo transaction will be retained, however, and DTC's future obligations regarding such positions effectively will be terminated.[15]

DTC may continue to act for a participant, however, if the Board of Director's determines that it is prudent to do so or if requested to do so by a pledge. In such a case, DTC will return to the participant or the representative of the participant for whom DTC has ceased to act securities that are subject to a pledge agreement upon the instructions of the pledgee.

II. Discussion

The Commission believes that DTC's proposed rule change is consistent with the Act. Specifically, the proposal is consistent with section 17A(b)(3)(A) in that it helps ensure that DTC is able to safeguard securities and funds in its custody or control or for which it is responsible by providing more efficient procedures than those currently in use. In addition, DTC has also acted to protect itself, and thereby protect other participant's positions, from undue financial exposure. The circumstances giving rise to DTC's decision to cease to act for a participant could escalate into systemic risk for DTC and other participants. DTC's revised rules regarding its ceasing to act for a participant and termination of DTC's future obligations will provide a mechanism for ensuring that the financial exposure created by a participant default or insolvency is limited.

The Commission believes that DTC's proposal concerning its right to cease to act for a participant with regard to future transactions is prudent. By requiring affected participants to settle respective rights and obligations outside of DTC, DTC will eliminate its obligation to allocate automatically future distributions under the repo tracking system to a terminated participant.

DTC proposal to extend RAD and other verification procedures to repo serves as an additional safeguard. Use of these verification procedures, in

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[6] Most repos are executed in accordance with the Public Securities Association's Master Repurchase Agreement. In the typical repo agreement, the parties will stipulate that principal and interest accruing on the securities after the initial purchase, but before the repurchase, will remain the property of the seller.

[7] CUSIP is an acronym for Committee on Uniform Securities Identification Procedures. This Committee is responsible for creating the identification numbers used to delineate one securities issue from another.

[8] In a typical repo transaction, the buyer will take book-entry delivery of the securities and, therefore, will have a long position in the underlying securities.

[9] Repo tracking will be implemented on a limited basis for issues that are eligible for DTC's Same Day Funds Settlement System ("SDFS"). DTC's special SDFS's collateralization procedures apply to all such transactions. In addition, DTC will verify that the participant holds sufficient long positions to complete the delivery prior to acting on a participant's repo delivery order instruction. As an additional safeguard, some participants may opt to use the automatic verification system, Receiver Authorized Delivery ("RAD"). RAD allows the receiving participant to verify each delivery by alerting the participant that a delivery is forthcoming.

[10] The reversal of the repo occurs when the original seller repurchases the securities from the original buyer.

[11] The type of distribution will vary depending on the nature of the underlying obligation. Some distributions will be interest payments only. Others, such as distributions on securities subject to a Collateralized Mortgage Obligation ("CMO") will be payments of interest and principal. This provision is primarily designed to accommodate the final payment on CMOs. When the repo involves a CMO, returns of principal, except for the final payment at maturity, will be paid to the seller.

[12] Participants may reclaim a repo delivery for any number of reasons. For example, a participant may reclaim a repo delivery to correct the transfer because it was made to the wrong party or for the wrong amount.

[13] The repo adjustment instruction may be used by a participant who has obtained a long position in the underlying securities by some means other than a repo deliver order. It may also be used by a participant to transfer its right to future distributions to another participant. For example, if the original buyer returned substitute securities to the original seller in satisfaction of the repo obligation, the original seller's legal right to receive distributions on the securities originally delivered would be terminated.

[14] Rule 10 will contain the specific procedures DTC will follow after DTC ceases to act for a participant. Rule 12 will specify the procedures DTC will follow when a participant becomes insolvent.

[15] The counterparties' legal obligations, if any, would not be eliminated by DTC's actions. However, because DTC would cease allocating distributions relating to the terminated participant's repo positions, the remaining counterparties would have to make arrangements, outside DTC, to receive or pay future distributions on open repo transactions.

particular RAD, will allow a receiving participant to reject an unauthorized delivery. In addition, because delivery verification will be extended to the repo tracking system, each receiving participant may set a maximum dollar amount so that any incoming book-entry delivery exceeding that amount could not be completed or would have to be individually authorized before the receiving participant's SDF account could be debited. Participants, therefore, will have greater control over their repo balances.

The Commission further believes that the proposal is consistent with the requirements of section 17A(b)(3)(A) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. DTC is making the repo tracking system available only to participants that hold position in SDFS-eligible securities. Because all repo transactions will settle in SDF, DTC will be able to monitor a participant's repo transactions and maintain a daily assessment of each participant's repo positions. In addition, repo positions will be maintained apart from other securities transactions, enabling DTC to promptly determine the portion of a participant's positions that are subject to a repo transactions. For these reasons, the Commission believes the proposal promotes the prompt and accurate clearance and settlement of securities transactions consistent with the Act.

The Commission believes that the proposal is also consistent with section 17A(a)(1)(C). In that Section, Congress stated its belief that "[n]ew data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement." DTC's proposed rule change will employ electronic communication and transfer and processing instructions specifically tailored to repos. The Commission believes that through the repo tracking system, DTC will be able to effect more efficient processing of repos. Under the proposed system, participants will be able to make arrangements for payment of distributions without going outside DTC or without the additional step of a Securities Payment Order. In addition, DTC will be able to accommodate a variety of special payment arrangements that could not be accommodated prior to implementing the repo tracking system.

III. Conclusion

For the reasons stated above, the Commission finds that DTC's proposed rule change is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–DTC–90–10), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1169 Filed 1–16–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 28763; File No. SR–ICC–90–06]

Self-Regulatory Organizations; Intermarket Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to its Stockholders' Annual Meeting

January 10, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 18, 1990, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–ICC–90–06) as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Article 2, section 2.1 of ICC's By-Laws to change the date of the annual meeting of stockholers ("Annual Meeting") from the fourth Tuesday in November of each year to the fourth Tuesday in April of each year.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b).

A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to change the date of the Annual Meeting of ICC from the fourth Tuesday in November of each year to the fourth Tuesday in April of each year. Currently, directors are elected at the Annual Meeting in November and commence their new terms at that time. Although in the past newly nominated directors have been invited to attend the board of directors ("Board") meeting held prior to their election, the newly elected directors have assumed their seats on the Board without the opportunity for sufficient introduction or orientation to ICC.

To rectify this concern, the Board has decided to invite newly nominated directors to attend the special two day Board meeting held each year in March ("Winter Board Meeting") as guests of ICC. Thus, the Winter Board Meeting, which covers industry, operational, and significant policy issues in depth, can serve as a useful orientation to these nominated directors and facilitate their transition to elected directors. Attendance at the Winter Board Meeting will also allow nominated directors to familiarize themselves with ICC management and its outside directors.

This procedure requires ICC to amend its rules to change the date of the Annual Meeting from the fourth Tuesday in November to the fourth Tuesday in April. By changing the date of the Annual Meeting, the newly nominated directors will begin their terms in April with the benefit of having attended the comprehensive orientation provided at the Winter Board Meeting.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because the change of date of the Annual Meeting will result in a more efficient use of Board time thereby helping to promote the further development of the national system for the prompt and accurate clearance and settlement of securities transactions.

B. SRO's Statement on Burden on Competition

ICC does not believe that the proposed rule change will impose any burden on competition.

C. SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not solicited and are not intended to be solicited with respect to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b) (3) (A) (iii) of the Act and paragraph (e) (3) of Rule 19b–4 thereunder in that it is concerned soley with administration of the SRO. At any time within sixty days of the filing of such proposed rule change, the Commission summarily may abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ICC. All submissions should refer to File Number SR–ICC–90–06 and should be submitted by February 7, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1170 Filed 1–16–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28764; Filed No. SR–MBSCC–90–09]

Self-Regulatory Organizations; MBS Clearing Corp.; of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Restructuring of Its Service Fees

January 10, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on December 26, 1990, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR–MBSCC–90–09) as described in Items I, II, and III below, which items have been prepared by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of MBSCC establishes a new fee structure for clearing and comparison services. The new fees, Settlement Balance Order ("SBO") recording fees, are as follows:

Monthly value of recorded trades ($ millions)	Rate per $1 million
1–2,500	2.70
2,501–5,000	2.50
5,001–7,500	2.30
7,501–10,000	2.15
10,001–12,500	1.95
12,501 & over	1.75

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Propoposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of any statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a new trade recording fee structure for SBO destined trades. Traditionally, funding to operate MBSCC services has been derived from two basic fees charged to Participants: (1) A trade recording fee of $4.00/trade side regardless of the face amount involved in the trade; and (2) a SBO fee of $8.00/$1 million face value regardless of the number of net-outs (*i.e.*, pair-offs with unlike contra-sides) generated.

Under the present pricing structure, Participants that maintain a matched book or closely matched positions ultimately pay little or no SBO fees in relation to original trade amounts. Little MBSCC revenue is generated from these Particpants to defray MBSCC's expenses for operating the netting and risk management features of the SBO system. Although these Participants derive the most benefit from netting, they do not bear their fair share of funding of MBSCC's services.

To more fairly distribute fees to Participants in relation to services provided, MBSCC's Board of Directors has approved a fee change that restructures the primary fees by: (1) Eliminating the $4.00/trade side recording fee and the $8.00/$1 million SBO fee; and (2) replacing these fees with a graduated fee per $1 million face amount on trades entered for netting services into the SBO system.

The new fee schedule is generally revenue neutral to MBSCC and sets variable fees per $1 million of face value entered for netting services. The fees are based on the total value of trades entered monthly and are reduced to provide a five percent discount from revenue neutral rates. The restructured fees place primary emphasis on the face value amounts of original trades entered for netting services. It does not change any other MBSCC fee.

The revisions to the MBSCC fee schedule are consistent wth section 17A(b)(3)(D) of the Act in that they provide for the equitable allocation of reasonable fees and other charges among Participants.

B. Self-Regulatory Organization's Statement on Burden on Competiton

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act because the proposal establishes or changes a due, fee, or other charge imposed by MBSCC. At any time within sixty days of the filing of such proposed rule change, the Commission summarily may abrogate such rule change if it appears to the Commission that such action is necessary or approriate in the public interest, for the protection of investors,

[2] 17 CFR 200.30–3 (a) (12).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions sold file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisons of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–90–09 and should be submitted by February 7, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1171 Filed 1–16–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28757; File No. SR–NASD–90–54]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Notification to District Offices on the Occurrence of Certain Events Affecting the Ownership or Control of a Member

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted on October 16, 1990 [1], to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and rule 19b–4 thereunder.[3] The proposal amends Schedule C of the Association's By-Laws [4] by requiring that member firms provide written notification to the appropriate District Office within ten (10) days upon the occurrence of the following events affecting the ownership or control of a member: (1) The merger of a member;

(2) An acquisition by a member;

(3) An acquisition of a member or substantially all of its assets; and

(4) Any change in the equity ownership or partnership capital of the member which results in one person or entity owning 50% or more of such equity ownership or partnership capital.

Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 28659, Novmeber 29, 1990) and by publication in the Federal Register (55 FR 50436, December 6, 1990). No comments were received on the proposal. This order approves the proposed rule change.

Schedule C to the NASD By-Laws currently permits an NASD member to experience a change in ownership or control without prior review by the appropriate NASD District Office. Pursuant to section (4) to part I of Schedule C of the NASD's By-Laws [5], in cases where the ownership or control of an existing member changes, the NASD has the discretion to condition continuance in membership on prompt compliance with the pre-membership interview procedures. Notice of a change in ownership or control of a member must be filed on a revised Form BD [6] whenever the information previously on file changes. Since the form does not specify a time for filing, a general rule of thumb has developed that filing is required within 30 days. In certain cases, a previously dormant member can become active unexpectedly or be sold or taken over by a new management. While a new pre-membership interview can be conducted, regulatory problems may have already occurred in reference to the merger, purchase, or change in ownership of a member. The proposed rule is designed to require prompt notification, thus allowing the NASD to act more expeditiously in determining whether a new premembership interview should be scheduled.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) [7] which requires, in part, that the rules of a national securities association be designed to promote just and equitable principles of trade and to remove impediments to, and to perfect the mechanisms of, a free and open market. Specifically, the rule will require earlier notification to the NASD allowing the Association to determine whether a new pre-membership interview should be scheduled in situations where there are certain changes in the ownership or control of an NASD member.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[8]

Dated: January 9, 1991.

[FR Doc. 91–1097 Filed 1–16–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17944; 811–2648]

Merrill Lynch Government Fund Inc.; Application

January 10, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application or Deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Merrill Lynch Government Fund Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 19, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing Interested persons may request a hearing by writing to the SEC's

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[1] By letter dated January 9, 1991, the NASD filed Amendment No. 1 to this proposed rule change. The purpose of the amendment was to change the language of the proposed rule change to reflect that the NASD is requiring written notification. The requirement for written notification was included in the NASD's description of the proposed rule change as filed on October 16, 1990, but was inadvertently left out of that part of the NASD's filing which tracks the actual language of the rule change. Amendment No. 1 makes no other changes to the proposed rule change as originally filed with the Commission.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b–4 (1989).

[4] "NASD Securities Dealers Manual," CCH ¶ 1783.

[5] *Id.*

[6] Form BD, the uniform application for Broker-Dealer registration, is required to be kept current pursuant to section 15 of the Act.

[7] 15 U.S.C. 78*o*–3 (1982).

[8] 17 CFR 200.30–3(a)(12) (1989).

Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 5, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111–2646.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an open-end investment company organized under Maryland law, registered under the 1940 Act on July 2, 1976. On the same date, it filed a registration Statement with respect to 2,000,000 shares under the Securities Act of 1933, which registration statement was declared effective on September 27, 1977.

2. On June 18, 1990, Applicant's board of directors unanimously approved an agreement and plan of reorganization (the "Plan") whereby Applicant would reorganize as the Merrill Lynch Government Fund series (the "Series"), a separate series of Merrill Lynch Funds For Institutions Series (the "Trust"), a Massachusetts business trust operating as a "series company" as defined in Rule 18f–2 under the 1940 Act. By becoming redomiciled as a series of a Massachusetts business trust, Applicant hopes to realize substantial state franchise tax and other savings. At a special meeting on August 15, 1990, a majority of Applicant's shareholders approved the Plan.

3. Pursuant to the Plan, Applicant transferred all of its assets and liabilities to the Series on August 31, 1990, and each of Applicant's shareholders received for his shares an equal number of full and fractional shares of the Series having a net asset value equal to the net asset value of Applicant's shares. As of that date, Applicant had 1,332,589,811 shares outstanding with an aggregate and per share net asset value of $1,332,588,916 and $1.00 respectively.

4. No brokerage commissions were paid on the transfer of assets from the Applicant to the Series nor on the delivery of shares of the Series to Applicant's shareholders. Fees and expenses incurred in connection with the reorganization, consisting of legal fees, blue sky registration fees, proxy printing and mailing expenses, are estimated at approximately $125,000. All such expenses will be borne by the Applicant and the Series.

5. Applicant filed articles of transfer and articles of dissolution with the state of Maryland on August 31, 1990, and on September 20, 1990, respectively. Applicant retains no assets and has no further liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no remaining shareholders.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1094 Filed 1–6–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17943; 811–2540]

Merrill Lynch Institutional Fund Inc.; Application

January 10, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Merrill Lynch Institutional Fund Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 19, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 5, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111–2646.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an open-end investment company organized under Maryland law, registered under the 1940 Act on October 30, 1974. On the same date, it filed a registration statement with respect to 100,000 shares under the Securities Act of 1933, which registration statement was declared effective on December 13, 1974.

2. On June 18, 1990, Applicant's board of directors unanimously approved an agreement and plan of reorganization (the "Plan") whereby Applicant would reorganize as the Merrill Lynch Institutional Fund series (the "Series"), a separate series of Merrill Lynch Funds For Institutions Series (the "Trust"), a Massachusetts business trust operating as a "series company" as defined in Rule 18f–2 under the 1940 Act. By becoming redomiciled as a series of a Massachusetts business trust, Applicant hopes to realize substantial state franchise tax and other savings. At a special meeting on August 15, 1990, a majority of Applicant's shareholders approved the Plan.

3. Pursuant to the Plan, Applicant transferred all of its assets and liabilities to the Series on August 31, 1990, and each of Applicant's shareholders received for his shares an equal number of full fractional shares of the Series having a net asset value equal to the net asset value of Applicant's shares. As of that date, Applicant had 1,958,503,398 shares outstanding with an aggregate and per share net asset value of $1,958,466,528 and $1.00 respectively.

4. No brokerage commission were paid on the transfer of assets from the Applicant to the Series nor on the delivery of shares of the Series to Applicant's shareholders. Fees and expenses incurred in connection with the reorganization, consisting of legal fees, blue sky registration fees, proxy printing and mailing expenses, are estimated at approximately $110,000. All such expenses will be borne by the Applicant and the Series.

5. Applicant filed articles of transfers and articles of dissolution with the state of Maryland on August 31, 1990, and on September 20, 1990, respectively. Applicant retains no assets and has no further liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no remaining shareholders.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-1095 Filed 1-16-91; 8:45 am]
BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 17941; 812-7648]

United Financial Group, Inc.; Application

January 9, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: United Financial Group, Inc.

RELEVANT ACT SECTION: Exemption requested under section 6(c) of the Act.

SUMMARY OF APPLICATION: Applicant seeks a conditional order to amend a prior order, *see* Investment Company Act Release No. 17441 (Apr. 18, 1990) (the "Order"), that exempted applicant from all of the provisions of the Act until December 30, 1990, subject to certain exceptions. The requested relief would grant an additional period of exemption until December 30, 1991.

FILING DATE: The application was filed on December 12, 1990 and an amendment was filed on December 18, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 6, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 5847 San Felipe, suite 2600, Houston, Texas 77057.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was a savings and loan holding company whose primary asset and source of income was the United Savings Association of Texas ("USAT"). As a result of the severe recession in Texas beginning in 1986, USAT's financial condition deteriorated, and on December 30, 1988 it was placed into receivership. The assets of USAT were sold to an unaffiliated third party and applicant received no consideration for the loss of its primary subsidiary, thereby generating substantial capital loss. In light of this capital loss, applicant determined not to liquidate, but instead to acquire an operating business.

2. Applicant's efforts to acquire an operating business have been substantially hindered due to claims asserted against it by the Federal Savings and Loan Insurance Corporation ("FSLIC"). Although applicant disputes these claims, their existence constitutes a large contingent liability against applicant's assets, thus making it difficult for applicant to acquire an operating business. Applicant's efforts also have been hindered by a standstill agreement it entered into with the FSLIC under which applicant was prohibited from making any investments in marketable securities unless the FSLIC was first given notice and the opportunity to object and seek enforcement of its claim.

3. In early 1990, after continuous negotiations, applicant reached a tentative agreement (the "Settlement Agreement") with the Federal Deposit Insurance Company ("FDIC"), the successor to the FSLIC, concerning settlement of the FSLIC's claims. The Settlement Agreement was contingent on the approval of a plan of reorganization (the "Plan") under chapter 11 of the Bankruptcy Code. Applicant believed that consummation of the Plan would provide a structure that would enable it to acquire one or more operating businesses and utilize its capital loss.

4. On April 18, 1990, applicant was granted conditional relief from all of the provisions of the Act until December 30, 1990, subject to certain exceptions. Following the grant of that relief, applicant continued in its endeavors to acquire an operating business upon consummation of the Plan. Since the beginning of 1990, applicant has made every effort to obtain final approval of the Settlement Agreement and to be in a position to solicit approval of the Plan.

5. At a recent meeting with the staff of the FDIC, applicant was informed that the Settlement Agreement had been rejected and that no counteroffer would be made.

6. As a result of the FDIC's decision, applicant is currently in an uncertain position and is reviewing its alternatives. Applicant's attention over the past year has been focused on obtaining the FDIC's approval of the Settlement Agreement and clearance of the filings that would have been necessary to implement the Plan. Since the date on which applicant received the FDIC's decision, it has commenced the process of formulating alternative methods to acquire an operating business and utilize its capital loss. However, because the period of exemption from the provisions of the Act under the Order expired on December 30, 1990, it is necessary for applicant to seek an additional period of exemption to permit it to formulate and implement new plans.

7. Applicant believes it would be unfair to its stockholders to require it to register as an investment company before it has had adequate opportunity to consider its alternatives. Since the issuance of the Order, applicant has

been in full compliance with the conditions of the Order.

Applicant now seeks to amend the Order to provide an additional period of exemption from the provisions of the Act, subject to those same conditions.

Applicant's Conditions

Applicant has agreed that the requested amendment to the Order will be subject to the following conditions, each of which will apply to applicant until it acquires an operating business or otherwise falls outside the definition of an investment company:

1. Applicant will continue to limit its securities investments to securities that qualify as "high quality securities" as that term is defined in rule 2a–7(a)(2)(iv).

2. Applicant will continue to comply with sections 9, 17(e), and 36 of the Act as if it were a registered investment company.

3. Applicant will continue to comply with sections 17(a) and 17(d) as if it were a registered investment company, subject to the following exceptions. As noted in the application, during a portion of the period in which the requested exemption will be effective, it is possible that applicant will be subject to the jurisdiction of the federal bankruptcy courts. It is understood that applicant need not comply with section 17(a) or 17(d) of the Act with respect to (a) any transaction, including, without limitation, the Plan, that is approved by the bankruptcy court and (b) any transaction or series of transactions that result in its ceasing to fall within the definition of an "investment company" provided that (i) no cash payments will be made to any "affiliated person" (as defined in the Act) of applicant as part of such transaction or series of transactions and (ii) no debt securities are issued to an affiliated person of applicant as part of such transaction or series of transactions unless such debt securities are expressly subordinated upon liquidation to the claims of applicant's debenture holders.

4. Applicant will continue to comply with the provisions of section 17(f) of the Act as provided in Rule 17f–2 as if it were a registered management investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–1096 Filed 1–16–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map; Greater Cincinnati International Airport, Covington, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Kenton County Airport Board for Greater Cincinnati International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 8, 1991.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Planner, Airports District Office, 3973 Knight Arnold Road, Suite #105, Memphis, TN 38118–3004. Telephone Number 901–544–3495.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Greater Cincinnati International Airport are in compliance with applicable requirements of Part 150, effective January 8, 1991.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Kenton County Airport Board. The specific maps under consideration are Greater Cincinnati International Airport Existing Noise Exposure Map and Future (1994) Noise Exposure Map. The FAA has determined that these maps for Greater Cincinnati International Airport are in compliance with applicable requirements.

This determination is effective on January 8, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Airports District Office, 3973 Knight Arnold Rd., suite #105, Memphis, TN 38118–3004.

Mr. Robert Holscher, Director of Aviation, Greater Cincinnati International Airport, Cincinnati, Ohio 45275–2000.

Questions may be directed to the individual named under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Memphis Airports District Office, January 8, 1991.

Wayne R. Miles,

Assistant Manager.

[FR Doc. 91–1137 Filed 1–16–91; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–91–2]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 6, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 11, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25405.
Petitioner: Peninsula Airways, Inc.
Sections of the FAR Affected: 14 CFR 43.3(a) and (g).
Description of Relief Sought: To extend Exemption No. 4949, as amended, which allows petitioner's pilots to remove and/or replace aircraft cabin seats and seat belts. Exemption No. 4949 will expire on June 1, 1991.

Docket No.: 26369.
Petitioner: Sierra Pacific Airlines.
Sections of the FAR Affected: 14 CFR 121.356.
Description of Relief Sought: To allow petitioner to operate seven Convair 580 type airplanes without the required Mode S transponder and Traffic Alert and Collision Avoidance System (TCAS II).

Docket No.: 26392.
Petitioner: Lockheed Aeronautical Systems Company.
Sections of the FAR Affected: 14 CFR 121.310(m).
Description of Relief Sought: To allow 29 foreign-registered L–1011–385–3 airplanes to be imported and operated in the United States.

Dispositions of Petitions

Docket No.: 15590.
Petitioner: Embry-Riddle Aeronautical University.
Sections of the FAR Affected: 14 CFR part 141, appendixes A, C, D, F, and H.
Description of Relief Sought/ Disposition: To amend Exemption No. 2329, as amended, which allows petitioner to graduate students after they have been trained to a performance standard instead of requiring minimum total flight time. The amendment would allow reduction of the minimum sole cross-country flight time requirement.

Grant, December 26, 1990, Exemption No. 2329H.

Docket No.: 23358.
Petitioner: Clarke Outdoor Spraying Company, Inc.
Sections of the FAR Affected: 14 CFR 91.313(c).
Description of Relief Sought/ Disposition: To extend Exemption No. 5010, which allows petitioner, under certain conditions, to carry passengers in restricted category aircraft, namely two Bell 4765 helicopters, while performing aerial service.

Grant, December 17, 1990, Exemption No. 5010A

Docket No.: 24822.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.309(c)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 5002, which allows petitioner's member airlines and any other similarly situated air carrier to operate their Boeing 747 airplanes without a hand fire extinguisher located in the upper-lobe galley, provided at least one hand fire extinguisher is installed in an area that makes it readily accessible to each galley.

Grant, December 27, 1990, Exemption No. 5002A

Docket No.: 25286.
Petitioner: United States Parachute Association.
Sections of the FAR Affected: 14 CFR 91.307(a) [old § 91.15(a)], § 91.607 [old § 91.47], and 105.43(a)(2).
Description of Relief Sought/ Disposition: To amend Exemption No. 4946, which allows foreign parachutists to participate in competitive parachuting events in the United States that are sponsored directly by the petitioner. The amendment would allow foreign participants to make parachute jumps at the U.S. National Skydiving Championships and at other events conducted by the petitioner and other groups' members.

Denial, January 2, 1991, Exemption No. 4946B

Docket No.: 26301.
Petitioner: Rich International Airways.
Sections of the FAR Affected: 14 CFR 121.358(b).
Description of Relief Sought/ Disposition: To allow petitioner to obtain from its certificate-holding office an extension of the compliance date by which it must install an approved airborne windshear (windshear equipment) in its two Douglas DC–8 airplanes and one Boeing 727 airplane.

Grant, December 27, 1991, Exemption No. 5262

Docket No.: 26377.
Petitioner: Arrow Air.

Sections of the FAR Affected: 14 CFR 121.358(c)(1).

Description of Relief Sought/ Disposition: To allow petitioner to request approval of a retrofit schedule for installation of approved windshear equipment. Such requests were to be submitted by June 1, 1990.

Grant, December 27, 1990, Exemption No. 5261

Docket No.: 26424.

Petitioner: Reeve Aleutian Airways.

Sections of the FAR Affected: 14 CFR 121.358(c)(1).

Description of Relief Sought/ Disposition: To allow petitioner to request approval of a retrofit schedule for installation of approved windshear equipment. Such requests were to be submitted by June 1, 1990.

Grant, January 2, 1991, Exemption No. 5265

[FR Doc. 91-1138 Filed 1-16-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 90-04-IP-N02]

General Motors Corp.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by General Motors Corporation (GM), of Warren, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.124, Federal Motor Vehicle Safety Standard (FMVSS) No. 124, "Accelerator Control Systems." The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on May 23, 1990, and an opportunity afforded for comment (55 FR 21297).

Paragraph S5.3 of FMVSS No. 124 specifies that the maximum time for the throttle to return to idle position shall be 1 second for vehicles of 10,000 pounds or less Gross Vehicle Weight Rating (GVWR). The maximum time to return to idle position shall be 3 seconds for any vehicle that is exposed to ambient air at 0 degrees to −40 degrees Fahrenheit during the test or for any portion of the 12 hour conditioning period.

General Motors produced 1,426 vehicles which may not have complied with the requirements of FMVSS No. 124 at the time of manufacture. These vehicles were built with accelerator assemblies which exhibit increased friction at the accelerator pedal pivot. These 1989 General Motors vehicles are:

Chevrolet—Celebrity
Pontiac—6000, Grand Prix and Bonneville
Oldsmobile—Cutlas Ciera, Cutlass Supreme, Delta 88, and 98 Regency
Buick—Century, Regal, Le Sabre, and Electra
Cadillac—Fleetwood and DeVille

GM evaluated the effect of the increased friction on the force necessary to return the pedal assembly to the idle position. It was determined from this study that "wear-in" quickly reduced the likelihood that the friction would significantly affect accelerator pedal return. The study also concluded that for the worst case engine/accelerator assembly configuration at the time of shipment, the engine would return to idle within 3 seconds (as specified in the requirement of S5.2 of FMVSS No. 124 for testing at −40 degrees Fahrenheit) for 70 percent of the vehicles equipped with the affected assemblies. Therefore, GM believes that in the worst case only 428 vehicles may have been in noncompliance with Standard No. 124 when shipped.

GM supported its petition with the following:

"1. Driving an affected vehicle results in a "wear-in" that quickly reduces the accelerator lever friction such that the pedal return will be consistent with the requirements of FMVSS No. 124. GM believes that because of the "wear-in," it is very unlikely that any affected vehicles in use now have the cited throttle return condition.

2. No field incidents attributable to this condition have been reported. GM is not aware of any field or customer reports. Furthermore, both warranty and parts sales records show no indication of repairs to correct the cited condition.

3. At the time of shipment, all of the 428 suspect parts performed within the requirements specified by S5.2 of FMVSS No. 124 at, or above, ambient temperatures (50 to 70 degrees Fahrenheit).

4. The throttle system, with any of the 428 parts installed, would return to within 10 percent or less of its normal idle position within the 3 seconds specified by S5.2 at a temperature of −40 degrees Fahrenheit. the resulting engine speed is somewhat higher than cold fast idle. The driver can easily drive and control the vehicle at this engine speed and normal application of service brake easily would stop the vehicle. The delay in idle return would only exist at extremely low temperatures, and as the automobile or the environment warmed, the delay would be eliminated.

5. Even though the throttle system may only return to within 10% of normal idle position within 3 seconds at extremely low temperatures, it does not stop at that point. The throttle continues to close and further decreases the effects described in item 4.

6. If the throttle system does not return to normal idle in cold weather, the condition would be repeatable, until relieved by "wear-in," and the cause would be easily diagnosed.

No comments were received on the petition.

In response to NHTSA's requests, GM provided supplementary information and met with agency personnel to discuss further the subject matter of the petition. NHTSA accepts GM's argument that 70 percent of the vehicles equipped with the accelerator assemblies would have complied at the time of shipment because of pre-conditioning or wear-in during the vehicle assembly process. With respect to the remaining vehicles, GM provided data which show that the friction between the accelerator lever and support block is reduced by an average of 45 percent just after 100 throttle actuations. After 400 actuations, the reduction is over 50 percent. Thus, it is reasonable to conclude that any noncompliance which may have existed in these 1989 model cars at the time of shipment has since been eliminated through vehicle use.

NHTSA found one complaint of throttle from an owner of one of the 1,426 vehicles concerned, but it appeared unrelated to the condition that was the subject of the petition, GM searched its own files and found nothing relevant.

Accordingly, petitioner has met its burden of persuasion that the noncompliance described herein is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Issued on: January 14, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-1177 Filed 1-16-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-

463 that a meeting of the Advisory Committee on the Readjustment Problems of Vietnam Veterans will be held February 7 and 8, 1991. The purpose of the meeting is to enable the Committee to gain firsthand experience of VA health care services for Vietnam veterans through review of treatment units, and discussions with VA service providers and veteran clientele. This meeting will be a field meeting primarily conducted at the San Francisco and Palo Alto, California VA Medical Centers. The meeting on February 7 will begin at 8:30 a.m. and conclude at 4 p.m. The day's agenda will consist of briefings and direct observations of VA operations at the Clinical Laboratory and Education Division of the National Center for Post-Traumatic Stress Disorder at the Menlo Park division of the Palo Alto VA Medical Center.

The meeting on February 8 will begin at 8 a.m. and conclude at 4 p.m. The day's agenda will be conducted at the San Francisco VA Medical Center and will consist of briefings by VA officials and direct observations of VA operations. Highlighted service areas will include Readjustment Counseling Service, the Homeless Chronically Mentally Ill Program, the Post-Traumatic Stress Disorder Clinical Team, and the Substance Abuse programs. A separate concurrent meeting from 1:30 p.m. to 5 p.m. on Friday afternoon will consist of a local public forum meeting and group discussion with non-VA officials and service providers regarding the post-war readjustment needs of area Vietnam veterans. The meeting will be conducted at the San Francisco Hilton Hotel, One Hilton Square, San Francisco, California 94102.

The meeting will be closed from 8:30 a.m. to 4 p.m. on Thursday, February 7, and from 8 a.m. to 4 p.m. on Friday, February 8, in accordance with the provisions cited in 5 U.S.C. 552b(c)(6) pursuant to subsection 10(d) of the Federal Advisory Committee Act. During this portion of the meeting, the Committee will be engaging in discussions with VA mental health professionals and veterans. These discussions will disclose information of a personal nature for veteran patients which would constitute a clearly unwarranted invasion of personal privacy. The concurrent meeting on February 8 from 1:30 p.m. to 5 p.m. will be open to the public to the seating capacity of the room.

Anyone having questions concerning the meeting may contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Department of Veterans Affairs Central Office at (202) 233-3317/3303.

Dated: January 9, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91-1085 Filed 1-16-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 12
Thursday, January 17, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Monday, January 28, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91–1251 Filed 1–15–91; 10:34 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION:

TIME AND DATE: 11:00 a.m., Friday, February 1, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91–1252 Filed 1–15–91; 10:34 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 8, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91–1253 Filed 1–15–91; 10:34 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 15, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91–1254 Filed 1–15–91; 10:34 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 22, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91–1255 Filed 1–15–91; 10:34 am]
BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Cancellation of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the previously announced open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held on Tuesday, January 15, 1991 at 2:00 p.m. has been *CANCELLED.*

No earlier notice of this cancellation was practicable.

Dated: January 14, 1991.
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 91–1209 Filed 1–14–91; 4:17 pm]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:37 a.m. on Monday, January 14, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: January 15, 1991.
Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 91–1328 Filed 1–15–91; 2:48 p.m.]
BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 23, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Buidling, C Street entrance between 20th and 21st Streets, NW., Washington, Dc 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the board; (202) 452–3204.

You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 15, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–1337 Filed 1–15–91; 3:58 pm]

[BILLING CODE 6210–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, January 23, 1991.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5358A—Aircraft Accident Report: MarkAir, Inc., Flight 3087, Boeing 737–2X6C, N670MA, Unalakleet, Alaska, June 2, 1990.

News Media Contact: Ted Lopatkiewicz 382–6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

January 14, 1991.

[FR Doc. 91–1231 Filed 1–14–91; 4:17 pm]

BILLING CODE 7533–01–M

federal register

Thursday
January 17, 1991

Part II

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment. Notice of hearing.

SUMMARY: The Commission is considering promulgating amendments to the sentencing guidelines, policy statements, and commentary. The proposed amendments, or a synopsis of issues to be addressed, are set forth below. The Commission may report amendments to the Congress on or before May 1, 1991. Comment is sought on all proposals, alternative proposals, and any other aspect of the sentencing guidelines, policy statements, and commentary.

DATES: Public comment should be received by the Commission no later than March 18, 1991, in order for it to be considered by the Commission in the promulgation of amendments due to the Congress by May 1, 1991. The Commission has scheduled a public hearing on these amendments for March 5, 1991, in Washington, D.C.

ADDRESS: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, N.W., Suite 1400, Washington, DC 20004, Attn: Communications Director.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Deputy Staff Director, Telephone: (202) 662-8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. § 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. § 994(o), (p).

Ordinarily, the Administrative Procedure Act rulemaking requirements are inapplicable to judicial agencies; however, 28 U.S.C. § 994(x) makes the Administrative Procedure Act rulemaking provisions of 5 U.S.C. § 553 applicable to the promulgation of sentencing guidelines by the Commission.

The proposed amendments are presented in one of three formats, each followed by a statement explaining the reason for the amendment. First, the majority of the amendments are proposed as specific revisions to a guideline, policy statement, or commentary. Second, for some amendments the Commission has published several methods of addressing the issue. Commentators are encouraged to state their preference among listed alternatives or to suggest a new alternative. Third, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language.

In connection with amendments numbered 7 (bank robbery), 16 (precursors), 21 and 22 (firearms and explosives), 30 (criminal history related cases), and 31 (criminal history category VII), additional background and explanatory information is available for review at the Commission's offices.

In displaying certain proposed amendments, underlining is used to denote material to be deleted; *italics* are used to denote material to be added.

Section 1B1.10 of the United States Sentencing Commission Guidelines Manual sets forth the Commission's policy statement regarding retroactivity of amended guideline ranges. Comment is requested regarding whether any of the proposed amendments should be retroactive under this policy statement.

While the amendments below are specifically proposed for public comment and possible submission to the Congress by May 1, 1991, the Commission emphasizes that it welcomes comment on any aspect of the sentencing guidelines, policy statements, and commentary, whether or not the subject of a proposed amendment.

Amendments are proposed for comment and possible promulgation upon the affirmative vote of at least four voting Commissioners; however, publication of an amendment for comment does not necessarily indicate the view of an individual Commissioner on the merits of the particular proposed amendment.

Authority. 28 U.S.C. § 994(a), (o), (p), (x).

William W. Wilkins, Jr.
Chairman

§2A3.2. Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts

1. Proposed Amendment: Section 2A3.2(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics", and by inserting the following additional subdivision:

[Option 1

"(2) If the difference in age between victim and defendant exceeds six years, increase as follows:

Difference in Age	Increase
More than 6 years	1 level
More than 8 years	2 levels
More than 10 years	3 levels
More than 12 years	4 levels."]

[Option 2
"(2) If the victim had not attained the age of fourteen years, increase by [2][4][6] levels."]

[Options 1 and 2
Section 2A3.2 is amended by inserting the following:

"(c) Cross References
(1) If the offense involved prostitution, apply §2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct) if the resulting offense level is greater than that determined above.
(2) If the offense involved the sexual exploitation of a minor by production of sexually explicit materials, apply §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) if the resulting offense level is greater than that determined above.".

The Commentary to §2A3.2 captioned "Application Note" is amended by deleting Note 1.

The Commentary to §2A3.2 captioned "Background" is amended by deleting "applies to sexual acts that would be lawful but for the age of the victim. It is assumed" and by inserting in lieu thereof "assumes".]

Reason for Amendment: Under the Crime Control Act of 1990, the maximum penalty for violations of 18 U.S.C. 2243(a) is increased from five to fifteen years imprisonment. The amendment provides increased penalties for cases where the difference in age between the victim and the defendant is large (Option 1) or cases involving younger victims (Option 2). Further, the amendment provides cross references to the appropriate guideline for cases involving prostitution or sexual exploitation of minors.

Illustration of §2A3.2 as amended by proposed amendment 1:

§2A3.2. Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts

(a) Base Offense Level: 15
(b) Specific Offense Characteristics
(1) If the victim was in the custody, care, or supervisory control of the defendant, increase by 1 level.

[Option 1

(2) If the difference in age between victim and defendant exceeds six years, increase as follows:

Difference in Age	*Increase*
More than 6 years	*1 level*
More than 8 years	*2 levels*
More than 10 years	*3 levels*
More than 12 years	*4 levels.*]

[Option 2
(2) If the victim had not attained the age of fourteen years, increase by [2][4][6] levels.]

[Options 1 and 2
(c) Cross References
(1) If the offense involved prostitution, apply §2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct) if the resulting offense level is greater than that determined above.
(2) If the offense involved the sexual exploitation of a minor by production of sexually explicit materials, apply §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provision: 18 U.S.C. § 2243(a). For additional statutory provision(s), see Appendix A (Statutory Index).

Application Note:
1. If the defendant committed the criminal sexual act in furtherance of a commercial scheme such as pandering, transporting persons for the purpose of prostitution, or the production of pornography, an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: This section applies to sexual acts that would be lawful but for the age of the victim. It is assumed *assumes* that at least a four-year age difference exists between the victim and the defendant, as specified in 18 U.S.C. § 2243(a). An enhancement is provided for a defendant who victimizes a minor under his supervision or care.]

§2A4.1. Kidnapping, Abduction, Unlawful Restraint
§1B1.1. Application Instructions

2. Proposed Amendment: Section 2A4.1 is amended by deleting subsection (b)(5) as follows:

"(5) If the victim was kidnapped, abducted, or unlawfully restrained to facilitate the commission of another offense: (A) increase by 4 levels; or (B) if the result

of applying this guideline is less than that resulting from application of the guideline for such other offense, apply the guideline for such other offense.",

and inserting in lieu thereof:

"(5) If a victim was kidnapped, abducted, or unlawfully restrained in connection with another offense, increase to--

(A) the offense level from the offense guideline applicable to that other offense if such offense includes an adjustment for kidnapping, abduction, or unlawful restraint, or otherwise takes such conduct into account; or

(B) 4 plus the offense level from the offense guideline applicable to that other offense in any other case,

if the resulting offense level is greater than determined above.

(6) If the victim was sexually exploited and an adjustment from subsection (b)(5) does not apply, increase by [3]-[5] levels.

(7) If the victim is a minor and, in exchange for money or other consideration, was placed in the care or custody of another person who does not have a legal right to such care or custody of the victim, increase by 3 levels.

(c) Cross Reference

(1) If the victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).".

The Commentary to §2A4.1 captioned "Application Notes" is amended by inserting the following additional note:

"4. 'Sexually exploited' includes offenses defined in 18 U.S.C. §§ 2241 - 2244, 2421 - 2423, 2251.".

The Commentary to §2A4.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

"Section 401 of the Crime Control Act of 1990 amends 18 U.S.C. § 1201 to require that courts take into account certain specific offense characteristics in cases involving children and directs the Commission to include those specific offense characteristics within the guidelines. Where the guidelines do not already take into account the offense conduct identified by the Act, additional specific offense characteristics have been provided.".

The Commentary to §1B1.1 captioned "Application Notes" is amended in Note 1(h) by inserting the following at the end:

"'Permanent or life-threatening bodily injury' also includes such injury resulting from intentional maltreatment to a life-threatening degree (e.g., denial of food or medical care).".

Reason for Amendment: Section 401 of the Crime Control Act of 1990 directs the Commission to amend its kidnapping guideline to include the following additional specific offense characteristics: "If the victim was intentionally maltreated (i.e., denied either food or medical care) to a life-threatening degree, increase by 4 levels; if the victim was sexually exploited (i.e., abused, used involuntarily for pornographic purposes), increase by 3 levels; if the victim was placed in the care or custody of another person who does not have a legal right to such care or custody of the child either in exchange for money or other consideration, increase by 3 levels; if the defendant allowed the child to be subjected to any of the conduct specified in this section by another person, then increase by 2 levels."

Under the Act, those characteristics are made applicable where the victim is under the age of 18 and the offender has attained the age of 18 and is not a parent, grandparent, brother, sister, aunt, uncle, or person having legal custody of the child.

The proposed amendment ensures that the first three specific offense characteristics listed in the Act are taken into account, either through new guideline language or by commentary language ensuring that existing guideline language is read to include the characteristic of concern to Congress. The Commission has determined that the fourth specific offense characteristic is currently accomplished through the application of §1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)).

Additionally, the proposed amendment revises subsection (b)(5) so that this adjustment always will be proportional to the underlying offense and clarifies its application. Finally, the amendment provides a cross reference to the first degree murder guideline where the offense involves a killing that would constitute murder under 18 U.S.C. § 1111.

Illustration of §§2A4.1 and 1B1.1 as amended by proposed amendment 2:

§2A4.1. Kidnapping, Abduction, Unlawful Restraint

(a) Base Offense Level: 24
(b) Specific Offense Characteristics

* * *

(5) If the victim was kidnapped, abducted, or unlawfully restrained to facilitate the commission of another offense: (A) increase by 4 levels; or (B) if the result of applying this guideline is less than that resulting from application of the guideline for such other offense, apply the guideline for such other offense.

(5) If a victim was kidnapped, abducted, or unlawfully restrained in connection with another offense, increase to–

(A) the offense level from the offense guideline applicable to that other offense if such offense includes an adjustment for kidnapping, abduction, or unlawful restraint, or otherwise takes such conduct into account; or

(B) 4 plus the offense level from the offense guideline applicable to that other offense in any other case,

if the resulting offense level is greater than determined above.

(6) If the victim was sexually exploited and an adjustment from subsection (b)(5) does not apply, increase by [3]-[5] levels.

(7) If the victim is a minor and, in exchange for money or other consideration, was placed in the care or custody of another person who does not have a legal right to such care or custody of the victim, increase by 3 levels.

(c) Cross Reference

(1) If the victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).

Commentary

Application Notes:

* * *

4. "Sexually exploited" includes offenses defined in 18 U.S.C. §§ 2241 - 2244, 2421 - 2423, 2251.

Background: Federal kidnapping cases generally encompass three categories of conduct: limited duration kidnapping where the victim is released unharmed; kidnapping that occurs as part of or to facilitate the commission of another offense (often, sexual assault); and kidnapping for ransom or political demand.

* * *

Section 401 of the Crime Control Act of 1990 amends 18 U.S.C. § 1201 to require that courts take into account certain specific offense characteristics in cases involving children and directs the Commission to include those specific offense characteristics within the guidelines. Where the guidelines do not already take into account the offense conduct identified by the Act, additional specific offense characteristics have been provided.

§1B1.1 Application Instructions

* * *

Commentary

* * *

Application Notes:

1. The following are definitions of terms that are used frequently in the guidelines:

* * *

(h) "Permanent or life-threatening bodily injury" means injury involving a substantial risk of death; loss or substantial impairment of the function of a bodily member, organ, or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent. *"Permanent or life-threatening bodily injury" also includes such injury resulting from intentional maltreatment to a life-threatening degree (e.g., denial of food or medical care).*

* * *

§2B1.1. Larceny, Embezzlement, and Other Forms of Theft

§2B1.2. Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property

3. Proposed Amendment: Section 2B1.1 is amended by deleting subsection (b)(2) as follows:

"If a firearm, destructive device, or controlled substance was taken, increase by 1 level; but if the resulting offense level is less than 7, increase to level 7.";

by renumbering the remaining subsections; and by inserting:

"(c) Cross Reference

(1) If the offense involved a firearm, destructive device, controlled substance, or explosive materials, apply the relevant guideline.".

Section 2B1.2 is amended by deleting subsection (b)(2) as follows:

"If a firearm, destructive device, or controlled substance was taken, increase by 1 level; but if the resulting offense level is less than 7, increase to level 7.";

by renumbering the remaining subsections; and by inserting:

"(c) Cross Reference

(1) If the offense involved a firearm, destructive device, controlled substance, or explosive materials, apply the relevant guideline.".

Reason for Amendment: This amendment deletes the enhancement or minimum offense level, and adds cross

references to the firearms, explosive materials, or controlled substance guidelines. The amendment would ameliorate the potential for considerable sentencing disparity depending on the guideline used. The current guidelines provide for a one-level enhancement, or minimum offense level 7, where the property involved in the larceny, theft, etc., was a firearm, destructive device, or controlled substance. No enhancement applies for similar conduct involving explosive materials. While the present guidelines (§§2B1.1 and 2B1.2) and the firearms guidelines, for example, would treat certain offenders similarly, other cases would differ more drastically. For example, a prohibited person who possesses a stolen rifle owned by the federal government would receive considerably different offense levels under §2B1.2 (level 7), and the current and proposed §2K2.1 (level 14). A non-prohibited person who possesses a stolen machinegun owned by the federal government would receive level 7 under §2B1.2, and level 20 under current and proposed firearms guidelines.

§2B1.1. **Larceny, Embezzlement, and Other Forms of Theft**
§2B4.1. **Bribery in Procurement of Bank Loan and Other Commercial Bribery**
§2F1.1. **Fraud and Deceit**

4. Proposed Amendment: Section 2B1.1(b) is amended by inserting the following additional subdivision:

"(8) If the defendant (A) is convicted of violating 18 U.S.C. §§ 656 or 657 and (B) personally derived more than $1,000,000 in gross receipts from the offense, and the offense level as determined above is less than level 24, increase to level 24.".

Section 2B4.1(b) is amended by inserting the following additional subdivision:

"(3) If the defendant (A) is convicted of violating 18 U.S.C. § 215 and (B) personally derived more than $1,000,000 in gross receipts from the offense, and the offense level as determined above is less than level 24, increase to level 24.".

Section 2F1.1(b) is amended by inserting the following additional subdivision:

"(7) If the defendant (A) is convicted of violating 18 U.S.C. §§ 1005, 1006, 1007, 1014, 1032, 1341 (if affecting a financial institution), 1343 (if affecting a financial institution), or 1344 and (B) personally derived more than $1,000,000 in gross receipts from the offense, and the offense level as determined above is less than level 24, increase to level 24.

Reason for Amendment: Section 2507 of the Crime Control Act of 1990 instructs the Commission to increase the offense level to level 24 when the defendant is convicted under specified statutes and derived more than $1,000,000 from the offense. The legislative history indicates that this adjustment is to apply when the defendant "personally derives more than $1 million in gross receipts." This amendment implements this statutory instruction to the Commission.

5. Proposed Amendment: Section 2B1.1(b)(1) is amended by inserting the following additional subdivisions:

"(V) More than $160,000,000	add 21
(W) More than $320,000,000	add 22
(X) More than $640,000,000	add 23
(Y) More than $1,280,000,000	add 24".

Section 2F1.1(b)(1) is amended by inserting the following additional subdivisions:

"(T) More than $160,000,000	add 19
(U) More than $320,000,000	add 20
(V) More than $640,000,000	add 21
(W) More than $1,280,000,000	add 22".

Reason for Amendment: This amendment responds to section 2504 of the Crime Control Act of 1990, which provides for an increase in the statutory maximum penalties for certain crimes relating to bank fraud, by providing for higher guideline sentences for the most serious offenses. These amendments also implement section 2510, which establishes a new offense (financial crime kingpin) by providing specific offense characteristics that will raise the offense level for that offense above the mandatory minimum in the more serious cases.

6. Proposed Amendment: The Commentary to § 2B1.1 captioned "Application Notes" is amended by adding the following additional note:

"11. If the defendant is convicted of violating 18 U.S.C. § 225 (Financial Crime Kingpins), apply the offense level applicable to the underlying offenses. Adjustments for Role in the Offense (§3B1.1) and Abuse of Position of Trust (§3B1.3) will typically be applicable. If the maximum of the guideline range is less than ten years, apply § 5G1.1(b).".

The Commentary to § 2B4.1 captioned "Application Notes" is amended by adding the following additional note:

"5. If the defendant is convicted of violating 18 U.S.C. § 225 (Financial Crime Kingpins), apply the offense level applicable to the underlying offenses. Adjustments for Role in the Offense (§3B1.1) and Abuse of Position of Trust (§3B1.3) will typically be applicable. If the maximum of the guideline range is less than ten years, apply § 5G1.1(b).".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by adding the following additional note:

"16. If the defendant is convicted of violating 18 U.S.C. § 225 (Financial Crime Kingpins), apply the offense level applicable to the underlying offenses. Adjustments for Role in the Offense (§3B1.1) and Abuse of Position of Trust (§3B1.3) will typically be applicable. If the maximum of the guideline range is less than ten years, apply §5G1.1(b).".

Appendix A (Statutory Index) is amended by inserting in the appropriate place by title and section:

"18 U.S.C. § 225 2B1.1, 2B4.1, 2F1.1".

Reason for Amendment: This amendment implements section 2510 of the Crime Control Act of 1990. The Commission contemplates that specific offense characteristics such as more than minimal planning and substantially jeopardizing the safety and soundness of a financial institution, as well as adjustments for aggravating role and abuse of position of trust, will typically be applicable to this offense. In a case involving $5,000,000, application of the guidelines for the underlying offenses and the Chapter Three adjustments should result in a guideline range at or above the statutory minimum. In the most serious cases, the amendments to the monetary tables in sections 2B1.1 and 2F1.1 should result in sentences substantially above the statutory minimum.

§2B3.1. Robbery

7(A). Proposed Amendment: The Commission seeks comment on whether the specific offense characteristic at §2B3.1(b)(1) for robbery of a financial institution (currently, a 2-level increase) should be increased to provide a 4-level increase to more adequately reflect the seriousness of this offense. The Commission's study on bank robbery is available for inspection at the Commission's offices.

(B). Proposed Amendment: The Commission seeks comment on whether the enhancement for involvement of a weapon in a robbery should be raised by an additional 1 to 4 levels to more closely accommodate Congress' view of the seriousness of committing a felony while possessing a weapon and to lessen the disparity from different prosecution practices with respect to pursuing violations of 18 U.S.C. § 924(c).

If a defendant robs a bank with a firearm and is convicted of bank robbery, 18 U.S.C. §2113, as well as a count of felon in possession of a firearm, 18 U.S.C. §924(c), the defendant faces a mandatory 60 months consecutive to the sentence for the robbery offense. In such an instance, however, no weapon enhancement (which is currently a minimum of 3 levels) is given under the guidelines to aggravate the bank robbery guideline sentence.

Applying the guidelines to the same set of facts, the presence or absence of a conviction for 924(c) can lead to significant sentencing differences. The extent of the difference varies depending on the criminal history category of the defendant; generally, the higher the criminal history category, the smaller the difference between a case with a 924(c) count and one without. It is clear from the cases sentenced that, notwithstanding the clear intent of the Justice Department's "Thornburgh Memorandum" on plea bargaining, prosecutors are not consistently charging 924(c) when a weapon is possessed during a bank robbery. Therefore, the Commission faces a policy question whether it should act to eliminate or limit the resulting disparity. The Commission's study on bank robbery is available for inspection at the Commission's offices.

(C). Proposed Amendment: Section 2B3.1 is amended by inserting the following additional subsection:

"(c) Special Instruction:

(1) If the defendant committed (A) one additional robbery, increase by 2 levels; (B) two additional robberies, increase by 3 levels; (C) three or four additional robberies, increase by 4 levels; or (D) five or more additional robberies, increase by 5 levels. This instruction applies only to federal robbery offenses (i) charged in the counts of which the defendant is convicted, or (ii) that were part of the same series as any robbery charged in a count of which the defendant is convicted.".

The Commentary to §2B3.1 captioned "Application Notes" is amended by inserting the following additional notes:

"8. For the purposes of subsection (c)(1), any two or more robberies committed at intervals of twelve months or less shall be deemed part of the same series; e.g., if the defendant committed a second robbery within twelve months of the robbery for which the defendant is convicted and a third robbery within twelve months of the second robbery, all three robberies are to be deemed part of the same series, even if the third robbery and the robbery resulting in the offense of conviction were separated by more than twelve months. A robbery offense included under subsection (c) is treated as part of the instant offense and not as criminal history (see §4A1.2(a)(1)).

9. Where the defendant is convicted of multiple, separate robberies, the offense level for each count of conviction will be increased under subsection (c)(1). The counts will then be grouped together into a single group under §3D1.2(c).".

Reason for Amendment: This amendment addresses a

concern that the guidelines may result in lower sentences in certain multiple robbery cases than under pre-guideline practice, and that variations in plea bargaining practices in different U.S. Attorney's offices with respect to dismissing or not pursuing provable counts of bank robbery may result in unwarranted disparity. This may occur when the prosecutor accepts a plea to only one count of robbery where the defendant in fact has committed several robberies, because the additional robberies would not be taken into account in the determination of the guideline range.

In pre-guidelines practice, the court was not constrained in considering such circumstances (within the maximum sentence authorized by statute for the count or counts of which the defendant was convicted). Where additional robberies were found to have been committed by the defendant, the Parole Commission guidelines expressly considered such conduct. Because such cases are serious and not infrequent, the proposed amendment would expressly provide for the inclusion of such conduct in the guidelines. As with pre-guideline practice, the sentence imposed under each option could not exceed the maximum authorized by statute for the count or counts of which the defendant was actually convicted.

The Commission's study on bank robbery is available for inspection at the Commission's offices.

§2B3.2. Extortion by Force or Threat of Injury or Serious Damage

8(A). Proposed Amendment: Section 2B3.2(b) is amended in subsection (b)(1) by deleting "$2,500" and inserting in lieu thereof "$10,000", and by deleting "§2B2.1(b)(2)" and inserting in lieu thereof "§2B3.1(b)(6)".

Section 2B3.2(b) is amended by renumbering subdivisions (2), (3), and (4) as (3), (4), and (5) respectively, and by inserting the following additional subdivision as subdivision (2):

"(2)(A) If the offense involved an express or implied threat of death, bodily injury or kidnapping, increase by 2 levels; or

(B) If the offense involved an express or implied threat of death or serious bodily injury to numerous victims (e.g., a threat to derail a passenger train, or to poison consumer products), increase by 4 levels [but if the resulting offense level is less than 24, increase to level 24].".

Reason for Amendment: This amendment increases the offense level for extortion involving a threat of bodily injury to be comparable to the offense level for robbery. It also provides an additional enhancement if the offense involves a threat of death or serious bodily injury to numerous persons.

(B). Proposed Amendment: Section 2B3.2(b)(3) (formerly (b)(2)) is amended by inserting "(i)" immediately after "(A)", by deleting "(B)" and "(C)" and inserting in lieu thereof "(ii)" and "(iii)" respectively; by deleting the period at the end and inserting in lieu thereof "; or", and by inserting the following additional paragraph:

"(B) If the offense involved preparation to carry out a threat of death, serious bodily injury, or kidnapping; or if the participant(s) demonstrated the ability to carry out such threat; or the offense involved product tampering or attempted product tampering, increase by [3]-[5] levels.".

The Commentary to §2B3.2 captioned "Application Notes" is amended by inserting the following additional note:

"6. In certain cases, an extortionate demand may be accompanied by conduct that does not qualify as a display of a dangerous weapon under §2B3.2(b)(3)(A)(iii) but is nonetheless similar in seriousness, demonstrating the defendant's preparation or ability to carry out the threatened harm (e.g., an extortionate demand containing a threat to tamper with a consumer product accompanied by a workable plan showing how the product's tamper-resistant seals could be defeated, or a threat to kidnap a person accompanied by information showing study of that person's daily routine). Subsection (b)(3)(B) addresses such cases.".

Reason for Amendment: This amendment provides an enhancement where the offense involves preparation to carry out a threat of death, serious bodily injury or kidnapping; where the participants demonstrate an ability to carry out such threat; or where the offense involved product tampering or attempted product tampering. Comment is sought as to the appropriate level of enhancement in such cases.

(C). Proposed Amendment: Section 2B3.2(b) is amended by inserting the following additional subdivisions:

"(6) If the offense was part of a pattern of conduct involving [organized crime][organized criminal activity], increase by [2][4] levels.

(7) If the offense was part of a larger pattern of extortion over time or extended to more victims than taken into account in the count(s) of conviction, increase by [2][4] levels.

(8) If the offense was to the family of the victim and such threat lasted for a period of time, increase by 2 levels.".

Reason for Amendment: This amendment adds additional specific offense characteristics to enhance the penalty for particular aggravating factors. The Commission seeks

comment as to the appropriateness of adding one or more of these specific offense characteristics.

Illustration of §2B3.2 as amended by proposed amendments 8(A), (B), and (C):

§2B3.2. Extortion by Force or Threat of Injury or Serious Damage

(a) Base Offense Level: 18

(b) Specific Offense Characteristics

(1) If the greater of the amount obtained or demanded exceeded $2,500 *$10,000*, increase by the corresponding number of levels from the table in §2B2.1(b)(2) *§2B3.1(b)(6)*.

(2)(A) If the offense involved an express or implied threat of death, bodily injury or kidnapping, increase by 2 levels; or

(B) If the offense involved an express or implied threat of death or serious bodily injury to numerous victims (e.g., a threat to derail a passenger train, or to poison consumer products), increase by 4 levels [but if the resulting offense level is less than 24, increase to level 24].

(2) (A)*(i)* If a firearm was discharged, increase by 5 levels; (B)*(ii)* if a dangerous weapon (including a firearm) was otherwise used, increase by 4 levels; (C)*(iii)* if a dangerous weapon (including a firearm) was brandished, displayed, or possessed, increase by 3 levels*; or*

(B)If the offense involved preparation to carry out a threat of death, serious bodily injury, or kidnapping; or if the participant(s) demonstrated the ability to carry out such threat; or the offense involved product tampering or attempted product tampering, increase by [3]-[5] levels.

(3) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

Degree of Bodily Injury		Increase in Level
(A)	Bodily Injury	add 2
(B)	Serious Bodily Injury	add 4
(C)	Permanent or Life-Threatening Bodily Injury	add 6

(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels.

Provided, however, that the cumulative adjustments from (2)*(3)* and (3)*(4)* shall not exceed 9 levels.

(4) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by 4 levels; or (B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.

(6) If the offense was part of a pattern of conduct involving [organized crime][organized criminal activity], increase by [2][4] levels.

(7) If the offense was part of a larger pattern of extortion over time or extended to more victims than taken into account in the count(s) of conviction, increase by [2][4] levels.

(8) If the offense was to the family of the victim and such threat lasted for a period of time, increase by 2 levels.

Commentary

* * *

Application Notes:

* * *

6. In certain cases, an extortionate demand may be accompanied by conduct that does not qualify as a display of a dangerous weapon under §2B3.2(b)(3)(A)(iii) but is nonetheless similar in seriousness, demonstrating the defendant's preparation or ability to carry out the threatened harm (e.g., an extortionate demand containing a threat to tamper with a consumer product accompanied by a workable plan showing how the product's tamper-resistant seals could be defeated, or a threat to kidnap a person accompanied by information showing study of that person's daily routine). Subsection (b)(3)(B) addresses such cases.

* * *

(D). Comment is also sought as to whether specific offense characteristic (b)(1) dealing with the amount demanded or obtained should be amended to take into account other losses to the victim (e.g., the cost of defensive measures).

§2C1.1. Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right

§2C1.2. Offering, Giving, Soliciting, or Receiving a Gratuity

9(A). Proposed Amendment: Section 2C1.1(c)(1) is amended by deleting "or facilitating another criminal offense, or for obstructing justice in respect to" and inserting in lieu thereof ", or obstructing justice in respect to,"; and by inserting "or §2J1.2 (Obstruction of Justice), as appropriate," immediately after "(Accessory After the Fact)".

Section 2C1.1(c) is amended by renumbering subdivisions (1) and (2) as (2) and (3) respectively, and by inserting the following as subdivision (1):

"(1) If the bribe was for the purpose of aiding or abetting the commission of another criminal offense, apply §2X2.1 (Aiding and Abetting) in respect to the offense aided or abetted if the resulting offense level is greater than that determined above.".

The Commentary to §2C1.1, captioned "Application Notes", is amended in Note 3 by deleting "§2C1.1(c)(1) or (2)" and inserting in lieu thereof "§2C1.1(c)(1), (2), or (3)"; and by inserting at the end: "In such cases, §3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.".

The Commentary to §2C1.1 captioned "Application Notes" is amended in Note 4 by deleting "and (2)" and inserting in lieu thereof ",(2), and (3)".

The Commentary to §2C1.1 captioned "Background" is amended in the fifth paragraph by deleting "(c)(1)" and inserting in lieu thereof "(c)(2)"; by deleting "facilitation" and inserting in lieu thereof "concealment"; and by deleting "facilitating" and inserting in lieu thereof "concealing".

The Commentary to §2C1.1 captioned "Background" is amended in the sixth paragraph by deleting "§2C1.1(c)(2)" and inserting in lieu thereof "§2C1.1(c)(3)".

The Commentary to §2C1.1 captioned "Background" is amended by deleting the seventh paragraph and inserting in lieu thereof:

" When the offense level is determined under §2C1.1(c)(1), (2), or (3), an adjustment from §3B1.3 (Abuse of Position of Trust or Use of a Special Skill) may apply.".

The Commentary to §2C1.1 captioned "Background" is amended by inserting the following additional paragraph immediately after the third paragraph:

" Under §2C1.1(c)(1), if the bribe was for the purpose of aiding or abetting the commission of another criminal offense, the guideline from §2X2.1 (Aiding and Abetting) would be applied in respect to the criminal offense aided or abetted, if the result is greater than that determined under the preceding subsections. For example, if a bribe was given to a law enforcement officer to allow the smuggling of a quantity of cocaine, the guideline for aiding or abetting the importation of that cocaine would be applied if the result was greater than that determined under the preceding subsections.".

Reason for Amendment: As currently written, subsection (c)(1) applies the accessory after the fact guideline (§2X3.1) when the bribe was for the purpose of "concealing or facilitating another criminal offense, or for obstructing justice in respect to another criminal offense." However, facilitating (aiding or abetting) the commission of another criminal offense is different from concealing or covering up that offense. Section 2X2.1, (Aiding and Abetting) has the same offense level as the underlying offense; §2X3.1 (Accessory After the Fact) is rated as 6 levels less than the underlying offense. This amendment creates a separate cross-reference for aiding or abetting another offense that increases the offense level for such conduct by referring to §2X2.1 (Aiding and Abetting). In addition, subsection (c)(2) is amended to expressly refer to §2J1.2 (Obstruction of Justice).

(B). Proposed Amendment: Section 2C1.1(b)(2) is amended by deleting "(If more than one applies, use the greater):"; by deleting "(A)"; and by redesignating "(B)" as "(3)".

The Commentary to §2C1.1 captioned "Background" is amended by deleting the fourth paragraph as follows:

"Under §2C1.1(b)(2)(B), if the bribe is for the purpose of influencing an official act by certain officials, the offense level is increased by 8 levels if this increase is greater than that provided under §2C1.1(b)(2)(A).".

Section 2C1.2(b)(2) is amended by deleting "(If more than one applies, use the greater):"; by deleting "(A)"; and by redesignating "(B)" as "(3)".

The Commentary to §2C1.2 captioned "Background" is amended in the fourth sentence by deleting "or where" and inserting in lieu thereof "and where".

Reason for Amendment: The purpose of this amendment is to make the current specific offense characteristics regarding value of the bribe and involving high level decision-making or sensitive positions apply cumulatively, rather than using the greater of the two. This will provide a more appropriate sanction in a case in which both characteristics are present.

Illustration of §§2C1.1 and 2C1.2 as amended by proposed amendments 9(A) and (B):

§2C1.1. Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right

(a) Base Offense Level: 10
(b) Specific Offense Characteristics
(1) If the offense involved more than one bribe, increase by 2 levels.
(2) (If more than one applies, use the greater):
(A) If the value of the bribe or the benefit received, or to be received, in return for the bribe exceeded $2,000, increase by the corresponding number of levels from the table in §2F1.1 (Fraud and Deceit).
(B)*(3)* If the offense involved a bribe for the purpose of influencing an elected official or any official holding a high level decision-making or sensitive position, increase by 8 levels.
(c) Cross References
(1) If the bribe was for the purpose of aiding or abetting the commission of another criminal offense, apply §2X2.1 (Aiding and Abetting) in respect to the offense aided or abetted if the resulting offense level is greater than that determined above.

(12) If the bribe was for the purpose of concealing or facilitating another criminal offense, or for obstructing justice in respect to, *or obstructing justice in respect to,* another criminal offense, apply §2X3.1 (Accessory After the Fact) *or §2J1.2 (Obstruction of Justice), as appropriate,* in respect to such other criminal offense if the resulting offense level is greater than that determined above.

(23) If the offense involved a threat of physical injury or property destruction, apply §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above.

Commentary

* * *

Application Notes:

* * *

3. Do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill) except where the offense level is determined under §2C1.1(c)(1) or (2) *§2C1.1(c)(1), (2), or (3) . In such cases, §3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.*
4. In some cases the monetary value of the bribe may not be known or may not adequately reflect the seriousness of the offense. For example, a small payment may be made in exchange for the falsification of inspection records for a shipment of defective parachutes or the destruction of evidence in a major narcotics case. In part, this issue is addressed by the adjustments in §2C1.1(b)(2), and §2C1.1(c)(1) and (2), *(2), and (3) .* However, in cases in which the seriousness of the offense is still not adequately reflected, an upward departure is warranted. See Chapter Five, Part K (Departures).

* * *

Background: This section applies to a person who offers or gives a bribe for a corrupt purpose, such as inducing a public official to participate in a fraud or to influence his official actions, or to a public official who solicits or accepts such a bribe. The maximum term of imprisonment authorized by statute for these offenses is fifteen years under 18 U.S.C. § 201(b) and (c), twenty years under 18 U.S.C. § 1951, and three years under 18 U.S.C. § 872.

The object and nature of a bribe may vary widely from case to case. In some cases, the object may be commercial advantage (e.g., preferential treatment in the award of a government contract). In others, the object may be issuance of a license to which the recipient is not entitled. In still others, the object may be the obstruction of justice. Consequently, a guideline for the offense must be designed to cover diverse situations.

The amount of the bribe is used as a factor in the guideline not because it directly measures harm to society, but because it is improbable that a large bribe would be given for a favor of little consequence. Moreover, for deterrence purposes, the punishment should be commensurate with the gain.

Under §2C1.1(c)(1), if the bribe was for the purpose of aiding or abetting the commission of another criminal offense, the guideline from §2X2.1 (Aiding and Abetting) would be applied in respect to the criminal offense aided or abetted, if the result is greater than that determined under the preceding subsections. For example, a bribe was given to a law enforcement officer to allow the smuggling of a quantity of cocaine, the guideline for aiding or abetting the importation of that cocaine would be applied if the result was greater than that determined under the preceding subsections.

Under §2C1.1(b)(2)(B), if the bribe is for the purpose of influencing an official act by certain officials, the offense level is increased by 8 levels if this increase is greater than that provided under §2C1.1(b)(2)(A).

Under §2C1.1 (c)(1) *(c)(2),* if the purpose of the bribe involved the facilitation *concealment* of another criminal offense or the obstruction of justice in respect to another criminal offense, the guideline for §2X3.1 (Accessory After the Fact) in respect to that criminal offense will be applied, if the result is greater than that determined above. For example, if a bribe was given for the purpose of facilitating *concealing* or covering up the offense of espionage, the guideline for accessory after the fact to espionage would be applied.

Under §2C1.1(c)(2) *§2C1.1(c)(3),* if the offense involved forcible extortion, the guideline from §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) will apply if the result is greater than that determined above.

Note that, when applying 2C1.1(c)(1) or (2), an adjustment from Chapter Three, Part B (Role in the Offense) will also apply. This normally will result in an increase of at least 2 levels.

When the offense level is determined under §2C1.1(c)(1), (2), or (3), an adjustment from §3B1.3 (Abuse of Position of Trust or Use of a Special Skill) may apply.

* * *

§2C1.2. Offering, Giving, Soliciting, or Receiving a Gratuity

(a) Base Offense Level: 7
(b) Specific Offense Characteristics
(1) If the offense involved more than one gratuity, increase by 2 levels.
(2) (If more than one applies, use the greater):
(A) If the value of the gratuity exceeded $2,000, increase by the corresponding number of levels from the

table in §2F1.1 (Fraud and Deceit).

(B)*(3)* If the gratuity was given, or to be given, to an elected official or any official holding a high level decision-making or sensitive position, increase by 8 levels.

Commentary

* * *

Background: This section applies to the offering, giving, soliciting, or receiving of a gratuity to a public official in respect to an official act. A corrupt purpose is not an element of this offense. The maximum term of imprisonment authorized by statute for these offenses is two years. An adjustment is provided where the value of the gratuity exceeded $2,000, or where *and where* the public official was an elected official or held a high level decision-making or sensitive position.

Chapter Two, Part C - Offenses Involving Public Officials

10. Proposed Amendment: Chapter Two, Part C, is amended by inserting the following additional guideline:

"§2C1.7. Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions

(a) Base Offense Level: 10
(b) Specific Offense Characteristics:
(1) (If more than one applies, use the greater):
(A) If the loss to the government or the value of anything obtained, or to be obtained, by a public official or others acting with a public official, whichever is greater, exceeded $2,000, increase by the corresponding number of levels from the table in §2F1.1 (Fraud and Deceit).
(B) If the offense involved an elected official or any official holding a high level decision-making or sensitive position, increase by 8 levels.
(c) Cross References
(1) If the bribe was for the purpose of aiding or abetting the commission of another criminal offense, apply §2X2.1 (Aiding and Abetting) in respect to the offense aided or abetted if the resulting offense level is greater than that determined above.
(2) If the bribe was for the purpose of concealing, or obstructing justice in respect to, another criminal offense, apply §2X3.1 (Accessory After the Fact) or §2J1.2 (Obstruction of Justice), as appropriate, in respect to such other criminal offense if the resulting offense level is greater than that determined above.
(3) If the offense involved a threat of physical injury or property destruction, apply §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above.
(d) Special Instruction
(1) If the offense is addressed more specifically under §2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right), §2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), or §2C1.3 (Conflict of Interest), apply the offense guideline section that most specifically addresses the offense.

Commentary

Statutory Provision: 18 U.S.C. §§ 371, 1341-1343, 1346.

Application Notes:
1. This section applies only to offenses committed by public officials or others acting with them that involve (A) depriving others of the intangible right of honest services (such offenses may be prosecuted under 18 U.S.C. §§ 1341-1343, 1346); or (B) conspiracy to defraud the United States by interfering with governmental functions (such offenses may be prosecuted under 18 U.S.C. § 371).
2. 'Official holding a high level decision-making or sensitive position' includes, for example, prosecuting attorneys, judges, agency administrators, supervisory law enforcement officers, and other governmental officials with similar levels of responsibility. 'Loss' is discussed in the Commentary to §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).
3. Do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill) except where the offense level is determined under §2C1.1(c)(1), (2), or (3). In such cases, §3B1.3 (Abuse of Position of Trust or Use of Special Skill) may apply.
4. Where the court finds that the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted. See Chapter Five, Part K (Departures).

Background: The maximum term of imprisonment authorized by statute for these offenses is five years.".

Reason for Amendment: This amendment provides an additional guideline to cover certain fraud offenses that involve public corruption but do not fall within the guidelines of Chapter Two, Part C (Official Corruption) as currently written. This amendment would create a new guideline based on §2C1.1 (Bribery) to address such cases. According to Justice Department staff, in some cases these statutes can be used to prosecute offenses more appropriately covered under §2C1.1 (Bribery), §2C1.2 (Gratuities), or §2C1.3 (Conflict of Interest). A special instruction is provided to address such cases. The definition of "loss" or "value" in subsection (b)(1)(A) is worded differently than the comparable characteristic in §2C1.1(b)(2)(A) ("bribe or demand"). Because both address the same underlying concept, comment is sought as to whether these characteristics should use similar or

identical phraseology, and, if so, suggested language to accomplish this goal. Comment is also sought as to whether a 2-level enhancement, parallel to the enhancement in §2C1.1(b)(1), should be added to address offenses that involve a pattern of corrupt conduct.

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)
§3B1.2. Mitigating Role

11. Proposed Amendment: Comment is requested as to whether the guidelines place too great a reliance on drug quantity in punishing drug offenders, particularly for less culpable aiders and abettors. Comments should be addressed as to whether any over-punishment is due to an over-reliance on quantity of drugs in determining the applicable offense level or insufficient reductions in §3B1.2 (Mitigating Role).

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)
§2N2.1. Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product

12. Proposed Amendment: Section 2D1.1(c)(12) is amended by deleting the period immediately after "Schedule III substances" and inserting in lieu thereof "(except anabolic steroids);", and by inserting the following additional subdivision at the end:

"• 40,000 or more units of anabolic steroids.".

Section 2D1.1(c)(13) is amended by deleting the period immediately after "Schedule III substances" and inserting in lieu thereof "(except anabolic steroids);" and by inserting the following additional subdivision at the end:

"• At least 20,000 but less than 40,000 units of anabolic steroids.".

Section 2D1.1(c)(14) is amended by deleting the period immediately after "Schedule III substances" and inserting "(except anabolic steroids);" immediately after "Schedule III substances", and by inserting the following additional subdivision at the end:

"• At least 10,000 but less than 20,000 units of anabolic steroids.".

Section 2D1.1(c)(15) is amended by deleting the period immediately after "Schedule III substances" and inserting "(except anabolic steroids);" immediately after "Schedule III substances", and by inserting the following additional subdivision after the next to last subdivision:

"• At least 5,000 but less than 10,000 units of anabolic steroids.".

Section 2D1.1(c)(16) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the next to last subdivision:

"• At least 2,500 but less than 5,000 units of anabolic steroids.".

Section 2D1.1(c)(17) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the next to last subdivision:

"• At least 1,000 but less than 2,500 units of anabolic steroids.".

Section 2D1.1(c)(18) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the fourth subdivision:

"• At least 250 but less than 1,000 units of anabolic steroids.".

Section 2D1.1(c)(19) is amended by inserting "(except anabolic steroids)" immediately after "Schedule III substances", and by inserting the following additional subdivision after the fourth subdivision:

"• Less than 250 units of anabolic steroids.".

Section 2D1.1(c) is amended in the note following subdivision (19) by inserting the following additional paragraph at the end:

"In the case of anabolic steroids, one 'unit' means a 10 cc vial or fifty tablets. All injectable vials are to be converted on the basis of their volume to the equivalent number of 10 cc injectable vials (e.g., one 50 cc vial is to be counted as five 10 cc vials).".

The Commentary to §2N2.1 captioned "Application Notes" is amended in note 4 by deleting "anabolic steroids" and inserting in lieu thereof "human growth hormones", and by inserting at the end:

"Offenses involving anabolic steroids are covered by Chapter Two, Part D (Offenses Involving Drugs). In the case of 'counterfeit' anabolic steroids not containing any active ingredients, apply §2F1.1 (Fraud and Deceit); 'loss,' in such cases, is to be measured by the amount paid by the victim for the counterfeit substance.".

Reason for Amendment: Title XIX of the Crime Control Act of 1990 adds anabolic steroids as Schedule III controlled substances in 21 U.S.C. § 812(c). The proposed

amendment to §2D1.1 treats steroids as equivalent in seriousness to other Schedule III controlled substances, mandating offense levels ranging from 6 to 20. The Commission has determined, however, that the offense level for steroid-related offenses should be based on a measure of quantity unit, rather than simply by weight. Because of the variety of substances involved, this measure provides a better proxy for the scale of the offense. Under the proposed guideline, the quantity of steroids would be measured in units equivalent to a 10 cc vial. Fifty tablets are deemed equivalent to one 10 cc vial. The following table indicates the proposed offense levels and corresponding number of units:

Level	Quantity (in Units)
6	< 250
8	250- 999
10	1,000- 2,499
12	2,500- 4,999
14	5,000- 9,999
16	10,000- 19,999
18	20,000- 39,999
20	40,000 +.

13. Proposed Amendment: Section 2D1.1 is amended to provide the following special instruction:

"(d) Special Instruction
(1) When the controlled substances is d-methamphetamine, increase the offense determined under the Drug Quantity Table by 2 levels.".

Reason for Amendment: This amendment implements the directive from Congress in section 2701 of the Crime Control Act of 1990 to "amend the existing guidelines for offenses involving smokable crystal methamphetamine... so that convictions involving smokable crystal methamphetamine will be assigned an offense level under the guidelines which is two levels above that which would have been assigned to the same offense involving other forms of methamphetamine." The major problem in implementing this directive is to distinguish between forms of methamphetamine since all methamphetamine salts (the form of methamphetamine generally involved in trafficking) are smokable and crystalline. From the legislative history, it is evident that the Congressional intent was to target a form of methamphetamine marketed on the streets as "ice." Ice's main distinctions are its high purity and the fact that its crystals are larger than that of other forms of methamphetamine sold on the street. The guidelines presently take purity into account in determining the appropriate offense level. Moreover, it is not practical to distinguish between forms of methamphetamine by crystal size and "ice" cannot be chemically distinguished from other forms of crystal smokable methamphetamine. Therefore, the Commission sought other definitions. Because "ice" currently prevalent is recrystallized d-methamphetamine, and this isomer is more potent than other isomers, the Commission has chosen to interpret the Congressional enhancement to apply to all d-methamphetamine.

14. Proposed Amendment: Section 2D1.7 is amended by deleting the entire guideline and accompanying commentary and inserting in lieu thereof:

"§2D1.7. Unlawful Sale or Transportation of Drug Paraphernalia

(a) Base Offense Level: 12
(b) Cross reference
If the offense involved a controlled substance, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession With Intent to Commit These Offenses)) or §2D2.1 (Unlawful Possession), as applicable, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 21 U.S.C. § 857.

Application Note:
1. If the offense was limited to possession or transportation of paraphernalia solely for the personal use of the defendant, a downward departure may be warranted.".

Reason for Amendment: This amendment reflects the expanded coverage of the statute to which this guideline applies (21 U.S.C. § 857 was amended by section 2401 of the Crime Control Act of 1990). Comment is also solicited on whether a more fundamental change in this guideline is warranted to reflect the differences in the scale of offenses that may be prosecuted under this statute. This might be accomplished by substituting a graduated scale of offense levels according to the retail value of the material sold in place of the current single base offense level of 12.

§2D1.8. Renting or Managing a Drug Establishment

15. Proposed Amendment:

[Option 1
Section 2D1.8(a) is deleted and the following inserted in lieu thereof:

"(a) Base Offense Level
(1) The offense level from the table in §2D1.1 applicable to the underlying controlled substance offense, except as provided below; or
(2) if the defendant had no role in the underlying controlled substance offense other than renting or allowing use of a premises, the offense level shall be 4 levels less than the offense level from §2D1.1 applicable to the underlying controlled substance offense, but not greater than level 16.".

The Commentary to § 2D1.8 captioned "Application Notes" is amended by deleting Note 1 and inserting in lieu thereof:

"1. Do not apply an adjustment from §3B1.2 (Mitigating Role) if the offense level is determined under subsection (a)(2).".]

[Option 2
Section 2D1.8(a) is deleted and the following inserted in lieu thereof:

"(a) Base Offense Level (Apply the greater):
(1) The offense level from the table in §2D1.1 applicable to the underlying controlled substance offense; or
(2) 16.".]

Reason for Amendment: The current guideline for renting or managing a drug establishment (21 U.S.C. § 856) provides a base offense level of 16 without regard to the quantity of drugs involved in the offense. This can produce anomalous results: A defendant who allows less than 250 grams of marihuana to be sold from his apartment is assigned an offense of 16 if convicted under section 856 but only an offense level of 6 if convicted of actual distribution, while a defendant who allows 300 kilograms of heroin to be sold also receives an offense level of 16 rather than 42. Under option one, the offense level is determined by the offense level for the underlying controlled substance offense. The result would be similar to the result produced by the Commission's 1989 amendment to §2D1.6, the "telephone count" guideline. At the same time this guideline would contain a lower alternative base offense level, capped at level 16 (the offense level of the current offense guideline) for the peripherally involved defendant.

Under option 2, the offense level would be increased if the offense level for the underlying distribution was greater than offense level 16, but a minimum offense level of 16 would be retained.

Illustration of §2D1.8 as amended by proposed amendment 15:

§2D1.8. Renting or Managing a Drug Establishment

(a) Base Offense Level: 16
[Option 1
(a) Base Offense Level
(1) The offense level from the table in §2D1.1 applicable to the underlying controlled substance offense, except as provided below; or
(2) if the defendant had no role in the underlying controlled substance offense other than renting or allowing use of a premises, the offense level shall be 4 levels less than the offense level from §2D1.1 applicable to the underlying controlled substance offense, but not greater than level 16.]

[Option 2
(a) Base Offense Level (Apply the greater):
(1) The offense level from the table in §2D1.1 applicable to the underlying controlled substance offense; or
(2) 16.]
(b) Specific Offense Characteristic
(1) If a firearm or other dangerous weapon was possessed during commission of the offense, increase by 2 levels.

* * *

Chapter 2, Part D, Subpart 1 - Unlawful Manufacturing, Importing, Exporting, Trafficking, or Possession; Continuing Criminal Enterprise

16(A). Proposed Amendment: Chapter Two, Part D, Subpart 1 is amended by inserting the following additional guideline:

[Option 1:
"§2D1.11. Unlawful Distribution, Import, Export or Possession of Listed Chemicals

(a) Base Offense Level:
[Option 1A: the offense level from the Chemical Quantity Table set forth in subsection (d) below.]

[Option 1B: the offense level from the Chemical Quantity Table set forth in subsection (d) below that corresponds to the (1) aggregate quantity of all listed precursor chemical(s) involved in the offense; or (2) aggregate quantity of the single listed essential chemical involved in the offense that results in the greatest offense level, whichever is greater.]

(b) Specific Offense Characteristics
[(2) If a dangerous weapon (including a firearm) was possessed during commission of the offense, increase by 2 levels.]
[(3) If the defendant is convicted of violating 21 U.S.C. §§ 841(d)(2) or 960(d)(2), decrease by [2]-[4] levels.]
(c) Cross Reference
(1) If the offense conduct for which the defendant is accountable involved the unlawful manufacture of a controlled substance, or an attempt or conspiracy to manufacture a controlled substance unlawfully, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, Trafficking), or §2D1.4 (Attempts and Conspiracies), as applicable, if the resulting offense level is greater than that determined above.]

(d) Chemical Quantity Table*

(1) 20 KG or more of Benzyl Cyanide; **Level 28**
20 KG or more of Ephedrine;
200 G or more of Ergonovine;
400 G or more of Ergotamine;
200 KG or more of Norpseudoephedrine;
20 KG or more of Phenylacetic Acid;
200 KG or more of Phenylpropanolamine;
10 KG or more of Piperidine;
20 KG or more of Pseudoephederine;
400 KG or more of 3, 4-methylenedioxyphenyl-2-propanone
22 KG or more of Acetic Anhydride;
1175 KG or more of Acetone;
20 KG or more of Benzyl Chloride;
1075 KG or more of Ethyl Ether;
44 KG or more of Hydriodic Acid;
10 KG or more of Potassium Permanganate;
1200 KG or more of Methyl Ethyl Ketone;
1300 KG or more of Toluene.

(2) At least 6 KG but less than 20 KG of Benzyl Cyanide; **Level 26**
At least 6 KG but less than 20 KG of Ephedrine;
At least 60 G but less than 200 G of Ergonovine;
At least 120 G but less than 400 G of Ergotamine;
At least 60 KG but less than 200 KG of Norpseudoephedrine;
At least 6 KG but less than 20 KG of Phenylacetic Acid;
At least 60 KG but less than 200 KG of Phenylpropanolamine;
At least 3 KG but less than 10 KG of Piperidine;
At least 6 KG but less than 20 KG of Pseudoephederine;
At least 120 KG but less than 400 KG of 3, 4-methylenedioxyphenyl-2-propanone
At least 6.6 KG but less than 22 KG of Acetic Anhydride;
At least 352.5 KG but less than 1175 KG of Acetone;
At least 6 KG but less than 20 KG of Benzyl Chloride;
At least 322.5 KG but less than 1075 KG of Ethyl Ether;
At least 13.2 KG but less than 44 KG of Hydriodic Acid (57%);
At least 3 KG but less than 10 KG of Potassium Permanganate;
At least 360 KG but less than 1200 KG of Methyl Ethyl Ketone;
At least 390 KG but less than 1300 KG of Toluene.

(3) At least 2 KG but less than 6 KG of Benzyl Cyanide; **Level 24**
At least 2 KG but less than 6 KG of Ephedrine;
At least 20 G but less than 60 G of Ergonovine;
At least 40 G but less than 120 G of Ergotamine;
At least 20 KG but less than 60 KG of Norpseudoephedrine;
At least 2 KG but less than 6 KG of Phenylacetic Acid;
At least 20 KG but less than 60 KG of Phenylpropanolamine;
At least 1 KG but less than 3 KG of Piperidine;
At least 2 KG but less than 6 KG of Pseudoephederine;
At least 40 KG but less than 120 KG of 3, 4-methylenedioxyphenyl-2-propanone
At least 2.2 KG but less than 6.6 KG of Acetic Anhydride;
At least 117.5 KG but less than 352.5 KG of Acetone;
At least 2 KG but less than 6 KG of Benzyl Chloride;
At least 107.5 KG but less than 322.5 KG of Ethyl Ether;
At least 4.4 KG but less than 13.2 KG of Hydriodic Acid (57%);
At least 1 KG but less than 3 KG of Potassium Permanganate;
At least 120 KG but less than 360 KG of Methyl Ethyl Ketone;
At least 130 KG but less than 390 KG of Toluene.

(4) At least 1.4 KG but less than 2 KG of Benzyl Cyanide; **Level 22**
At least 1.4 KG but less than 2 KG of Ephedrine;
At least 14 G but less than 20 G of Ergonovine;
At least 28 G but less than 40 G of Ergotamine;
At least 14 KG but less than 20 KG of Norpseudoephedrine;
At least 1.4 KG but less than 2 KG of Phenylacetic Acid;
At least 14 KG but less than 20 KG of Phenylpropanolamine;
At least 700 G but less than 1000 G of Piperidine;
At least 1.4 KG but less than 2 KG of Pseudoephederine;
At least 28 KG but less than 40 KG of 3, 4-methylenedioxyphenyl-2-propanone
At least 1.54 KG but less than 2.2 KG of Acetic Anhydride;
At least 82.25 KG but less than 117.5 KG of Acetone;
At least 1.4 KG but less than 2 KG of Benzyl Chloride;
At least 75.25 KG but less than 107.5 KG of Ethyl Ether;
At least 3.08 KG but less than 4.4 KG of Hydriodic Acid (57%);
At least 700 G but less than 1 KG of Potassium Permanganate;
At least 84 KG but less than 120 KG of Methyl Ethyl Ketone;
At least 91 KG but less than 130 KG of Toluene.

(5) At least 800 G but less than 1.4 KG of Benzyl Cyanide; **Level 20**
At least 800 G but less than 1.4 KG of Ephedrine;
At least 8 G but less than 14 G of Ergonovine;
At least 16 G but less than 28 G of Ergotamine;
At least 8 KG but less than 14 KG of Norpseudoephedrine;
At least 800 G but less than 1400 G of Phenylacetic Acid;
At least 8 KG but less than 14 KG of Phenylpropanolamine;
At least 400 G but less than 700 G of Piperidine;
At least 800 G but less than 1.4 KG of Pseudoephederine;
At least 16 KG but less than 28 KG of 3, 4-methylenedioxyphenyl-2-propanone
At least 880 G but less than 1.54 KG of Acetic Anhydride;
At least 47 KG but less than 82.25 KG of Acetone;
At least 800 G but less than 1400 G of Benzyl Chloride;
At least 43 KG but less than 75.25 KG of Ethyl Ether;
At least 1.76 KG but less than 3.08 KG of Hydriodic Acid (57%);
At least 400 G but less than 700 G of Potassium Permanganate;
At least 48 KG but less than 84 KG of Methyl Ethyl Ketone;
At least 52 KG but less than 91 KG of Toluene.

(6) At least 200 G but less than 800 G of Benzyl Cyanide; **Level 18**
At least 200 G but less than 800 G of Ephedrine;
At least 2 G but less than 8 G of Ergonovine;
At least 4 G but less than 16 G of Ergotamine;
At least 2 KG but less than 8 KG of Norpseudoephedrine;
At least 200 G but less than 800 G of Phenylacetic Acid;
At least 2 KG but less than 8 KG of Phenylpropanolamine;
At least 100 G but less than 400 G of Piperidine;
At least 200 G but less than 800 G of Pseudoephederine;
At least 4 KG but less than 16 KG of 3, 4-methylenedioxyphenyl-2-propanone
At least 220 G but less than 880 G of Acetic Anhydride;
At least 12.93 KG but less than 47 KG of Acetone;
At least 200 G but less than 800 G of Benzyl Chloride;
At least 10.75 KG but less than 43 KG of Ethyl Ether;
At least 440 G but less than 1.76 KG of Hydriodic Acid (57%);
At least 100 G but less than 400 G of Potassium Permanganate;
At least 12 KG but less than 48 KG of Methyl Ethyl Ketone;
At least 13 KG but less than 52 KG of Toluene.

(7) At least 160 G but less than 200 G of Benzyl Cyanide; **Level 16**
At least 160 G but less than 200 G of Ephedrine;
At least 1.6 G but less than 2 G of Ergonovine;
At least 3.2 G but less than 4 G of Ergotamine;
At least 1.6 KG but less than 2 KG of Norpseudoephedrine;
At least 160 G but less than 200 G of Phenylacetic Acid;
At least 1.6 KG but less than 2 KG of Phenylpropanolamine;
At least 80 G but less than 100 G of Piperidine;
At least 160 G but less than 200 G of Pseudoephederine;
At least 3.2 KG but less than 4 KG of 3, 4-methylenedioxyphenyl-2-propanone
At least 176 G but less than 220 G of Acetic Anhydride;
At least 9.4 KG but less than 12.93 KG of Acetone;
At least 160 G but less than 200 G of Benzyl Chloride;
At least 8.6 KG but less than 10.75 KG of Ethyl Ether;
At least 352 G but less than 440 G of Hydriodic Acid (57%);
At least 80 G but less than 100 G of Potassium Permanganate;
At least 9.6 KG but less than 12 KG of Methyl Ethyl Ketone;
At least 10.4 KG but less than 13 KG of Toluene.

(8) 3.6 KG or more of Anthranilic Acid; **Level 14**
At least 120 G but less than 160 G of Benzyl Cyanide;
At least 120 G but less than 160 G of Ephedrine;
At least 1.2 G but less than 1.6 G of Ergonovine;
At least 2.4 G but less than 3.2 G of Ergotamine;
4.8 KG or more of N-acetylanthranilic Acid;
At least 1.2 KG but less than 1.6 KG of Norpseudoephedrine;
At least 120 G but less than 160 G of Phenylacetic Acid;
At least 1.2 KG but less than 1.6 KG of Phenylpropanolamine;
At least 60 G but less than 80 G of Piperidine;
At least 120 G but less than 160 G of Pseudoephederine;
At least 2.4 KG but less than 3.2 KG of 3, 4-methylenedioxyphenyl-2-propanone
At least 132 G but less than 176 G of Acetic Anhydride;
At least 7.05 KG but less than 9.4 KG of Acetone;
At least 120 G but less than 160 G of Benzyl Chloride;
At least 6.45 KG but less than 8.6 KG of Ethyl Ether;
At least 264 G but less than 352 G of Hydriodic Acid (57%);
At least 60 G but less than 80 G of Potassium Permanganate;
At least 7.2 KG but less than 9.6 KG of Methyl Ethyl Ketone;
At least 7.8 KG but less than 10.4 KG of Toluene.

(9) Less than 3.6 KG of Anthranilic Acid; **Level 12**
Less than 120 G of Benzyl Cyanide;
Less than 120 G of Ephedrine;
Less than 1.2 G of Ergonovine;
Less than 2.4 G of Ergotamine;
Less than 4.8 KG of N-acetylanthranilic Acid;
Less than 1.2 KG of Norpseudoephedrine;
Less than 120 G of Phenylacetic Acid;
Less than 1.2 KG of Phenylpropanolamine;
Less than 60 G of Piperidine;
Less than 120 G of Pseudoephederine;
Less than 2.4 KG of 3, 4-methylenedioxyphenyl-2-propanone
Less than 132 G of Acetic Anhydride;
Less than 7.05 KG of Acetone;
Less than 120 G of Benzyl Chloride;
Less than 6.45 KG of Ethyl Ether;
Less than 352 G of Hydriodic Acid (57%);
Less than 60 G of Potassium Permanganate;
Less than 7.2 KG of Methyl Ethyl Ketone;
Less than 7.8 KG of Toluene.

[Option 1A: "Where different precursors or essential chemicals are involved, use the quantity of the precursor or essential chemical that results in the greatest offense level.]

[Option 1B: "The Precursor Chemical Equivalency Table provides a means for combining differing precursor chemicals to obtain a single offense level adjustment. Where multiple listed precursors exist, convert each to the ephedrine equivalent from the table below, add the quantities, and reference the Chemical Quantity Table to obtain the combined offense level for the listed precursors.

PRECURSOR CHEMICAL EQUIVALENCY TABLE

(A) 1 gm of anthranilic acid =	.033 gm of ephedrine
(B) 1 gm of benzyl cyanide =	1 gm of ephedrine
(C) 1 gm of ergonovine =	1 gm of ephedrine
(D) 1 gm of ergotamine =	50 gm of ephedrine
(E) 1 gm of N-acetylanthranilic acid =	.025 gm of ephedrine
(F) 1 gm of norpseudoephedrine =	.40 gm of ephedrine
(G) 1 gm of phenylacetic acid =	1 gm of ephedrine
(H) 1 gm of phenylpropanolamine =	.40 gm of ephedrine
(I) 1 gm of piperidine =	2 gm of ephedrine
(J) 1 gm of pseudoephedrine =	1 gm of ephedrine
(K) 1 gm of 3,4-Methylenedioxyphenyl-2-propanone =	.05 gm of ephedrine

Provided, that the aggregate ephedrine equivalency from subdivisions (A) and (E) may not exceed 160 grams of ephedrine.]

Commentary

Statutory Provisions: 21 U.S.C. § 841(d)(1),(d)(2),(g)(1), § 960(d)(1),(d)(2)

Application Notes:

1. 'Listed chemical', 'listed precursor chemical', and 'listed essential chemical' are defined at 21 U.S.C. § 802. Any reference to a listed chemical includes all its salts, isomers, and all its salts of isomers.]

[Option 1A:

2. Where there are multiple listed chemicals involved in the offense, the offense level under (a) of this guideline is determined by using the highest offense level attributed to the total quantity of any one listed chemical involved in the offense.]

[Option 1B:

2. Where there are multiple listed precursor chemicals involved in the offense, the quantities of all precursors are to be added together for purposes of determining the offense level under (a)(1). This is in recognition of the fact that only one precursor is utilized in a given manufacturing process. Further, unlike essential chemicals, precursors become part of the manufactured controlled substance. A table for making the necessary conversions is provided.
3. Where there are multiple listed essential chemicals involved in the offense, all quantities of the same essential chemical are to be added together for purposes of determining the offense level under (a)(2). However, quantities of different essential chemicals are not to be totaled. Thus, where multiple essential chemicals are involved in the offense, the offense level under (a)(2) of this guideline is determined by using the highest offense level attributed to the total quantity of any one essential chemical involved in the offense.
4. Where both listed precursor chemicals and listed essential chemicals are involved in the offense, the offense level will be determined by utilizing the greatest precursor or essential chemical adjustment from (a)(1) or (a)(2).]".

Option 2:

"§2D1.11. Unlawful Distribution, Import, Export, or Possession of Listed Chemicals

(a) Base Offense Level (Apply the greater):
(1) The offense level from § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking); or
(2) 18.
(b) Specific Offense Characteristics
(1)(A) If the defendant is convicted of violating 21 U.S.C. §§ 841(d)(1),(g)(1), or 960(d)(1), decrease by 4 levels.
[(B) If the defendant is convicted of violating 21 U.S.C. §§ 841(d)(2) or 960(d)(2), decrease by 6 levels.]

Provided, that if the offense conduct for which the defendant is accountable involved the unlawful manufacture of a controlled substance, or an attempt or conspiracy to unlawfully manufacture a controlled substance, no decrease under subdivision (A) or (B) is authorized.

Commentary

Statutory Provisions: 21 U.S.C. § 841 (d)(1),(d)(2),(g)(1), § 960 (d)(1),(d)(2)

Application Notes:

1. Where there are multiple listed chemicals involved in the offense, the quantities of all chemicals should be taken into consideration in determining the corresponding drug quantity or lab capacity for purposes of §2D1.1.(Unlawful Manufacturing, Importing, Exporting, or Trafficking).
2. 'Listed chemical' is defined at 21 U.S.C. § 802(33) and includes all salts, isomers, and all salts of isomers of any listed chemical.".

Reason for Amendment: This amendment adds a guideline to address 21 U.S.C. §§ 841(d)(1), (d)(2), (g)(1), 960(d)(1), (d)(2), violations of the Chemical Diversion and Trafficking Act (CDTA) that are not directly addressed by the existing guidelines.

The CDTA was passed by Congress on November 18, 1988 and took effect on March 18, 1989. However, because the required companion regulations to the CDTA were not implemented until the fall of 1989, the CDTA only began to be criminally enforced within the last year. The CDTA regulates the import, export, possession, and distribution of "listed chemicals" and equipment commonly used to clandestinely manufacture controlled substances. The Commission has analyzed the types of cases that are likely to be investigated and prosecuted under the CDTA and other relevant considerations. A copy of the Commission's report detailing its findings is available for inspection at the Commission's offices.

(B). Proposed Amendment: Chapter 2, Part D, Subpart 1 is amended by inserting the following additional guideline:

"§2D1.12. Unlawful Possession, Distribution or Manufacture of Prohibited Flask or Equipment; Presenting False or Fraudulent Identification to Obtain a Listed Chemical

(a) Base Offense Level: [10]-[12]
(b) Specific offense characteristic
(1) If the defendant manufactured or imported any item specified in 21 U.S.C. § 843(a)(7), increase by 2 levels.
(c) Cross Reference
(1) If the offense involved the unlawful distribution or possession of a listed chemical; the unlawful manufacture of a controlled substance; or an attempt or conspiracy to manufacture a controlled substance unlawfully, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, Trafficking), §2D1.4 (Attempts and Conspiracies), or §2D1.11 (Unlawful Distribution, Import, Export or Possession of Listed Chemicals), as applicable, if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 21 U.S.C. § 843(a)(4),(6),(7).

Background: The maximum term of imprisonment authorized by statute is four years except where the defendant has a prior felony conviction for a federal drug-related offense in which case the maximum term of imprisonment authorized by statute is eight years.".

Reason for Amendment: This amendment provides a specific guideline to deal with violations of the Chemical Diversion and Trafficking Act (CDTA), 21 U.S.C. § 843(a)(4),(6),(7). No existing guideline directly addresses these provisions pertaining to the unlawful manufacture, possession or distribution of certain equipment, or the use of false or fraudulent information or identification to obtain chemicals used to unlawfully manufacture controlled substances. A copy of the Commission's report detailing its findings concerning violations of the CDTA is available for inspection at the Commission's offices.

(C). Proposed Amendment: Chapter 2, Part D, Subpart 1, is amended by inserting the following additional guideline:

"§2D1.13. Structuring Chemical Transactions or Creating a Chemical Mixture to Evade Reporting or Recordkeeping Requirements

(a) Base Offense Level:
(1) If the offense was committed with the intent, knowledge, or reasonable cause to believe that the chemicals or chemical mixture would be used to unlawfully manufacture a controlled substance, apply § 2D1.11 (Unlawful Distribution, Import, Export or Possession of Listed Chemicals); § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, Trafficking), or §2D1.4 (Attempts and Conspiracies), as applicable;
(2) [8]-[15], otherwise

Commentary

Statutory Provisions: 21 U.S.C. §§ 841(d)(3), 843(a)(8).

Background: The maximum term of imprisonment authorized by statute is ten years for a violation of § 841(d)(3) and four years for a violation of § 843(a)(8).".

Reason for Amendment: This amendment provides a specific guideline to deal with violations of the Chemical Diversion and Trafficking Act (CDTA), 21 U.S.C. §§ 841(d)(3), 843(a)(8). No existing guideline directly addresses these provisions pertaining to the creation of a chemical mixture or the structuring of chemical transactions to evade the recordkeeping or reporting requirements of the (CDTA). A copy of the Commission's report detailing its findings concerning violations of the CDTA is available for inspection at the Commission's offices.

(D). Proposed Amendment: Chapter 2, Part D, Subpart 3 is amended by inserting the following additional guideline:

"§2D3.5. Violation of Recordkeeping or Reporting Requirement

(a) Base Offense Level: [4]-[8]

Commentary

Statutory Provisions: 21 U.S.C. §§ 842(a)(9),(10).

Background: The maximum term of imprisonment authorized by statute is one year; except that a two year maximum term of imprisonment is authorized under 21 U.S.C. § 842 where the defendant has a prior conviction for a federal drug-related offense.".

Reason for Amendment: This amendment provides a specific guideline to deal with violations of the Chemical Diversion and Trafficking Act (CDTA), 21 U.S.C. §§ 842(a)(9) & (10). No existing guideline directly addresses these CDTA misdemeanor recordkeeping and reporting violations. A copy of the Commission's report detailing its findings concerning violations of the CDTA is available for inspection at the Commission's offices.

Chapter Two, Part G - Offenses Involving Prostitution, Sexual Exploitation of Minors, and Obscenity

17. Proposed amendment: Chapter Two, Part G, Subpart 2 of the guidelines is amended by inserting the following additional guideline:

"§2G2.4. [Receipt or] Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct

(a) Base Offense Level: [6] - [10]

[(b) Specific Offense Characteristics

(1) If the material involved a prepubescent minor or a minor under the age of twelve years, increase by 2 levels.

(2) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.]

[(c) Cross References

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

(2) If the offense involved transporting, distributing, selling, possessing with intent to sell, distribute, or transport, or advertising to receive material involving the sexual exploitation of a minor, apply §2G2.2 (Transporting, Selling, Possessing with Intent to Sell, or Trafficking in Material Involving the Sexual Exploitation of a Minor).]

Commentary

Statutory Provision: 18 U.S.C. § 2252.

Application Note:

1. This guideline assumes that the offense involved a relatively small number of prohibited items. If the defendant possessed [25] [50] or more books, magazines, periodicals, films, video tapes, or other matter containing a visual depiction involving the sexual exploitation of a minor, and subsection (c)(1) or (2) does not apply, an upward departure may be warranted.".

The title to §2G2.2 is amended by deleting "Receiving" and inserting in lieu thereof "Selling, Possessing with Intent to Sell".

The Commentary to §2G2.2 captioned "Statutory Provisions" is amended by deleting "1460,".

Subsection (c)(1) of §2G3.1 is amended by deleting "receiving" and by inserting in lieu thereof "selling, or possessing with intent to sell" and by deleting "Receiving" and inserting in lieu thereof "Selling, or Possessing with Intent to Sell".

Appendix A (Statutory Index) is amended by deleting "18 U.S.C. § 1460 2G2.2, 2G2.3"; and inserting in lieu thereof "18 U.S.C. §1460 2G2.3"; and by deleting "18 U.S.C. § 2252 2G2.2" and inserting in lieu thereof "18 U.S.C. § 2252 2G2.2, 2G2.4".

Reason for Amendment: This amendment adds a guideline covering an offense enacted by Section 323 of the Crime Control Act of 1990, provides consistent treatment for similar offenses currently covered by the guidelines, and makes conforming changes. Section 323 of the Crime

Control Act creates a new offense of possession of more than 3 items of child pornography punishable by up to five years imprisonment. Additionally, section 323 increases the penalties for sale or possession with intent to sell child pornography from two to ten years imprisonment (a five year mandatory minimum and 15 year maximum penalty are provided for second or subsequent offenses), expands the jurisdictional basis of the offense, and changes its location in the code from section 1460 to section 2252 of title 18.

18. Proposed Amendment: Chapter Two, Part G, Subpart 2 of the guidelines is amended by inserting the following additional guideline:

"§2G2.5. Recordkeeping Offenses Involving the Production of Sexually Explicit Materials

(a) Base Offense Level: 6
(b) Cross References
(1) If the offense reflected an effort to conceal a substantive offense that involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply §2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).
(2) If the offense reflected an effort to conceal a substantive offense that involved transporting, distributing, selling, possessing with intent to sell, distribute, or transport, or advertising to receive material involving the sexual exploitation of a minor, apply §2G2.2 (Transporting, Selling, Possessing with Intent to Sell, or Trafficking in Material Involving the Sexual Exploitation of a Minor).

Commentary

Statutory Provision: 18 U.S.C. § 2257.".

Appendix A (Statutory Index) is amended by inserting the following in the appropriate place "18 U.S.C. §2257 §2G2.5".

Reason for Amendment: This amendment creates a guideline to cover a new offense created in the Crime Control Act of 1990. Section 311 of the Crime Control Act revises the current requirement that producers of sexually explicit materials maintain certain records and creates new criminal penalties for those who fail to comply. Producers who fail to make such records, who knowingly create false or incomplete records, or who knowingly fail to affix to their products a statement of where such records may be found are subject to up to 2 years imprisonment and a fine. Those who sell or transfer, or offer to sell or transfer such products knowing them to lack a statement of where required records are kept are subject to the same penalty.

§2J1.3. Perjury

19. Proposed Amendment: The Commission seeks comment on the most appropriate way to address the situation in which a defendant is convicted of multiple counts of perjury for perjuring himself in more than one proceeding in the same case or in related cases (e.g., the defendant lies at a grand jury proceeding and lies again at trial; or a defendant testifies falsely in several trials of codefendants). The number of multiple count perjury cases involving such conduct reported by the Commission's case monitoring section is very small, but the Commission believes that the issue raised is nonetheless significant. A complicating factor in addressing this issue is that, in practice, there may be an interaction between the number of instances of perjury and the application of current subsection (b)(2) (which provides a 3-level increase where the perjury results in substantial interference with the administration of justice).

Two options to address this issue are provided. Option 1 uses a special instruction prohibiting the grouping of such counts. Option 2 uses an application note recommending consideration of a departure.

[Option 1
Section 2J1.3 is amended by inserting the following additional subsection:

"(d) Special Instruction
(1) In the case of counts of perjury or subornation of perjury arising from testimony given, or to be given, in separate proceedings, do not group the counts together under §3D1.2 (Groups of Closely-Related Counts).".

The Commentary to §2J1.3 captioned "Application Notes" is amended by inserting the following additional note:

"5. 'Separate proceedings,' as used in subsection (d) includes different proceedings in the same case (e.g., a grand jury proceeding and a trial, or a trial and retrial), and proceedings in separate cases (e.g., separate trials of codefendant); but does not include multiple grand jury proceedings in the same case.".]

[Option 2
The Commentary to §2J1.3 captioned "Application Notes" is amended by inserting the following additional note:

"5. Counts of perjury arising from testimony given in unrelated cases are not grouped together under §3D1.2 (Groups of Closely-Related Counts). Counts of perjury arising from testimony given in the same proceeding, or

in different proceedings in the same or related cases, generally will be grouped together under §3D1.2(a), which requires grouping of counts having the same victim ('societal harm') and the same act or transaction, or §3D1.2(b), which requires grouping of counts having the same victim ('societal harm') and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan. Where the perjured testimony involves different proceedings (e.g., the defendant testifies falsely in separate trials of codefendants, or testifies falsely before a grand jury and at trial), the grouping of multiple counts may result in a guideline range that does not adequately reflect the seriousness of the defendant's conduct. In such cases, an upward departure may be warranted. In making this determination, the court should consider whether an enhancement from subsection (b)(2) ('substantial interference with the administration of justice') has been applied and, if so, the extent to which this enhancement takes into consideration the same factors.".]

§ 2J1.10. Harboring a Fugitive

20. Proposed Amendment: Chapter Two, Part J, is amended by inserting the following additional offense guideline:

"§2J1.10. Harboring a Fugitive

(a) Base Offense Level:
(1) If the offense for which the fugitive is wanted was escape from custody, the offense level is the same as the offense level from §2P1.1 (Escape, Instigating or Assisting Escape) that corresponds to the circumstances of the fugitive's escape; or
(2) If the offense for which the fugitive is wanted was a failure to report for service of sentence, the offense level is the same as the offense level from §2J1.6 (Failure to Appear by Defendant) that corresponds to the circumstances of the fugitive's failure to appear for service of sentence; or
(3) In any other case --
(A) [15]-[18], if the offense for which the fugitive is wanted is punishable by death or imprisonment for a term of fifteen years or more;
(B) [12]-[15], if the offense for which the fugitive is wanted is punishable by a term of five years or more, but less than fifteen years; or
(C) [9]-[12], if the offense for which the fugitive is wanted is a felony punishable by a term of imprisonment of less than five years; or
(D) [6]-[9], otherwise.

Commentary

Statutory Provision: 18 U.S.C. §§ 1071, 1072.

Application Note:
1. If the fugitive was wanted for multiple offenses, apply this guideline to the offense that results in the greatest offense level.

Background: Subsection (a)(3) provides offense levels that increase in relation to the statutory maximum of the offense for which the fugitive is wanted. The resulting offense level is equivalent to that in §2J1.6 (Failure to Appear by Defendant). Subsections (a)(1) and (a)(2) address cases in which the offense for which the fugitive is wanted is escape from custody or failure to appear for service of sentence, and result in offense levels equal to the offense levels provided for escape and failure to appear for service of sentence in §2P1.1 (Escape, Instigating or Assisting Escape) and §2J1.6 (Failure to Appear by Defendant).".

Reason for Amendment: Determination of a guideline sentence for harboring a fugitive (18 U.S.C. §§ 1071, 1072) has been problematic because of the absence of a guideline specifically designed for such cases. Currently, such cases are referenced to §2X3.1 (Accessory After the Fact). The offense level is frequently difficult to calculate under that guideline, however, because it hinges on the defendant's knowledge of the specifics of the fugitive's offense. Moreover, the guideline range derived from §2X3.1 is often higher than the statutory maximum for harboring a fugitive.

Harboring a fugitive can involve harboring a fugitive from arrest or a defendant who has failed to appear in court or for sentence and is subject to a warrant (a five-year felony under 18 U.S.C. § 1071), or harboring an escaped prisoner (a three-year felony under 18 U.S.C. § 1072). The proposed guideline is accordingly based on §2J1.6 (Failure to Appear by Defendant) and §2P1.1 (Escape). In the case of escape, the same offense level is assigned as that assigned the fugitive's escape under §2P1.1; in the case of harboring a defendant who failed to appear for service of sentence, the same offense level is assigned as that assigned the fugitive's failure to appear for service of sentence under §2J1.6; and in any other case, the same offense level is assigned as under §2J1.6 (Failure to Appear by Defendant), which corresponds to the charge for which the fugitive was wanted. Comment is sought as to whether the offense levels should be equivalent to those in §2J1.6 and §2P1.1 or whether the offense levels should be 1-3 levels higher.

Chapter Two, Part K - Offensives Involving Public Safety

21. Proposed Amendment: Chapter Two, Part K, Subpart 1, is amended by deleting in their entirety sections 2K1.1, 2K1.2, 2K1.3, and 2K1.6, and inserting in lieu thereof the following new section 2K1.1:

"§2K1.1. Unlawfully Trafficking In, Receiving, or Transporting Explosive Materials; Improper Storage and Failure to Report Theft of Explosive Material

(a) Base Offense Level (Apply the Greatest):
(1) [24], if the defendant is a prohibited person and had two prior felony convictions for a crime of violence, controlled substance offense[, or explosives offense];
(2) [20], if the defendant is a prohibited person and had one prior felony conviction for a crime of violence, controlled substance offense[, or explosives offense];
(3) [16], if the defendant
(A) is a prohibited person; or
(B) knowingly distributed explosive materials to a prohibited person [or a person under twenty-one years of age].
(4) [10], if the defendant
(A) engaged in the business of importing, manufacturing, or dealing in explosive materials without a license, in violation of 18 U.S.C. §842(a)(1);
(B) made any false or fictitious oral or written statement; furnished or exhibited any false, fictitious, or misrepresented identification; or knowingly withheld information for the purpose of obtaining explosive materials, or a license, permit, exemption or relief from disability under federal law, in violation of 18 U.S.C. §842(a)(2);
(C) knowingly distributed any explosive material [to a person under twenty-one years of age], to a person prohibited by any state law or any published ordinance from receiving such explosives at the place of distribution, or to a person the defendant had reason to believe intended to transport such materials into a state in violation of the law of that state; or
(D) unlawfully transported, shipped, caused to be transported, or received in interstate or foreign commerce, any explosive materials.
(5) [6]-[8], otherwise.
(b) Specific Offense Characteristics
(1) If the defendant unlawfully possessed, distributed, imported, transported, or manufactured twenty-five pounds or more of explosive materials, increase as follows for the quantity of unlawful explosive materials involved:

Pounds of Unlawful Explosive Material	Increase in Level
(A) at least 25 but less than 50 lbs.	add 1
(B) at least 50 but less than 75 lbs.	add 2
(C) at least 75 but less than 100 lbs.	add 3
(D) at least 100 but less than 125 lbs.	add 4
(E) at least 125 but less than 150 lbs.	add 5
(F) at least 150 but less than 175 lbs.	add 6
(G) at least 175 but less than 200 lbs.	add 7
(H) 200 lbs. or more	add 8

[unless the defendant, other than a defendant subject to (a)(1), (a)(2), or (a)(3) of this guideline used all of the explosive materials solely for lawful commercial uses.]

(2) If the offense involved any explosive material that the defendant knew or had reason to believe was stolen, increase by 6 levels.
(3) If the defendant was a prohibited person and sold, dealt, or otherwise disposed of any explosive material to any person, [other than a licensee or permittee,] increase by [1-2] level(s).]
(4) If the defendant used, possessed, or transferred any explosive material, or knew, intended, or had reasonable cause to believe the explosive material would be used or possessed, during or in relation to any violent or drug-related conduct, or any felony offense, increase by [2-4] levels. If the resulting offense level is less than level [18], increase to level [18].
(5) If a recordkeeping offense reflected an effort to conceal a substantive offense involving explosive materials, apply the guideline for the substantive offense.
(c) Cross Reference
(1) If the defendant used or possessed any explosive material, or knew, intended, or had reasonable cause to believe any explosive material would be used or possessed during or in connection with the commission or attempted commission of another offense, apply the offense level from the underlying offense if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 842, 844(d), (h).

Application Notes:
1. The term 'explosive material[s]' is defined at 18 U.S.C. § 841(c) as meaning explosives, blasting agents, and detonators.
2. The term 'prohibited person' means anyone who: (1) is under indictment for, or has been convicted of, a 'crime punishable by imprisonment for a term exceeding one year'; (2) is a fugitive from justice; (3) is an unlawful user of, or is addicted to, any controlled substance; or (4) has been adjudicated as a mental defective or committed to a mental institution.
3. The term 'violent conduct' means any actual, attempted, or agreed upon conduct that involves the use, attempted use, or threatened use, of physical force against the person or property of another whether or not a criminal charge was brought or conviction obtained.
4. The term 'drug-related conduct' means any actual, attempted, or agreed upon conduct that involves the use, possession, distribution, manufacture, import, or export, of any controlled substance, whether or not a criminal charge was brought or conviction obtained.
5. The terms 'crime of violence,' 'controlled substance offense,' and 'prior felony conviction' are defined at §4B1.2(1), (2), and Application Note 3, respectively.
6. The term 'explosives offense' means an offense under federal, state, or local law prohibiting the manufacture.

assembly, import, export, possession, sale, or distribution of any explosive materials. The term does not include recordkeeping offenses unless such offense reflected an effort to conceal a substantive offense involving explosive materials.

7. For the purposes of calculating the offense level adjustment under the Explosives Table, only the weight of the actual explosive material is to be considered. However, the weight of packaging material that is necessary to the use or detonation of the explosives may also be included; any other shipping or packaging materials are to be excluded. For example, the paper and fuse on a stick of dynamite would be included; the box that the dynamite was shipped in would not be included. Further, only explosive materials that were unlawfully possessed, distributed, imported, shipped, transferred, or otherwise disposed of, are to be included in the Explosives Table calculation.
8. The term 'underlying offense' includes a conspiracy or attempt to commit an offense. The Commission anticipates that, where applicable, the underlying offense will most often involve: §2A1.1 (First Degree Murder); §2A1.2 (Second Degree Murder); §2A1.3 (Voluntary Manslaughter); §2A1.5 (Conspiracy to Commit Murder); §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder); §2A2.2 (Aggravated Assault); §2B3.1 (Robbery); §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage); §2D1.1 (Unlawful Manufacturing, Importing, Exporting or Trafficking); or §2D1.4 (Attempts and Conspiracies). This list is merely illustrative and is not intended to be exclusive.".

Reason for Amendment: The Commission thoroughly examined the explosive materials guidelines (§§2K1.1 - 2K1.7) and the firearms guidelines (§§2K2.1 - 2K2.5) in view of comments received from judges, probation officers and practitioners. The Commission also evaluated the available case files, presentence reports, appellate decisions and recommendations of the Bureau of Alcohol, Tobacco, and Firearms (ATF). As a result of this review, the Commission proposes an amendment that would combine four explosive materials guidelines, §§2K1.1, 2K1.2, 2K1.3, and 2K1.6, into a single explosive materials guideline at §2K1.1.

The Commission intends this amendment and consolidation of guidelines to achieve the following objectives:

(1) address concerns raised by judges, probation officers, and practitioners and suggested by a review of presentence reports and case law;
(2) eliminate duplication and confusion in the application of the current guidelines, particularly with respect to multiple cross references and the potential application of more than one guideline to the same statute;
(3) reduce departures and potential sentencing disparity by relying more heavily on specific offense characteristics and real offense conduct and less on the statute of conviction;
(4) simplifying application of the guidelines by making the explosive materials and firearms guidelines more parallel; and
(5) avoid the need to revisit firearms and explosive materials guidelines by comprehensively setting appropriate levels and offense characteristics in this amendment cycle.

The Commission's firearms and explosive materials report detailing its findings is available for inspection at the Commission's offices.

22. Proposed Amendment: Chapter Two, Part K, Subpart 2, is amended by deleting in their entirety sections 2K2.1, 2K2.2, 2K2.3, and 2K2.5, and inserting in lieu thereof the following new section 2K2.1:

"§2K2.1 Prohibited Transactions Involving Firearms

(a) Base Offense Level (Apply the Greatest):
(1) [18]-[20], if the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a); [but if the offense conduct involved one or more destructive devices, as defined in 26 U.S.C. § 5845(f), then level [20]-[22];]
(2) [24], if the defendant is a prohibited person and had at least two prior [convictions for a violent felony or serious drug offense] [felony convictions for a crime of violence or controlled substance offense] [, or firearms offense]; but if the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a), then level [26];
(3) [20], if the defendant is a prohibited person and had one prior [conviction for a violent felony or serious drug offense] [felony conviction for a crime of violence or controlled substance offense] [, or firearms offense]; but if the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a), then level [22];
(4) [14]-[16], if the defendant is a prohibited person; but if the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a), then level [20];
(5) [12], if the defendant
(A) is convicted of 18 U.S.C. § 922(a)(1) (engaging in the business of importing, manufacturing, or dealing in ammunition or firearms), unless the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a);
(B) is convicted of 18 U.S.C. § 922(h) (receiving, possessing, or transporting ammunition or firearms while employed by a prohibited person), unless the offense conduct involved one or more firearms defined in 26 U.S.C. § 5845(a);
(C) unlawfully manufactured, sold, imported, or delivered any armor piercing ammunition;
(D) unlawfully engaged in offense conduct which

involved one or more 'non-detectable' firearms described in 18 U.S.C. § 922(p);

(E) [other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector,] unlawfully transferred, sold, traded, gave, transported, or delivered any firearm to any person who does not reside in the state in which the transferor resides;] or

(6) [6]-[8], otherwise.

(b) Specific Offense Characteristics

(1) If the defendant, other than a defendant subject to §2K2.1(a)(2) or (a)(3), used or possessed all ammunition, or all firearms, other than a firearm defined in 26 U.S.C. §5845(a), solely for lawful sporting purposes or collection, decrease the offense level determined above to level [6]-[8].]

(2) If the offense involved the use, possession, distribution, or other disposition of three or more firearms, increase as follows for the number of unlawful firearms:

Number of Firearms	Increase in Level
(A) 3-4	add 1
(B) 5-7	add 2
(C) 8-12	add 3
(D) 13-24	add 4
(E) 25-49	add 5
(F) 50 or more	add 6.

(3) If any firearm was stolen, or had an altered or obliterated serial number, or was not identified by a serial number, increase by 2 levels.

(4) If the defendant is convicted of 18 U.S.C. §922(d) (selling, or otherwise disposing of ammunition or any firearm to a prohibited person), increase by 6 levels.

(5) If the defendant unlawfully sold or delivered ammunition, or any firearm, to an underage person, increase by [1]-[3] level[s].

(6) If the defendant was a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, and unlawfully sold or delivered or otherwise disposed of any firearm to any person in violation of any state law or public ordinance, increase by 1 level.

(7) If the defendant used, possessed, or transferred any firearm, or knew, intended, or had reasonable cause to believe the firearm would be used, possessed, or transferred during or in relation to any violent or drug-related conduct, or any felony offense, increase by [2]-[4] levels.

[(8) If the defendant was a prohibited person and sold, dealt, or otherwise disposed of any firearm to any person, [other than a licensed dealer,] increase by [1][2] level(s).]

(9) If the defendant unlawfully possessed or caused any firearm to be present in a federal court facility, increase by [2]-[4] levels.

(10) If the defendant unlawfully possessed or discharged a firearm in a school zone, increase by [2]-[4] levels.

(c) Cross Reference

(1) If the defendant used or possessed any firearm, or knew, intended, or had reasonable cause to believe the firearm would be used or possessed, during or in connection with the commission or attempted commission of another offense, apply the guideline for the underlying offense if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 922, 924(b), (f), (g), 930, 1715; 26 U.S.C. § 5861.

Application Notes:

1. The term 'firearm,' unless otherwise specified by the guideline, means: (A) any weapon (including a starter gun, handgun, rifle, shotgun, short barreled rifle or shotgun, or machinegun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or silencer; or (D) any destructive device. Such term does not include an antique firearm. Refer to 18 U.S.C. § 921(a)(3)-(8) for a more detailed definition. This definition is broader than that used in Application Note 1(e) of the Commentary to §1B1.1 (Application Instructions).
2. A 'firearm defined in 26 U.S.C. §5845(a)' means a firearm that, by its nature, is generally considered to be more dangerous than other firearms. A §5845(a) firearm primarily includes: (A) any short barreled shotgun or rifle or any weapon made therefrom; (B) a machinegun; (C) a silencer; (D) a destructive device; or (E) any 'other weapon' as that term is defined by 26 U.S.C. §5845(e). A §5845(a) firearm does not include unaltered handguns or regulation-length rifles or shotguns. Refer to 26 U.S.C. §5845(a), et seq., for a more detailed definition.
3. The term 'firearms offense' means an offense under federal, State, or local law prohibiting the manufacture, assembly, import, export, possession, sale, or distribution of any firearm or ammunition. The term does not include record keeping offenses unless such offense reflected an effort to conceal a substantive offense involving firearms or ammunition.
4. The term 'prohibited person' means anyone who: (1) is under indictment for, or has been convicted of, a 'crime punishable by imprisonment for more than one year,' as defined by 18 U.S.C. § 921(a)(20); (2) is a fugitive from justice; (3) is an unlawful user of, or is addicted to, any controlled substance; (4) has been adjudicated as a mental defective or committed to a mental institution; (5) being an alien, is illegally or unlawfully in the United States; (6) has been discharged from the Armed Forces under dishonorable conditions; or (7) having been a citizen of the United States, has renounced his citizenship.
5. The terms 'crime of violence,' 'controlled substance

offense,' and 'prior felony conviction' are defined at §4B1.2(1), (2), and App. Note 3, respectively.

6. The term 'engaged in the business' is defined at 18 U.S.C. § 921(a)(21). The term 'ammunition' is defined at 18 U.S.C. § 921(a)(17)(A). The term 'armor piercing ammunition' is defined at 18 U.S.C. § 921(a)(17)(B). The term 'underage person' is defined at 18 U.S.C. § 922(b)(1).
7. Under §2K2.1(b)(1), 'lawful sporting purposes or collection' as determined by the surrounding circumstances provides for an offense level [6-8]. Relevant surrounding circumstances include, among others, the number and type of firearms and ammunition, the location and circumstances of possession, the nature of the defendant's criminal history (e.g., whether involving firearms), and the extent to which possession was restricted by local law. Defendants subject to §2K2.1(a)(2) (prohibited person with two prior qualifying convictions) and §2K2.1(a)(3) (prohibited person with one prior qualifying conviction), are not eligible for the 'lawful sporting purposes or collection' reduction under §2K2.1(b)(1).]
8. For the purposes of calculating the offense level adjustment under the Firearms Table, include only firearms that were unlawfully possessed, distributed, or otherwise disposed of. If the number of firearms exceeded fifty, an upward departure may be warranted. An upward departure especially may be warranted in the case of [large numbers of] [multiple] National Firearms Act firearms (e.g., machineguns, destructive devices) or military type assault rifles.
9. The term 'identified by a serial number' includes identification by a serial number, as required by 26 U.S.C. § 5842(a), and such other identification as the Secretary may by regulations prescribe, pursuant to 26 U.S.C. § 5842(a) and (c).
10. The term 'violent conduct' means any actual, attempted, or agreed upon conduct that involves the use, attempted use, or threatened use, of physical force against the person or property of another, whether or not a criminal charge was brought or conviction obtained.
11. The term 'drug-related conduct' means any actual, attempted, or agreed upon conduct that involves the use, possession, distribution, manufacture, import, or export, of any controlled substance, whether or not a criminal charge was brought, or conviction obtained. The term 'any felony offense' means 'an offense punishable by imprisonment for a term exceeding one year,' as provided in 18 U.S.C. § 924(b).
12. The term 'federal court facility' means the courtroom, judges' chambers, witness rooms, jury deliberation rooms, attorney conference rooms, prisoner holding cells, offices of the court clerks, the United States attorney, and the United States marshal, probation and parole offices, and adjoining corridors of any court of the United States.
13. The term 'school zone' is defined at 18 U.S.C. § 922(q). Under 18 U.S.C. § 922(q), a sentence of imprisonment must be imposed in addition to the sentence for the underlying offense, and the sentence of imprisonment imposed under 18 U.S.C. § 922(q) must run consecutively to any other sentence of imprisonment. Therefore, the court, in order to comply with the statute, should divide the sentence on the judgment form between the sentence attributable to the underlying offense and the sentence attributable to the enhancement. The court will have to ensure that the 'total punishment' (i.e., the sentence for the underlying offense and the sentence of imprisonment imposed under 18 U.S.C. § 922(q)) is in accord with the guideline range for the offense committed while on release, as adjusted by the relevant specific offense characteristic. For example, if the applicable adjusted guideline range is 30-37 months and the court determines 'total punishment' of 36 months is appropriate, a sentence of 30 months for the underlying offense, plus 6 months under 18 U.S.C. § 922(q) would satisfy this requirement.
14. The term 'underlying offense' includes a conspiracy or attempt to commit an offense. The Commission anticipates that, where applicable, the underlying offense most often involved will be: §2A1.1 (First Degree Murder); §2A1.2 (Second Degree Murder); §2A1.3 (Voluntary Manslaughter); §2A1.5 (Conspiracy to Commit Murder); §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder); §2A2.2 (Aggravated Assault); §2B3.1 (Robbery); §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage); §2D1.1 (Unlawful Manufacturing, Importing, Exporting or Trafficking); or §2D1.4 (Attempts and Conspiracies). This list is merely illustrative and is not intended to be exhaustive.
15. A defendant who is subject to an enhanced sentence under the provisions of 18 U.S.C. § 924(e) is an Armed Career Criminal, and §4B1.4 shall be applied.

Background: [Existing text to be retained.]".

Reason for Amendment: The Commission thoroughly examined the firearms guidelines (§§2K2.1 - 2K2.5) and the explosive materials guidelines (§§2K1.1 - 2K1.7) in light of comments received from judges, probation officers and practitioners. The Commission also evaluated the available case files, presentence reports, appellate decisions and recommendations of the Bureau of Alcohol, Tobacco, and Firearms (ATF). As a result of this review, the Commission proposes an amendment that would combine four of the firearms guidelines, §§2K2.1, 2K2.2, 2K2.3, and 2K2.5, into a single firearms guideline at §2K2.1.

The Commission intends this amendment and consolidation of guidelines to achieve the following objectives:

(1) address concerns raised by judges, probation officers, and practitioners and suggested by a review of presentence reports and case law;

(2) eliminate duplication and confusion in the application of the current guidelines, particularly with respect to multiple cross references and the potential application of more than one guideline to the same statute;

(3) reduce departures and potential sentencing disparity by relying more heavily on specific offense characteristics and real offense conduct and less on the statute of conviction;

(4) simplifying the application of the guidelines by making the explosive materials and firearms guidelines more parallel; and

(5) avoid the need to revisit firearms and explosive materials guidelines by comprehensively setting appropriate levels and offense characteristics in this amendment cycle.

The Commission's firearms and explosive materials report detailing its findings is available for inspection at the Commission's offices.

Part L - Offenses Involving Immigration, Naturalization, and Passports

23(A). Proposed Amendment: Section 2L1.1 is amended by deleting subsection (a) and inserting in lieu thereof:

"(a) Base Offense Level:

(1) [12]-[20], if the defendant was convicted under 8 U.S.C. § 1327; or

(2) 9, otherwise."

Reason for Amendment: This amendment is in response to statutory changes made by Section 543(b)(4) of the Immigration Act of 1990.

(B). Section 2L1.2(b) is amended by adding the following additional subdivision:

"(2) If the defendant previously was deported after sustaining a conviction for an aggravated felony, increase by [6]-[20] levels.";

and by deleting "Characteristic" and inserting in lieu thereof "Characteristics (If more than one applies, use the greater):".

The Commentary to §2L1.2 captioned "Application Notes" is amended in Note 3 by deleting the last sentence as follows:

"In the case of a defendant previously deported after sustaining a conviction for an aggravated felony as defined in 8 U.S.C. § 1101(a), or for any other violent felony, an upward departure may be warranted.".

The Commentary to §2L1.2 captioned "Application Notes" is amended in Note 4 by deleting "adjustment" and inserting in lieu thereof "adjustments", by inserting "and (b)(2)" immediately following "(b)(1)", by deleting "is" and inserting in lieu thereof "are", and by deleting "conviction" and inserting in lieu thereof "convictions".

The Commentary to §2L1.2 captioned "Application Notes" is amended by inserting the following additional note:

"5. The adjustment under §2L1.2(b)(2) applies regardless of whether the aggravated felony conviction was in violation of federal or state law. This adjustment also applies to aggravated felonies as defined in 8 U.S.C. § 1101(a)(43) that were in violation of foreign law for which the term of imprisonment was completed within the previous 15 years."

Reason for Amendment: This proposed amendment reflects the different statutory penalties for illegal reentry of a deported alien. Title 8 U.S.C. § 1326 provides a statutory maximum term of imprisonment of five years for an alien who illegally reenters the United States subsequent to a prior deportation for a felony conviction. This same statute provides a statutory maximum term of imprisonment of fifteen years where the prior deportation was subsequent to an aggravated felony conviction.

Illustration of §§2L1.1 and 2L1.2 as amended by proposed amendment 23 (A) and (B):

§2L1.1. Smuggling, Transporting, or Harboring an Unlawful Alien

(a) Base Offense Level: 9
(a) Base Offense Level:
(1) [12]-[20], if the defendant was convicted under 8 U.S.C. § 1327; or
(2) 9, otherwise.

* * *

§2L1.2. Unlawfully Entering or Remaining in the United States

(a) Base Offense Level: 8
(b) Specific Offense Characteristic *Characteristics*
(If more than one applies, use the greater):
(1) If the defendant previously was deported after sustaining a conviction for a felony, other than a felony involving violation of the immigration laws,

increase by 4 levels.

(2) *If the defendant previously was deported after sustaining a conviction for an aggravated felony, increase by [6]-[20] levels.*

Commentary

* * *

Application Notes:

* * *

3. A 4-level increase is provided under subsection (b)(1) in the case of a defendant who was previously deported after sustaining a conviction for a felony, other than a felony involving a violation of the immigration laws. In the case of a defendant previously deported after sustaining a conviction for an aggravated felony as defined in 8 U.S.C. § 1101(a), or for any other violent felony, an upward departure may be warranted.
4. The adjustment *adjustments* under §2L1.2(b)(1) *and (b)(1)* is *are* in addition to any criminal history points added for such conviction *convictions* in Chapter 4, Part A (Criminal History).
5 *The adjustment under §2L1.2(b)(2) applies regardless of whether the aggravated felony conviction was in violation of federal or state law. This adjustment also applies to aggravated felonies as defined in 8 U.S.C. § 1101(a)(43) that were in violation of foreign law for which the term of imprisonment was completed within the previous 15 years.*

Chapter Two, Part N, Subpart 1 - Tampering With Consumer Products

24(A). Proposed Amendment: Section 2N1.1 is amended in the title by deleting "Serious" and inserting in lieu thereof "Bodily".

Section 2N1.1 is amended by redesignating subsection (b) as (c) and by inserting the following:

"(b) Specific Offense Characteristics
(1) (A) If a victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if a victim sustained serious bodily injury, increase by 2 levels; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.
(2) If the offense posed a risk of death or serious bodily injury to numerous individuals (e.g., an attempt to poison products offered for distribution to the public), increase by 4 levels.
(3) If the offense involved extortion, increase by 2 levels.".

Section 2N1.1 is amended in subsection (c) (formerly subsection (b)) by deleting "Cross Reference" and inserting in lieu thereof "Cross References", by renumbering "(1)" as "(3)", and by inserting the following additional subdivisions:

"(1) If the offense resulted in death, apply §2A1.1 (First Degree Murder) if the death was caused intentionally or knowingly, and §2A1.2 (Second Degree Murder) in any other case.
(2) If the offense was tantamount to attempted murder, apply §2A2.1 (Assault With Intent to Commit Murder; Attempted Murder), if the resulting offense level is greater than that determined above.".

Section 2N1.1 is amended by inserting the following additional subsection:

"(d) Special Instruction
(1) If the defendant is convicted of a single count involving (A) the death, permanent, life-threatening, or serious bodily injury of more than one victim, or (B) conduct tantamount to the attempted murder of more than one victim, apply Chapter Three, Part D (Multiple Counts) as if the defendant had been convicted of a separate count for each such victim.".

The Commentary to §2N1.1 captioned "Application Note" is amended in Note 1 by deleting "death, bodily injury,", and by inserting "or bodily injury to [multiple victims][a victim or victims] resulted that is not taken into account in the determination of the offense level," immediately before "an upward departure".

The Commentary to §2N1.1 captioned "Application Note" is amended in the caption by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional note:

"2. In the unusual case where the offense did not involve a risk of death or serious bodily injury, a downward departure may be warranted.".

The Commentary to §2N1.1 captioned "Background" is amended by deleting "Background: The base offense level reflects the risk of death or serious injury posed to significant numbers of people by this type of product tampering.".

Reason for Amendment: The addition of specific offense characteristic (b)(1) incorporates an adjustment for permanent, life-threatening, or serious bodily injury directly into the guideline offense level. Similarly, the addition of cross references (1) and (2) incorporate adjustments where death resulted, or where the offense was tantamount to attempted murder, directly into the guideline offense level. The addition of special instruction (d)(1) provides that where the conduct addressed by new specific offense characteristic (b)(1) or new cross references (c)(1) and (2) involve multiple victims, the conduct involving each victim is to be treated as if contained in a separate count of conviction.

The addition of specific offense characteristic (b)(2) increases the offense level by 4 levels where the offense involved a risk of death or serious bodily injury to numerous victims. Current background commentary stating that "the base offense level reflects the risk of death or serious bodily injury posed to significant numbers of people" would be deleted.

The addition of specific offense characteristic (b)(3) is in addition to the current cross reference to §2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) and would increase the minimum offense level in such case to level 27.

The revision of the title reference (from Serious Bodily Injury to Bodily Injury) combined with the addition of Application Note 2 would provide that this guideline applies where only bodily injury (and not death or serious bodily injury) is risked. At the same time it would provide that where only bodily injury was risked, a downward departure may be warranted.

(B). Proposed Amendment: The Commission seeks comment on whether additional adjustments comparable to those contained in the above proposal should be incorporated in §2N1.2 (Providing False Information or Threatening to Tamper with Consumer Products) to reflect similar concerns.

§2R1.1. Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors

25. Proposed Amendment: Section 2R1.1(a) is amended by deleting "9" and inserting in lieu thereof "10".

Section 2R1.1 is amended in subsection (b)(2) by deleting "less than $1,000,000 or more than $4,000,000" and inserting in lieu thereof "greater than $400,000" and by deleting

"(A)	Less than $1,000,000	subtract 1
(B)	$1,000,000 - $4,000,000	no adjustment
(C)	More than $4,000,000	add 1
(D)	More than $15,000,000	add 2
(E)	More than $50,000,000	add 3",

and inserting in lieu thereof:

"(A)	More than $400,000	add 1
(B)	More than $1,000,000	add 2
(C)	More than $2,500,000	add 3
(D)	More than $6,250,000	add 4
(E)	More than $15,000,000	add 5
(F)	More than $37,500,000	add 6
(G)	More than $100,000,000	add 7".

Section 2R1.1 is amended by deleting subsection (c) and inserting in lieu thereof the following:

"(c) Special Instructions for Fines

(1) For an individual, the minimum guideline fine shall be 1 percent of the volume of commerce, but not less than $20,000, and the maximum guideline fine shall be 5 percent of the volume of commerce.

(2) For an organization, the guideline fine range is from 20 to 50 percent of the volume of commerce, but not less than $100,000.".

The Commentary to §2R1.1 captioned "Application Notes" is amended by deleting Note 1 and inserting in lieu thereof:

"1. The provisions of §3B1.1 (Aggravating Role) and §3B1.2 (Mitigating Role) should be applied to an individual defendant, as appropriate, to reflect the individual's role in committing the offense. For example, if a sales manager organizes and leads the price-fixing activity of five or more participants, a 4 level increase is called for under §3B1.1. An individual should be considered for a downward adjustment under §3B1.2 for a mitigating role in the offense only if he was responsible in some minor way for his firm's participation in the conspiracy.".

The Commentary to §2R1.1 captioned "Background" is amended by deleting the first sentence of the third paragraph and inserting in lieu thereof:

"Under the guidelines, prison terms for these offenders should be much more common, and usually somewhat longer, than was typical in pre-guideline practice.".

The Commentary to §2R1.1 captioned "Background" is amended by deleting the last sentence of the third paragraph.

The Commentary to §2R1.1 captioned "Background" is amended by deleting the last four paragraphs.

Reason for the Amendment: This amendment increases the offense levels for antitrust violations to make them more comparable to the offense levels for fraud that result in comparable amounts of loss. The base offense level for antitrust violations starts higher than the base offense level for fraud violations because of the serious nature of antitrust violations, but the offense levels for antitrust offenses based on volume of commerce increase less quickly than the offense levels for fraud based on the magnitude of loss because the average level of mark-up from an antitrust violation may tend to decline with the volume of commerce involved. The amendment also reduces the minimum guideline fine level based on the volume of commerce to reflect a marginal shift from fines to imprisonment as the more effective means to deter antitrust offenses.

Illustration of §2R1.1 as amended by proposed amendment 25:

§2R1.1. Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors

(a) Base Offense Level: 9 *10*

(b) Specific Offense Characteristics

(1) If the conduct involved participation in an agreement to submit non-competitive bids, increase by 1 level.

(2) If the volume of commerce attributable to the defendant was less than $1,000,000 or more than $4,000,000 *greater than $400,000*, adjust the offense level as follows:

Volume of Commerce (Apply the Greatest)	Adjustment to Offense Level
(A) Less than $1,000,000	subtract 1
(B) $1,000,000 - $4,000,000	no adjustment
(C) More than $4,000,000	add 1
(D) More than $15,000,000	add 2
(E) More than $50,000,000	add 3
(A) More than $400,000	*add 1*
(B) More than $1,000,000	*add 2*
(C) More than $2,500,000	*add 3*
(D) More than $6,250,000	*add 4*
(E) More than $15,000,000	*add 5*
(F) More than $37,500,000	*add 6*
(G) More than $100,000,000	*add 7.*

For purposes of this guideline, the volume of commerce attributable to an individual participant in a conspiracy is the volume of commerce done by him or his principal in goods or services that were affected by the violation. When multiple counts or conspiracies are involved, the volume of commerce should be treated cumulatively to determine a single, combined offense level.

(c) Fines

A fine shall be imposed in addition to any term of imprisonment. The guideline fine range for an individual conspirator is from 4 to 10 percent of the volume of commerce, but not less than $20,000. The fine range for an organization is from 20 to 50 percent of the volume of commerce, but not less than $100,000.

(c) Special Instructions for Fines

(1) For an individual, the minimum guideline fine shall be 1 percent of the volume of commerce, but not less than $20,000, and the maximum guideline fine shall be 5 percent of the volume of commerce.

(2) For an organization, the guideline fine range is from 20 to 50 percent of the volume of commerce, but not less than $100,000.

Commentary

Statutory Provision: 15 U.S.C. § 1. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

Because the guideline sentences depend on the volume of commerce done by each firm, role in the offense is implicitly taken into account. Accordingly, the provisions of §3B1.1 (Aggravating Role) are to be applied only in unusual circumstances. An increase for role under §3B1.1 might be appropriate only where a defendant actually coerced others into participating in a conspiracy -- an unusual circumstance. Conversely, a decrease for role under §3B1.2 (Mitigating Role) would not be appropriate merely because an individual defendant or his firm did not profit substantially from the violation. An individual defendant should be considered for a downward adjustment for a mitigating role in the offense only if he was responsible in some minor way for his firm's participation in the conspiracy. A complementary bidder who did not win a bid would not for that reason qualify for a downward adjustment, but a low-level employee who participated in only one of several agreements constituting a conspiracy would.

1. The provisions of §3B1.1 (Aggravating Role) and §3B1.2 (Mitigating Role) should be applied to an individual defendant as, appropriate, to reflect the individual's role in committing the offense. For example, if a sales manager organizes and leads the price-fixing activity of five or more participants, a 4 level increase is called for under §3B1.1. An individual should be considered for a downward adjustment under §3B1.2 for a mitigating role in the offense only if he was responsible in some minor way for his firm's participation in the conspiracy.

* * *

Background: These guidelines apply to violations of the antitrust laws. Although they are not unlawful in all countries, there is near universal agreement that restrictive agreements among competitors, such as horizontal price-fixing (including bid rigging) and horizontal market-allocation, can cause serious economic harm. There is no consensus, however, about the harmfulness of other types of antitrust offenses, which furthermore are rarely prosecuted and may involve unsettled issues of law. Consequently, only one guideline, which deals with horizontal agreements in restraint of trade, has been promulgated.

The agreements among competitors covered by this section are almost invariably covert conspiracies that are intended to and serve no purpose other than to restrict output and raise prices, and that are so plainly anti-competitive that they have been recognized as illegal per se, i.e., without any inquiry in individual cases as to their actual competitive effect. The Commission believes that the most effective method to deter individuals from committing this crime is through imposing short prison sentences coupled with large fines. The controlling consideration underlying this guideline is general deterrence.

Under the guidelines, prison terms for these offenders should be much more common, and usually somewhat

longer, than typical under pre-guidelines practice. *Under the guidelines, prison terms for these offenders should be much more common, and usually somewhat longer, than was typical in pre-guidelines practice.* Absent adjustments, the guidelines require confinement of four months or longer in the great majority of cases that are prosecuted, including all bid-rigging cases. The court will have the discretion to impose considerably longer sentences within the guideline ranges. Adjustments from Chapter Three, Part E (Acceptance of Responsibility) and, in rare instances, Chapter Three, Part B (Role in the Offense), may decrease these minimum sentences; nonetheless, in very few cases will the guidelines not require that some confinement be imposed. Adjustments will not affect the level of fines.

The guideline imprisonment terms represent a substantial change from pre-guidelines practice. Under pre-guidelines practice, approximately 39 percent of all individuals convicted of antitrust violations were imprisoned. Considering all defendants sentenced, the average time served under pre-guidelines practice was only forty-five days. The guideline prison terms are, however, consistent with the parole guidelines. The fines specified in the guideline represent substantial increases over pre-guidelines practice. Under pre-guidelines practice, the average fine for individuals was only approximately $27,000; for corporations, it was approximately $160,000.

Tying the offense level to the scale or scope of the offense is important in order to ensure that the sanction is in fact punitive and that there is an incentive to desist from a violation once it has begun. The offense levels are not based directly on the damage caused or profit made by the defendant because damages are difficult and time consuming to establish. The volume of commerce is an acceptable and more readily measurable substitute. The limited empirical data available as to pre-guidelines practice showed that fines increased with the volume of commerce and the term of imprisonment probably did as well.

The Commission believes that the volume of commerce is liable to be an understated measure of seriousness in some bid-rigging cases. For this reason, and consistent with pre-guidelines practice, the Commission has specified a 1 level increase for bid-rigging.

Substantial fines are an essential part of the sanction. It is estimated that the average additional profit attributable to price fixing is 10 percent of the selling price. The Commission has specified that a fine from two to five times that amount be imposed on organizational defendants as a deterrent because of the difficulty in identifying violators. Additional monetary penalties can be provided through private treble damage actions. A lower fine is specified for individuals. The Commission believes that most antitrust defendants have the resources and earning capacity to pay these fines, at least over time. The statutory maximum fine is $250,000 for individuals and $1,000,000 for organizations, but is increased when there are convictions on multiple counts.

§2S1.1 Laundering of Monetary Instruments

26. Proposed Amendment: Section 2S1.1(a)(1) is amended by deleting "or (a)(2)(A)" and inserting in lieu thereof ", (a)(2)(A), or (a)(3)(A)".

Section 2S1.1(b)(1) is amended by deleting "knew" and inserting in lieu thereof "knew or believed".

Reason for Amendment: In the Anti-Drug Abuse Act of 1988, Congress enacted a new subsection (a)(3) of 18 U.S.C. § 1956 which authorizes undercover "sting" operations in money laundering cases. Such cases differ from those prosecuted under subsection (a)(1) in that the money being laundered is not actually criminal proceeds, as it is in cases covered by (a)(1), but is government "sting" money that an undercover officer represents to be criminal proceeds. In all other respects, subsections (a)(1) and (a)(3) are the same. In the Crime Control Act of 1990, Congress extended this "sting" provision to offenses committed under subsection (a)(2).

Guideline §2S1.1(a) provides for a base offense level of 23 for offenses committed in violation of subsections (a)(1)(A) and (a)(2)(A). These offenses carry a higher offense level because they involve an intent to promote another criminal offense. Since the same is true of new subsection (a)(3)(A), this amendment addresses the 1988 amendment to the statute by applying the same offense level to that provision.

Guideline §2S1.1(b) provides for an increase of 3 levels if the defendant "knew" that the funds were the proceeds of drug trafficking. This amendment takes both the 1988 and 1990 statutory amendments into account by providing for the 3-level increase if the defendant either knew or believed that the funds were drug proceeds.

§2S1.3. Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements

27. Proposed Amendment: Section 2S1.3 is amended in subsection (a)(1)(B) by deleting "made false statements to conceal or disguise the evasion of reporting requirements; or" and inserting in lieu thereof "knowingly filed, or caused another to file, a report containing materially false statements." ; by deleting subsection (a)(1)(C); and, in subsection (b)(1) by deleting "5" and inserting in lieu thereof "4" and by inserting "If the resulting offense level is less than 13, increase to 13." immediately following "levels.".

The Commentary to §2S1.3 captioned "Application Notes" is amended by deleting "Notes" and inserting in lieu thereof "Note" and by deleting note 2.

The Commentary to §2S1.3 captioned "Background" is amended in the second paragraph by deleting ", made false statements to conceal or disguise the activity, or reasonably should have believed that the funds were criminally derived property" and inserting in lieu thereof "or knowingly filed, or caused another to file, a report containing materially false statements" and by deleting the last sentence in the paragraph; and in the third paragraph by deleting "a 5-level increase in offense level" and inserting in lieu thereof "the greater of a 4-level increase or an increase to level 13".

Reason for Amendment: This amendment is designed to eliminate double counting, clarify the scope of the specific offense characteristics, and provide penalties commensurate with similar money laundering offenses.

Illustration of §2S1.3 as amended by proposed amendment 27:

§2S1.3. Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements

(a) Base Offense Level:
(1) 13, if the defendant:
(A) structured transactions to evade reporting requirements; or
knowingly filed, or caused another to file, a report containing materially false statements.~ made false statements to conceal or disguise the evasion of reporting requirements; or
(B) made false statements to conceal or disguise the evasion of reporting requirements; or *knowingly filed, or caused another to file, a report containing materially false statements.*
(C) reasonably should have believed that the funds were criminally derived property;
(2) 5, otherwise.
(b) Specific Offense Characteristics
(1) If the defendant knew or believed that the funds were criminally derived property, increase by 5 *4* levels. *If the resulting offense level is less than 13, increase to 13.*
(2) If the base offense level is from (a)(1) above and the value of the funds exceeded $100,000, increase the offense level as specified in §2S1.1(b)(2).

Commentary

Statutory Provisions: 18 U.S.C. § 1005; 26 U.S.C. § 7203 (if a willful violation of 26 U.S.C. § 6050I); 31 U.S.C. §§ 5313-5314, 5316, 5322, 5324. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes *Note* :

1. "Criminally derived property" means any property constituting, or derived from, proceeds obtained from a criminal offense. See 18 U.S.C. § 1957(f)(2).
2. Subsection (a)(1)(C) applies where a reasonable person would have believed from the circumstances that the funds were criminally derived property. Subsection (b)(1) applies if the defendant knew or believed the funds were criminally derived property. Subsection (b)(1) applies in addition to, and not in lieu of, subsection (a)(1)(C). Where subsection (b)(1) applies, subsection (a)(1)(C) also will apply. It is possible that a defendant "believed" or "reasonably should have believed" that the funds were criminally derived property even if, in fact, the funds were not so derived (e.g., in a "sting" operation where the defendant is told the funds were derived from the unlawful sale of controlled substances).

Background: The offenses covered by this guideline relate to records and reports of certain transactions involving currency and monetary instruments. The maximum prison sentence for these offenses is ten years if there is any pattern of unlawful activity, and five years otherwise.

A base offense level of 13 is provided for those offenses where the defendant either structured the transaction to evade reporting requirements , made false statements to conceal or disguise the activity, or reasonably should have believed that the funds were criminally derived property *or knowingly filed, or caused another to file, a report containing materially false statements*. A lower alternative base offense level of 5 is provided in all other cases. The Commission anticipates that such cases will involve simple recordkeeping or other more minor technical violations of the regulatory scheme governing certain monetary transactions committed by defendants who reasonably believe that the funds at issue emanated from legitimate sources.

Where the defendant actually knew or believed that the funds were criminally derived property, subsection (b)(1) provides for a 5 level increase in the offense level *the greater of a 4-level increase or an increase to level 13*.

Except in rare cases, the dollar value of the transactions not reported is an important indicator of several factors that are pertinent to the sentence, including the size of the criminal enterprise, and the extent to which the defendant aided the enterprise.

Chapter Two, Part S - Money Laundering and Monetary Transaction Reporting

28. Proposed Amendment: Chapter Two, Part S is amended by inserting the following additional guideline:

"§2S1.4 ' Failure to File Currency and Monetary Instrument Report

(a) Base Offense Level: 9
(b) Specific Offense Characteristics
(1) If the defendant knew or believed that the funds were criminally derived property, increase by 4 levels;
(2) If the defendant knew or believed that the funds were intended to be used to promote criminal activity, increase by 4 levels;
(3) If the value of the funds exceeded $100,000, increase the offense level as specified in §2S1.1(b)(2).

Commentary

Statutory Provision: 31 U.S.C. § 5316.".

The Commentary to §2S1.3 captioned "Statutory Provisions" is amended by deleting "18 U.S.C. § 1005;", "-5314, 5316" and ", 5324".

Reason for Amendment: This amendment creates a new guideline for offenses involving Currency and Monetary Instrument Reports (CMIR). Currently, such offenses are covered by §2S1.3, which deals with all currency transaction reporting requirements. CMIR violations are committed by individuals who, when entering or leaving the country, knowingly conceal $10,000 or more in cash or bearer instruments on their persons or in their personal effects and knowingly fail to file the report required by the U.S. Customs Service. Such criminal conduct is sufficiently different from the other offenses covered by §2S1.3 (namely, regulatory and structuring offenses) to merit treatment in a separate guideline.

§4A1.1. Criminal History Category;
§4A1.2. Definitions and Instructions for Computing Criminal History Score;
§4A1.3. Adequacy of Criminal History Category
§4B1.2. Definition of Terms Used in Section 4B1.1

29(A). Proposed Amendment: The Commentary to §4A1.1 captioned "Application Notes" is amended in the second sentence of Note 4 by inserting the following immediately before the period at the end of the sentence:

"having a custodial or supervisory component, whether active or inactive. For example, a term of unsupervised probation would be included; but a sentence to pay a fine, standing alone, would not be included".

Reason for Amendment: This amendment clarifies the meaning of the term "under a criminal justice sentence".

(B). Proposed Amendment: Section 4A1.2(a) is amended by inserting the following additional subdivision:

"(4) Where a defendant has been convicted of an offense, but not yet sentenced, such conviction shall be counted as if it constituted a prior sentence under §4A1.1(c) if a sentence resulting from that conviction otherwise would be counted. In the case of a conviction for an offense set forth in §4A1.2(c)(1), apply this provision only where the sentence for such offense would be counted regardless of type or length.

'Convicted of an offense,' for the purposes of this provision, means that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.".

Reason for Amendment: This amendment addresses the case in which the defendant has been convicted of a prior offense but not yet sentenced for that offense.

(C). Proposed Amendment: Section 4A1.2 is amended by inserting the following additional subsection:

"(l) Sentences on Appeal
Prior sentences under appeal are counted except as expressly provided below. In the case of a prior sentence, the execution of which has been stayed pending appeal, [Option 1 §4A1.1(a), (b), (c), and (d) shall apply as if the execution of such sentence had not been stayed; §4A1.1(e) shall not apply.] [Option 2 §4A1.1(a), (b), and (c) shall apply as if the execution of such sentence had not been stayed; §4A1.1(d) and (e) shall not apply, but a departure under §4A1.3 (Adequacy of Criminal History Category) may be warranted where it appears that such provisions would have been applicable had the sentence not been stayed.]

[Option 1 Conforming Amendment: The Commentary to §4A1.3(d) is amended by deleting "sentencing, or appeal" and inserting in lieu thereof "or sentencing".]

Reason for Amendment: This amendment addresses the treatment of sentences stayed during appeal. Two options are provided that differ in the treatment of item (d)(whether the defendant is under a criminal justice sentence).

(D). Proposed Amendment: Section 4A1.2 is amended by inserting the following additional subsections:

"(m) Effect of a Violation Warrant
For the purposes of §4A1.1(d), a defendant who commits the instant offense while a violation warrant (e.g., a probation, parole, or supervised release violation warrant) resulting from a prior sentence is outstanding shall be deemed to be under a criminal justice sentence if that sentence is otherwise countable, even if that sentence would have expired absent such warrant.

(n) Failure to Report for Service of Sentence of Imprisonment

For the purposes of §4A1.1(d) and (e), failure to report for service of a sentence of imprisonment imposed on the defendant shall be treated as if an escape from such sentence.

(o) Felony Offense

For the purposes of §4A1.2(c), a 'felony offense' means any federal, state, or local offense punishable by death or a term of imprisonment exceeding one year, regardless of the actual sentence imposed.".

The Commentary to §4A1.1 captioned "Application Notes" is amended by inserting the following as the second sentence of Note 4 and the third sentence of Note 5:

"Failure to report for service of a sentence of imprisonment is to be treated as if an escape from such sentence. See §4A1.2(n).".

The Commentary to §4A1.1 captioned "Application Notes" is amended in Note 4 by inserting the following additional sentence at the end:

"A defendant who commits the instant offense while a violation warrant (e.g., a probation, parole, or supervised release violation warrant) resulting from a prior sentence is outstanding shall be deemed under a criminal justice sentence for the purposes of this provision if that sentence is otherwise countable, even if that sentence would have expired absent such warrant. See §4A1.2(m).".

Reason for Amendment: This amendment clarifies the effect of an outstanding violation warrant under §4A1.2(d), the treatment of failure to report for a sentence of imprisonment under §4A1.2(d) and (e), and the definition of felony at §4A1.2(c).

(E). Proposed Amendment: Section 4A1.2(k)(2) is amended by deleting the last sentence; by inserting "(A)" immediately after "(2)"; and by inserting the following additional subdivision:

"(B) Revocation of probation, parole, supervised release, special parole, or mandatory release may affect the time period under which certain sentences are counted as provided in §4A1.2(d)(2) and (e). For the purposes of determining the applicable time period, use the following: (i) in the case of a term of imprisonment totaling more than one year and one month, the date of last release from incarceration on such sentence (see §4A1.2(e)(1)); (ii) in the case of any other confinement sentence for an offense committed prior to the defendant's eighteenth birthday, the date of the defendant's last release from confinement on such sentence (see §4A1.2(d)(2)(A)); and (iii) in any other case, the date of the original sentence (see §4A1.2(e)(2) and (d)(2)(B)).".

Reason for Amendment: This amendment clarifies the determination of the applicable time periods in revocation cases.

(F). Proposed Amendment: The Commentary to §4A1.2 captioned "Application Notes" is amended in Note 2 by inserting, immediately after "stated maximum", the following:

"(e.g., in the case of a determinate sentence of five years, the stated maximum is five years; in the case of an indeterminate sentence of one to five years, the stated maximum is five years; in the case of an indeterminate sentence for a term not to exceed five years, the stated maximum is five years; in the case of an indeterminate sentence for a term not to exceed the defendant's twenty-first birthday, the stated maximum is the amount of time in pre-trial detention plus the amount of time between the date of sentence and the defendant's twenty-first birthday)".

Reason for Amendment: This amendment illustrates the meaning of "stated maximum" sentence.

(G). Proposed Amendment: The Commentary to §4A1.2 is amended in Note 11 by inserting the following additional paragraph:

"Where a revocation applies to multiple sentences, and such sentences are counted separately under §4A1.2(a)(2), add the term of imprisonment imposed upon revocation to the sentence that will result in the greatest increase in criminal history points. Example: A defendant was serving two probationary sentences, each counted separately under §4A1.2(a)(2), probation was revoked on both sentences on account of the same violation conduct, and the defendant was sentenced to a total of 45 days imprisonment. If one sentence had been a 'straight' probationary sentence and the other had been a probationary sentence that had required service of 15 days imprisonment, the revocation term of imprisonment (45 days) would be added to the probationary sentence that had the 15 day term of imprisonment. This would result in the addition of 2 criminal history points under §4A1.1(b)(for the combined 60 day term of imprisonment) and 1 criminal history point under §4A1.1(c)(for the other probationary sentence).".

Reason for Amendment: This amendment expressly addresses the situation in which, as a result of one violation behavior, multiple sentences of probation, parole, or supervised release, each of which has been counted separately under §4A1.2(a)(2), are revoked.

(H). Proposed Amendment: Section 4B1.2(2) is amended by deleting "or distribution" and inserting in lieu thereof "distribution, or dispensing", and by deleting "or distribute" and inserting in lieu thereof "distribute, or dispense".

Reason for Amendment: This amendment makes the definition in §4B1.2(2) more comprehensive, and conforms it to the definition adopted by the Commission in §7B1.1

30. Proposed Amendment:

[Option 1
Section 4A1.1 is amended by inserting the following additional subsection:

"(f) Add [1] [2] point[s] for each additional prior sentence for a crime of violence that was considered related and did not receive separate points under §4A1.1 (a), (b), and (c) because it was part of single common scheme or plan or was consolidated for trial or sentencing, up to a total of [2]- [5] points.".

Section 4A1.2(a)(2) is amended by deleting "the criminal history" and inserting in lieu thereof "4A1.1(a), (b), and (c).

Section 4A1.2 is amended by inserting the following additional subsection:

"(p) Crime of Violence.
'Crime of Violence' is defined in §4B1.2(1).".

The Commentary to §4A1.2 captioned "Application Notes" is amended in Note 3 by deleting "Cases" and inserting in lieu thereof "Prior sentences"; by inserting "resulted from offenses that" immediately after "they"; by inserting the following as the second sentence:

"Except that prior sentences are not considered related under this definition if they were for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense).";

and by deleting the last three sentences and inserting in lieu thereof:

"For example, if a defendant is convicted of a number of serious non-violent offenses committed on different occasions, and the resulting sentences are treated as related because the cases were consolidated for sentencing, the assignment of a single set of points may not adequately reflect the seriousness of the defendant's criminal history or the frequency with which he has committed crimes. In such circumstances, an upward departure may be warranted. Note that the above example refers to serious non-violent offenses. Where prior related sentences result from convictions of crimes of violence, §4A1.1(f) will apply.".]

[Option 2
The Commentary to §4A1.2 captioned "Application Notes" is amended in Note 3 by deleting "Cases" and inserting in lieu thereof "Prior sentences"; by inserting "resulted from offenses that" immediately after "they"; by inserting the following as the second sentence:

"Except that prior sentences are not considered related under this definition if (A) they were for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense), or (B) if they were of a nature not grouped according to §3D1.2 (a), (b), (c), or (d).".]

[Option 3
Section 4A1.1 is amended by inserting the following:

"(f) Add 2 points for each additional prior sentence of more than one year and one month for a crime of violence or drug offense that was considered related and did not receive separate points under §4A1.1(a) because it was part of a single common scheme or plan or was consolidated for trial or sentencing, up to a total of 6 points.

(g) Add 1 point for each additional prior sentence of one year and one month or less for a crime of violence or drug offense that was considered related and did not receive separate points under §4A1.1(b) or (c) because it was part of a single common scheme or plan or was consolidated for trial or sentencing, up to a total of 6 points.

(h) Add 1 point for each additional prior sentence that was considered related and did not receive separate points under §4A1.1(a), (b), or (c) because it was part of a single common scheme or plan or was consolidated for trial or sentencing, up to a total of 6 points.

[(i) Provided, however, that the cumulative points added under subsections (f), (g), and (h) shall not exceed [6]-[9] points.]"

The Commentary to §4A1.2 captioned "Application Notes" is amended in Note 3 by deleting "Cases" and inserting in lieu thereof "Prior sentences"; by inserting "resulted from offenses that" immediately after "they"; by inserting the following as the second sentence:

"Except that prior sentences are not considered related under this definition if they were for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense)." immediately after "sentencing";

and by deleting the last three sentences.]

Reason for Amendment: The Commission is reexamining the "related cases" rule as applied to prior cases that were consolidated for trial or sentencing. Section 4A1.2(a) provides that, for purposes of calculating criminal history, prior sentences in related cases are to be treated as only one sentence. Application Note 3 of that provision defines "related cases" as cases that "(1) occurred on a single

occasion, (2) were part of a single common scheme or plan, or (3) were consolidated for trial or sentencing. . . ." It is the third prong of the related cases definition -- cases that were consolidated for trial or sentencing -- that has generated comment by courts, practitioners, and probation officers. Three options are shown that provide different ways of addressing this issue. A report of the Commission's study of related cases is available for inspection at the Commission's offices.

Illustration of §§4A1.1 and 4A1.2 as amended by proposed amendment 30:

Option 1

§4A1.1. Criminal History Category

The total points from items (a) through (e) determine the criminal history category in the Sentencing Table in Chapter Five, Part A.

(a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month.

(b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).

(c) Add 1 point for each prior sentence not included in (a) or (b), up to a total of 4 points for this item.

(d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

(e) Add 2 points if the defendant committed the instant offense less than two years after release from imprisonment on a sentence counted under (a) or (b) or while in imprisonment or escape status on such a sentence. If 2 points are added for item (d), add only 1 point for this item.

(f) Add [1] [2] point[s] for each additional prior sentence for a crime of violence that was considered related and did not receive separate points under §4A1.1 (a), (b), and (c) because it was part of single common scheme or plan or was consolidated for trial or sentencing, up to a total of [2]- [5] points.

* * *

§4A1.2. Definitions and Instructions for Computing Criminal History

(a) Prior Sentence Defined

(1) The term "prior sentence" means any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for conduct not part of the instant offense.

(2) Prior sentences imposed in unrelated cases are to be counted separately. Prior sentences imposed in related cases are to be treated as one sentence for purposes of the criminal history *4A1.1(a), (b), and (c).* Use the longest sentence of imprisonment if concurrent sentences were imposed and the aggregate sentence of imprisonment imposed in the case of consecutive sentences.

* * *

(p) Crime of Violence.
'Crime of Violence' is defined in 4B1.2(1).

Commentary

* * *

Application Notes:

* * *

3. Related Cases. Cases *Prior sentences* are considered related if they *resulted from offenses that*(1) occurred on a single occasion, (2) were part of a single common scheme or plan, or (3) were consolidated for trial or sentencing. *Except that prior sentences are not considered related under this definition if they were for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense).* The court should be aware that there may be instances in which this definition is overly broad and will result in a criminal history score that underrepresents the seriousness of the defendant's criminal history and the danger that he presents to the public. For example, if the defendant commits a number of offenses on independent occasions separated by arrests, and the resulting criminal cases are consolidated and result in a combined sentence of eight years, counting merely three points for this factor will not adequately reflect either the seriousness of the defendant's criminal history or the frequency with which he commits crimes. In such circumstances, the court should consider whether departure is warranted. See §4A1.3. *For example, if a defendant is convicted of a number of serious non-violent offenses committed on different occasions, and the resulting sentences are treated as related because the cases were consolidated for sentencing, the assignment of a single set of points may not adequately reflect the seriousness of the defendant's criminal history or the frequency with which he has committed crimes. In such circumstances, an upward departure may be warranted. Note that the above example refers to serious non-violent offenses. Where prior related sentences result from convictions of crimes of violence, §4A1.1(f) will apply.*

* * *

Option 2

§4A1.2. Definitions and Instructions for Computing Criminal History

* * *

Commentary

* * *

Application Notes:

* * *

3. Related Cases. Cases *Prior sentences* are considered related if they *resulted from offenses that* (1) occurred on a single occasion, (2) were part of a single common scheme or plan, or (3) were consolidated for trial or sentencing. *Except that prior sentences are not considered related under this definition if (A) they were for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense), or (B) if they were of a nature not grouped according to §3D1.2 (a), (b), (c), or (d).* The court should be aware that there may be instances in which this definition is overly broad and will result in a criminal history score that underrepresents the seriousness of the defendant's criminal history and the danger that he presents to the public. For example, if the defendant commits a number of offenses on independent occasions separated by arrests, and the resulting criminal cases are consolidated and result in a combined sentence of eight years, counting merely three points for this factor will not adequately reflect either the seriousness of the defendant's criminal history or the frequency with which he commits crimes. In such circumstances, the court should consider whether departure is warranted. See §4A1.3.

* * *

Option 3

§4A1.1. Criminal History Category

The total points from items (a) through (e) determine the criminal history category in the Sentencing Table in Chapter Five, Part A.

(a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month.

(b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).

(c) Add 1 point for each prior sentence not included in (a) or (b), up to a total of 4 points for this item.

(d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

(e) Add 2 points if the defendant committed the instant offense less than two years after release from imprisonment on a sentence counted under (a) or (b) or while in imprisonment or escape status on such a sentence. If 2 points are added for item (d), add only 1 point for this item.

(f) Add 2 points for each additional prior sentence of more than one year and one month for a crime of violence or drug offense that was considered related and did not receive separate points under §4A1.1(a) because it was part of a single common scheme or plan or was consolidated for trial or sentencing, up to a total of 6 points.

(g) Add 1 point for each additional prior sentence of one year and one month or less for a crime of violence or drug offense that was considered related and did not receive separate points under §4A1.1(b) or (c) because it was part of a single common scheme or plan or was consolidated for trial or sentencing, up to a total of 6 points.

(h) Add 1 point for each additional prior sentence that was considered related and did not receive separate points under §4A1.1(a), (b), or (c) because it was part of a single common scheme or plan or was consolidated for trial or sentencing, up to a total of 6 points.

[(i) Provided, however, that the cumulative points added under subsections (f), (g), and (h) shall not exceed [6]-[9] points.]

* * *

§4A1.2. Definitions and Instructions for Computing Criminal History

* * *

Commentary

* * *

Application Notes:

* * *

3. Related Cases. Cases *Prior sentences* are considered related if they *resulted from offenses that* (1) occurred on a single occasion, (2) were part of a single common scheme or plan, or (3) were consolidated for trial or sentencing. *Except that prior sentences are not considered related under this definition if they were for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense).* The court should be aware that there may be instances in which this definition is overly broad and will result in a criminal history score that underrepresents the seriousness of the defendant's criminal history and the danger that he

presents to the public. For example, if the defendant commits a number of offenses on independent occasions separated by arrests, and the resulting criminal cases are consolidated and result in a combined sentence of eight years, counting merely three points for this factor will not adequately reflect either the seriousness of the defendant's criminal history or the frequency with which he commits crimes. In such circumstances, the court should consider whether departure is warranted. See §4A1.3.

* * *

Chapter Five, Part A - SENTENCING TABLE

31. Proposed Amendment: Defendants with more than 13 criminal history points are presently assigned to Category VI. This open-ended characteristic of the category has led some to question whether the criminal history categories of the Sentencing Table adequately take into account the criminal background of defendants with high numbers of criminal history points. Accordingly, the Commission solicits comment concerning (1) whether a new Category VII should be added to criminal history categories of the Sentencing Table in order to better distinguish between defendants with large numbers of criminal history points and (2) which of the options described below may best accomplish that end. Three options for a new Category VII are presented. Under each of the options described below, the sentencing range for Category VII offenders would be as follows for each offense level:

Offense Level	Criminal History Category VII
1	1-7
2	3-9
3	6-12
4	9-15
5	12-18
6	15-21
7	18-24
8	21-27
9	24-30
10	27-33
11	30-37
12	33-41
13	37-46
14	41-51
15	46-57
16	51-63
17	57-71
18	63-78
19	70-87
20	77-96
21	84-105
22	92-115
23	100-125
24	110-137
25	120-150
26	130-162
27	140-175
28	151-188
29	168-210
30	188-235
31	210-262
32	235-293
33	262-327
34	292-365
35	324-405
36	360-life
37	360-life
38	360-life
39	360-life
40	360-life
41	360-life
42	life
43	life

The following options provide alternative definitions of the offender population to which Category VII would apply.

Option 1 - Category VI with a 3 point spread. Under this option, Category VI would include cases with 13-15 points and a new Category VII would include cases with 16 or more points.

Option 2 - Category VI with a 7 point spread. Under this option, Category VI would include cases with 13-19 points and Category VII would include cases with 20 or more points.

Option 3 - A three point spread for both Categories VI and VII. Under this option, Category VI would included cases with 13-15 points and Category VII would include those with 16-18 points. Courts would sentence the defendant with over 18 points either within the range prescribed by Category VII or would upwardly depart.

The Commission solicits comment on the following issues:

1) Whether the Commission should promulgate the new criminal history Category VII set forth above.
2) If so, whether criminal history Category VI should be capped at 15 points and Category VII apply to defendants with 16 points or more; or, whether criminal history Category VI should be capped at 19 points and Category VII apply to defendants with 20 or more points; or, whether Category VI should be capped at 15, Category VII capped at 18 points, and defendants with 19 points or more sentenced in Category VII or through departure.
3) If a new Category VII is promulgated, whether §4B1.1 (Career Offender) should be amended to provide either that all Career Offenders be sentenced at Category VI (as currently); that all Career Offenders be sentenced at Category VII; or, that Career Offenders be sentenced at Category VI except for those defendants who would

otherwise be sentenced in a higher criminal history category.

A report of the Commission's study of criminal history category VII is available for inspection at the Commission's offices.

§5E1.1 Restitution

32. Proposed Amendment: Section 5E1.1(a) is amended by deleting ", and may be ordered as a condition of probation or supervised release in any other case", by redesignating subsections (b) and (c) as (c) and (d) respectively, and by inserting the following as subsection (b):

"(b) In the case of a conviction not covered under subsection (a), the court shall provide for restitution by imposing a term of probation or supervised release with a condition requiring restitution, unless the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweighs the need to provide restitution to any victims.".

The Commentary to §5E1.1 captioned "Background" is amended in the first paragraph by deleting "An order of restitution may be appropriate in offenses not specifically referenced in 18 U.S.C. § 3663 where victims require relief more promptly than the civil justice system provides.".

The Commentary to §5E1.1 captioned "Background" is amended in the second paragraph by deleting "5E1.1" and inserting in lieu thereof "(a) of this guideline".

The Commentary to §5E1.1 captioned "Background" is amended in the last paragraph by deleting "how and to whom" and by inserting "the manner and the persons to whom".

The Commentary to §5E1.1 captioned "Background" is amended by inserting the following additional paragraph at the end:

" Subsection (b) of this guideline requires restitution for offenses not covered under 18 U.S.C. §3663(a) as a condition of probation or supervised release.".

Reason for Amendment: This amendment expands the restitution guideline to cover convictions other than those under Title 18 and 49 U.S.C. § 1472(b), (i), (j), and (h). The present guideline permits restitution as a condition of probation or supervised release in such cases, but does not require a restitution condition. This amendment requires that restitution be ordered as a condition of probation or supervised release for such offenses unless the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution outweighs the need to provide restitution to any victims. This amendment is the counterpart to the expanded restitution provision that the Commission has included in its organizational sanctions proposal.

Illustration of §5E1.1 as amended by proposed amendment 32:

§5E1.1. Restitution

(a) Restitution shall be ordered for convictions under Title 18 of the United States Code or under 49 U.S.C. § 1472(h), (i), (j) or (n) in accordance with 18 U.S.C. § 3663(d), and may be ordered as a condition of probation or supervised release in any other case.

(b) In the case of a conviction not covered under subsection (a), the court shall provide for restitution by imposing a term of probation or supervised release with a condition requiring restitution, unless the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweighs the need to provide restitution to any victims.

(b)*(c)* If a defendant is ordered to make restitution and to pay a fine, the court shall order that any money paid by the defendant shall first be applied to satisfy the order of restitution.

(c)*(d)* With the consent of the victim of the offense, the court may order a defendant to perform services for the benefit of the victim in lieu of monetary restitution or in conjunction therewith. 18 U.S.C. § 3663(b)(4).

Commentary

Background: Section 3553(a)(7) of Title 18 requires the court, "in determining the particular sentence to be imposed," to consider "the need to provide restitution to any victims of the offense." Section 3556 of Title 18 authorizes the court to impose restitution in accordance with 18 U.S.C. §§ 3663 and 3664, which authorize restitution for violations of Title 18 and of designated subdivisions of 49 U.S.C. § 1472. For other offenses, restitution may be imposed as a condition of probation or supervised release. See 18 U.S.C. § 3563(b)(3) as amended by Section 7110 of Pub. L. No. 100-690 (1988). An order of restitution may be appropriate in offenses not specifically referenced in 18 U.S.C. § 3663 where victims require relief more promptly than the civil justice system provides.

Subsection 5E1.1*(a) of this guideline* requires the court to order restitution for offenses under Title 18 or 49 U.S.C. § 1472(h), (i), (j), or (n), unless "the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of

restitution . . . outweighs the need to provide restitution to any victims." 18 U.S.C. § 3663(d). If the court does not order restitution, or orders only partial restitution, it must state its reasons for doing so. 18 U.S.C. § 3553(c).

* * *

Unless the court orders otherwise, restitution must be made immediately. 18 U.S.C. § 3663(f)(3). The court may permit the defendant to make restitution within a specified period or in specified installments, provided that the last installment is paid not later than the expiration of probation, five years after the end of the defendant's term of imprisonment, or in any other case five years after the date of sentencing. 18 U.S.C. § 3663(f)(1) and (2). The restitution order should specify how and to whom *the manner and the persons to whom* payment is to be made.

Subsection (b) of this guideline requires restitution for offenses not covered under 18 U.S.C. §3663(a) as a condition of probation or supervised release.

§5G1.3. Imposition of a Sentence on a Defendant Serving an Unexpired Term of Imprisonment

33. Proposed Amendment: Section 5G1.3 is deleted in its entirety and the following inserted in lieu thereof:

"§5G1.3. Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment

(a) If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status) or after sentencing for, but before commencing service of, such term of imprisonment or while on bail or other release status, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment;

(b) If subsection (a) does not apply, and the undischarged term of imprisonment resulted from offense(s) that constituted part of the same course of conduct as the instant offense and have been fully taken into account in the determination of the offense level for the instant offense, or if the prior undischarged term of imprisonment resulted from a federal offense and was imposed pursuant to the Sentencing Reform Act, the sentence for the instant offense shall be imposed to result in a combined sentence equal to the total punishment that would have been imposed under § 5G1.2 (Sentencing on Multiple Counts of Conviction) had all the sentences been imposed at the same time;

[Option 1

(c) In any other case, the sentence for the instant offense shall be imposed to run concurrently with the unexpired term of imprisonment.]

[Option 2

(c) Policy Statement. In any other case, the sentence for the instant offense shall be imposed to run consecutively to the prior unexpired term of imprisonment to the extent necessary to result in a total combined term of imprisonment for the instant offense and the offense giving rise to the prior term of imprisonment so that a reasonable incremental punishment is imposed for the instant offense.]

[Option 3

(c) In any other case, the sentence for the instant offense shall be imposed to run consecutively to the prior undischarged term of imprisonment.]

Commentary

This guideline provides direction to the court when a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment. See 18 U.S.C. § 3584. Except in the cases in which subsection (a) applies, this Guideline is intended to result in an appropriate incremental punishment for the instant offense that most nearly approximates the sentence that should have been imposed had all the sentences been imposed at the same time.

Application Notes:

1. Under subsection (a), the court shall impose a consecutive sentence where the instant offense (or any part thereof) was committed while the defendant was serving an undischarged term of imprisonment. Subsection (a) also applies when the defendant commits the instant offense during an escape or while on any form of release, including pretrial release on bail, release pending sentence or surrender, work release, furlough, or parole.
2. Subsection (b) (which applies only if subsection (a) does not apply), applies in two situations. First, it applies if the sentence resulting in the undischarged term of imprisonment was a federal sentence imposed pursuant to the Sentencing Reform Act. In such cases, the court shall fashion a sentence equal to the total punishment that would have been imposed had both sentences been imposed at the same time. Second, it also applies if the conduct resulting in the undischarged term of imprisonment was part of the same course of conduct as the instant offense and has been fully taken into account in determining the offense level for the instant offense (e.g., where a defendant is prosecuted in both federal and state court for the same criminal conduct; or where the defendant is prosecuted in state and federal court for different criminal transactions that are part of the same course of conduct, such as two drug sales, but the conduct underlying both transactions is fully taken into account under §1B1.3 (Relevant Conduct) in determining the offense level for the instant offense).

3. When a sentence is imposed pursuant to subsection (b), the court should adjust for any term of imprisonment already served as a result of the conduct taken into account in determining the instant sentence. E.g., if the appropriate total punishment determined under this subsection for all offenses is 30 months and the defendant has already served 10 months of the prior undischarged term of imprisonment, the court should impose a sentence of 20 months concurrent with the prior undischarged term.

[Option 1

4. Under subsection (c), which applies only if subsections (a), and (b) do not apply, the sentence for the instant offense should be imposed to run concurrently with the undischarged term of imprisonment. Departure would be warranted when separate prosecutions produce anomalous results that circumvent or defeat the intent of the guidelines to provide for incremental punishment for multiple offenses.]

[Option 2

4. Where the defendant is serving an unexpired term of imprisonment in circumstances other than set forth in subsections (a) or (b), the court should impose a consecutive sentence to the extent necessary to fashion a sentence resulting in incremental punishment for the multiple offenses. A consecutive sentence would not be necessary, for example, when the court determines that the defendant should serve a total of 30 months in prison for the conduct underlying the prior offense, the guideline sentence for the instant offense is 25 months, and the defendant has already served five months or more of the prior sentence. To the extent practicable, the court should consider imposing a sentence for the instant offense that results in a combined sentence that approximates the total punishment that would have been imposed under §5G1.2 (Sentencing on Multiple Counts of Conviction) had all of the offenses been federal offenses for which sentences were being imposed at the same time. Where the defendant is serving a term of imprisonment for a state offense, the information available may permit only a rough estimate of the total punishment that would have been imposed under the guidelines. It is not intended that the above methodology be applied in a manner that unduly complicates or prolongs the sentencing process.

To impose an appropriate incremental punishment when the date a defendant will be released from a prior undischarged term of imprisonment is not known or when only a partially consecutive sentence will result in a reasonable incremental sentence, the court may consider including in the Judgment and Commitment Order a provision that the sentence for the instant offense shall commence when the defendant is released from the prior undischarged sentence or on a date certain, whichever is earlier.

Example: The defendant is to be sentenced on December 10, 1990, for commercial burglary. The guideline range for the instant offense is 18-24 months. The defendant has already served 1 month on a state indeterminate sentence of 10 to 60 months for a separate commercial burglary committed two weeks before the federal offense. The court determines that an appropriate aggregate term of imprisonment would be 30 months. A sentence of imprisonment of 24 months (within the guideline range for the instant offense), with the Judgement and Commitment Order providing that the sentence shall commence on May 4, 1991 or upon the defendant's release from state custody, whichever comes first, will produce an appropriate result (approximately 30 months).]

[Option 3

4. Under subsection (c), which applies only if subsections (a) or (b) do not apply, the sentence for the instant offense shall be imposed to run consecutively to the prior undischarged term of imprisonment. Departure would be warranted when separate prosecutions produce anomalous results that circumvent or defeat the intent of the guidelines to provide for incremental punishments, but not more than necessary to comply with the purposes of sentencing for multiple offenses.".]

Reason for Amendment: Section 3584 of title 18 permits the court to impose either a concurrent or consecutive sentence when the defendant is subject to a prior undischarged term of imprisonment. This situation is addressed by §5G1.3, which currently requires a consecutive sentence when the instant offense was committed while the defendant was serving a term of imprisonment but leaves other cases to the court's discretion. This guideline has been criticized as leaving too much discretion to the sentencing court.

The Commission has been directed to promulgate guidelines that result in terms of imprisonment sufficient, but not greater than necessary, to comply with the purposes of sentencing, 18 U.S.C. § 3553(a), 28 U.S.C. § 991(b)(1)(A), and to ensure that incremental punishment is imposed for multiple offenses, 18 U.S.C. § 3584, 28 U.S.C. § 994 (l). These principles underlie the guidelines for sentencing on multiple counts of conviction (Chapter Three, Part D). The Commission believes that, to the extent possible, the sentence imposed should not depend on whether acts were prosecuted in one or several proceedings. The time a defendant serves in prison should, to the extent possible, be the same whether sentences for multiple offenses were pronounced in one or several proceedings. The Commission believes that the proposed amendment achieves this result as nearly as is practical.

Under the current §5G1.3, a defendant who commits the instant federal offense while serving a term of imprisonment or during an escape or furlough is to receive a consecutive sentence for the federal offense. Under the

proposed amendments the requirement for a consecutive sentence is expanded to cover a defendant on any form of release. Moreover, a defendant who is prosecuted for the same acts in several proceedings whose guideline sentence for the instant offense takes into account all the conduct that gave rise to the prior sentence will receive a concurrent sentence. And a defendant who is subject to a prior sentence imposed pursuant to the Sentencing Reform Act will receive the same total sentence had sentences for all the federal crimes been imposed in one proceeding. In the latter two cases, the court will be instructed to deduct any time already served pursuant to the prior sentence from the sentence for the instant offense. The result will be that the length of time a defendant serves in prison in these circumstances will be determined exclusively by application of the Sentencing Guidelines and will not depend on the number of separate prosecutions.

The Commission is considering three options in the case of a defendant subject to a prior, undischarged state term of imprisonment for an offense not taken into account by the guidelines for the instant offense. Under option one, the guideline sentence for the instant offense would be imposed to run concurrently with the prior sentence. If the court found that a concurrent guideline sentence was insufficient to provide reasonably incremental punishment, it could depart upward by imposing a longer concurrent sentence or by imposing a consecutive sentence. Proponents of this proposal suggest that it is consistent with the requirement that punishment be no greater than necessary to comply with the purposes of sentencing and that it is desirable to define a consecutive sentence in these circumstances as a departure so that sentencing courts will be required to state the reasons for a consecutive sentence and the defendant will be entitled to appellate review. Others suggest that this proposal is unlikely to result in adequate deterrence for defendants who commit multiple crimes.

Under option two, the court would be directed to impose a consecutive sentence no greater than necessary to result in reasonably incremental punishment. An application note suggests that the court may achieve this result by including a provision in the Judgement and Commitment Order that the sentence would commence when the defendant is released from state prison or on a date certain, whichever is earlier. The date certain would be calculated to ensure that the defendant served an appropriate term of imprisonment. Proponents of this option suggest that it best comports with the principle that a reasonably incremental punishment be imposed, but not excessive punishment. Others suggest that the proposal is impractical because making the necessary calculations would be difficult and burdensome.

Under option three, the sentence for the instant offense would be consecutive. Proponents of this option suggest that it best ensures that all defendants will receive an additional punishment for multiple offenses. Others suggest that it may result in excessive sentences in many cases.

The difference in result produced by the options is striking. Assume, for example, a defendant in Criminal History Category VI who commits two bank robberies. In each case a firearm is brandished and the loss was less than $10,000. The offense level for each robbery individually would be 25 (§2B3.1). The guideline range for Criminal History Category VI would be 110-137. If sentence were imposed for both crimes in one federal proceeding, §3D1.4 would produce an offense level of 27 with a guideline range of 130-162. The maximum incremental punishment attributable to the second robbery would be 25 months.

If the two robberies described above were prosecuted separately, one in state court and the other in federal court, and a state sentence of ten years was imposed first, application of option one, without departure, could provide an incremental sentence of 17 months (concurrent sentence of 137 months). The increment could be greater if the defendant had already served time in state prison before the federal sentence was imposed and the time served in state prison was not taken into account in calculating the federal sentence. Under option one, the maximum possible increment without departure would decrease as the length of the prior state sentence approached the guideline maximum for the instant offense. Under option two, the court, in accordance with a policy statement, could provide an incremental punishment of precisely 25 months. Under option three, the court, without departure, would be required to impose an incremental punishment of at least 110 months.

The proposed amendment and options are set out above. Subsections (a) and (b) of the guideline would be the same under any of the options. These subsections are set out first, followed by the three alternative versions of subsection (c). The Commentary and Application Notes applicable to all three options in common are set out after the guideline provisions. The Commentary applicable to each option alone is then set out at the end.

Chapter Five, Part H - Specific Offender Characteristics

34(A). Proposed Amendment: The Introductory Commentary to Chapter Five, Part H is amended in the first paragraph by deleting "Congress has directed the Commission" and inserting in lieu thereof:

"The following policy statements address the relevance of certain offender characteristics to the determination of whether a sentence should be outside the applicable guideline range, and in certain cases to the determination of a sentence within the applicable guideline range. Under 28 U.S.C. § 994(d), the Commission is directed";

and by deleting "relevant by the Commission. 28 U.S.C. § 994(d)" and inserting in lieu thereof "to be relevant by the

Commission".

The Introductory Commentary to Chapter Five, Part H is amended by inserting the following additional paragraph as the second paragraph.

"The Commission has determined that certain factors are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range. Unless expressly stated, this does not mean that the Commission views such factors as necessarily inappropriate to the determination of the sentence within the applicable guideline range or to the determination of various other incidents of an appropriate sentence (e.g., the appropriate conditions of probation or supervised release).".

Section 5H1.1 is amended by inserting "(including youth)" immediately following "Age" in the first sentence; and by deleting "guidelines. Neither is it ordinarily" and all that follows through the end of the section and inserting in lieu thereof "applicable guideline range. Physical condition, which may be related to age, is addressed at §5H1.4 (Physical Condition). The guidelines are not applicable to persons sentenced as juvenile delinquents under the provisions of 18 U.S.C. § 5037.".

Section 5H1.2 is amended by deleting "guidelines" in the first sentence and inserting in lieu thereof "applicable guideline range", by deleting "Neither are education and vocational skills" and all that follows through the end of the section, and inserting the following additional paragraph:

"Education and vocational skills may be relevant in determining the conditions of probation or supervised release for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the type of community service appropriate.".

Section 5H1.3 is amended by deleting "guidelines" in the first sentence and inserting in lieu thereof "applicable guideline range", and by deleting "the general provisions in Chapter Five." and all that follows through the end of the section, and inserting in lieu thereof "Chapter Five, Subpart 2 (Other Grounds for Departure)"; and by inserting the following additional paragraph:

"Mental and emotional conditions may be relevant in determining the conditions of probation or supervised release (e.g., participation in a mental health program, see recommended condition (24) at §5B1.4 (Recommended Conditions of Probation and Supervised Release)).".

Section 5H1.4 is amended by deleting "guidelines or where within the guidelines a sentence should fall" and inserting in lieu thereof "applicable guideline range", by deleting "other than imprisonment" and inserting in lieu thereof:

"below the applicable guideline range; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment";

by deleting ". If participation in a substance abuse program" and all that follows through the end of the paragraph and inserting in lieu thereof:

"(see recommended condition (23) at §5B1.4 (Recommended Conditions of Probation and Supervised Release). Similarly, where a defendant who is a substance abuser is sentenced to probation, it is strongly recommended that the conditions of probation contain a requirement that the defendant participate in an appropriate substance abuse program (see recommended condition (23) at §5B1.4 (Recommended Conditions of Probation and Supervised Release)).";

and by deleting the last paragraph.

Section 5H1.4 is amended in the caption by deleting "Dependence and" immediately following "Drug" and inserting in lieu thereof "or", and by inserting "Dependence or" immediately following "Alcohol".

Section 5H1.4 is amended in the first sentence of the second paragraph by deleting "dependence or alcohol abuse" and inserting in lieu thereof "or alcohol dependence or abuse".

Section 5H1.5 is amended in the title by deleting "Previous".

Section 5H1.5 is amended by deleting "guidelines or where within the guidelines" and all that follows through the end of the section and inserting in lieu thereof "applicable guideline range.", and by inserting the following additional paragraph:

"Employment record may be relevant in determining the conditions of probation or supervised release (e.g., the appropriate hours of home detention).".

Section 5H1.6 is amended by deleting "guidelines. Family responsibilities that are" and all that follows through the end of the section and inserting in lieu thereof "applicable guideline range."; and by inserting the following additional paragraph:

"Family responsibilities that are complied with may be relevant to the determination of the amount of restitution (§5E1.1 (Restitution)) and fine (§5E1.2 (Fines for Individual Defendants)).".

Reason for Amendment: Sections 5H1.1-5H1.6 contain numerous inconsistencies and ambiguities.

The specific considerations that the various sections of this Part cover include:

(1) whether a factor is relevant to a sentence outside the guidelines;
(2) whether a factor is relevant to placement of a sentence within the applicable guideline range;
(3) whether a factor is relevant to a choice of a sentencing option within the applicable guideline range;
(4) whether a factor is relevant to the length of a term of probation or supervised release; and
(5) whether a factor is relevant to the conditions of probation or supervised release.

Sections 5H1.1-5H1.6 each address Item 1, but there is much less consistency and clarity in respect to the remaining items: Item 2 is addressed by §§5H1.4 and 5H1.5 but is not addressed by §§5H1.1-5H1.3 or §5H1.6; Item 3 is addressed by §§5H1.1-5H1.2, but is not addressed by §§5H1.3-5H1.4. Section 5H1.5 indicates that employment may be related to choice of sentencing option but gives no further specifics. Section 5H1.6 provides that "these factors" may be relevant in the determination of probation; Item 4 is addressed by §§5H1.1-5H1.6 but no or little guidance is provided as to how this factor is to be considered; Item 5 is addressed by §§5H1.1-5H1.6 but no or little guidance is provided as to how this factor is to be considered except for the discussion in §5H1.4 related to drug and alcohol abuse. For example, §5H1.1 states that age may be relevant to the length and conditions of probation or supervised release but does not explain what relevance this factor may have.

The prime feature of this amendment are that the inconsistencies noted above are removed and the Commission generated restrictions in §5H1.1-5H1.6 are limited to guideline departures. Because these sections are policy statements, clarity and consistency are especially important if they are to be persuasive. Various criticisms of these policy statements as overly restrictive of the court's discretion may, in part, be due to the "mixed signals" that can be read from the seeming inconsistencies noted above.

In addition, the recommended amendment expressly states that the guidelines do not apply to defendants sentenced as juvenile delinquents (this is not expressly stated elsewhere in the guidelines).

(B). Proposed Amendment: Section 5H1.4 is amended in the first sentence by inserting "or appearance, including physique," immediately after "condition"; and by inserting "Specifically, physical appearance or condition, including physique, is not a relevant factor in determining whether to impose sentences below the applicable guideline range." immediately after the first sentence.

Reason for Amendment: In several cases, court have departed based upon the defendant's alleged vulnerability to sexual assault in prison due to youthful appearance and slender physique. This amendment expresses the Commission's position that such grounds are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.

(C). Proposed Amendment: Chapter Five, Part H is amended by inserting the following additional policy statement at the end:

"§5H1.11. Military, Civic, Charitable, or Public Service; Employment-Related Contributions; Record of Prior Good Works (Policy Statement)

Military, civic, charitable, or public service; employment-related contributions; and similar prior good works are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.".

Reason for Amendment: This amendment sets forth the Commission's position that military, civic, charitable, or public service; employment-related contributions; and record of prior good works are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.

Illustration of Chapter 5, Part H as amended by proposed amendments 34(A), (B), and (C):

PART H - SPECIFIC OFFENDER CHARACTERISTICS

Introductory Commentary

Congress has directed the Commission *The following policy statements address the relevance of certain offender characteristics to the determination of whether a sentence should be outside the applicable guideline range, and in certain cases to the determination of a sentence within the applicable guideline range. Under 28 U.S.C. § 994(d), the Commission is directed* to consider whether certain specific offender characteristics "have any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence" and to take them into account only to the extent they are determined relevant by the Commission. 28 U.S.C. § 994(d) *to be relevant by the Commission.*

The Commission has determined that certain factors are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range. Unless expressly stated, this does not mean that the Commission views such factors as necessarily inappropriate to the determination of the sentence within the applicable guideline range or to the determination of various other incidents of an appropriate sentence (e.g., the appropriate conditions of probation or supervised release).

In addition, 28 U.S.C. § 994(e) requires the Commission to assure that its guidelines and policy statements reflect the general inappropriateness of considering the defendant's education, vocational skills, employment record, family ties and responsibilities, and community ties in

determining whether a term of imprisonment should be imposed or the length of a term of imprisonment.

§5H1.1. Age (Policy Statement)

Age *(including youth)* is not ordinarily relevant in determining whether a sentence should be outside the guidelines. Neither is it ordinarily relevant in determining the type of sentence to be imposed when the guidelines provide sentencing options. Age may be a reason to go below the guidelines when the offender is elderly and infirm and where a form of punishment (e.g., home confinement) might be equally efficient as and less costly than incarceration. If, independent of the consideration of age, a defendant is sentenced to probation or supervised release, age may be relevant in the determination of the length and conditions of supervision, *applicable guideline range. Physical condition, which may be related to age, is addressed at §5H1.4 (Physical Condition). The guidelines are not applicable to persons sentenced as juvenile delinquents under the provisions of 18 U.S.C. § 5037.*

§5H1.2. Education and Vocational Skills (Policy Statement)

Education and vocational skills are not ordinarily relevant in determining whether a sentence should be outside the guidelines *applicable guideline range*, but the extent to which a defendant may have misused special training or education to facilitate criminal activity is an express guideline factor. See §3B1.3 (Abuse of Position of Trust or Use of Special Skill). Neither are education and vocational skills relevant in determining the type of sentence to be imposed when the guidelines provide sentencing options. If, independent of consideration of education and vocational skills, a defendant is sentenced to probation or supervised release, these considerations may be relevant in the determination of the length and conditions of supervision for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the type or length of community service.

Education and vocational skills may be relevant in determining the conditions of probation or supervised release for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the type of community service appropriate.

§5H1.3. Mental and Emotional Conditions (Policy Statement)

Mental and emotional conditions are not ordinarily relevant in determining whether a sentence should be outside the guidelines *applicable guideline range*, except as provided in the general provisions in Chapter Five. Mental and emotional conditions, whether mitigating or aggravating, may be relevant in determining the length and conditions of probation or supervised release, *Chapter Five, Subpart 2 (Other Grounds for Departure).*

Mental and emotional conditions may be relevant in determining the conditions of probation or supervised release (e.g., participation in a mental health program, see recommended condition (24) at §5B1.4 (Recommended Conditions of Probation and Supervised Release)).

§5H1.4. Physical Condition, Including Drug Dependence and *or* Alcohol *Dependence or* Abuse (Policy Statement)

Physical condition *or appearance, including physique,* is not ordinarily relevant in determining whether a sentence should be outside the guidelines or where within the guidelines a sentence should fall *applicable guideline range. Specifically, physical appearance or condition, including physique, is not a relevant factor in determining whether to impose sentence below the applicable guideline range.* However, an extraordinary physical impairment, *such as blindness, deafness, or severe heart disease,* may be a reason to impose a sentence other than imprisonment *below the applicable guideline range; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.*

Drug dependence or alcohol abuse *or alcohol dependence or abuse* is not a reason for imposing a sentence below the guidelines. Substance abuse is highly correlated to an increased propensity to commit crime. Due to this increased risk, it is highly recommended that a defendant who is incarcerated also be sentenced to supervised release with a requirement that the defendant participate in an appropriate substance abuse program. If participation in a substance abuse program is required, the length of supervised release should take into account the length of time necessary for the supervisory body to judge the success of the program, *(see recommended condition (23) at §5B1.4 (Recommended Conditions of Probation and Supervised Release)). Similarly, where a defendant who is a substance abuser is sentenced to probation, it is strongly recommended that the conditions of probation contain a requirement that the defendant participate in an appropriate substance abuse program (see recommended condition (23) at §5B1.4 (Recommended Conditions of Probation and Supervised Release)).*

This provision would also apply in cases where the defendant received a sentence of probation. The substance abuse condition is strongly recommended and the length of probation should be adjusted accordingly. Failure to comply would normally result in revocation of probation.

§5H1.5. Previous Employment Record (Policy Statement)
Employment record is not ordinarily relevant in determining whether a sentence should be outside the guidelines or where within the guidelines a sentence should fall. Employment record may be relevant in determining the type of sentence to be imposed when the guidelines provide for sentencing options. If, independent of the consideration of employment record, a defendant is sentenced to probation or supervised release, considerations of employment record may be relevant in the determination of the length and conditions of supervision. *applicable guideline range.*

Employment record may be relevant in determining the conditions of probation or supervised release (e.g., the appropriate hours of home detention).

§5H1.6. Family Ties and Responsibilities, and Community Ties (Policy Statement)
Family ties and responsibilities and community ties are not ordinarily relevant in determining whether a sentence should be outside the *applicable guideline range.*guidelines. Family responsibilities that are complied with are relevant in determining whether to impose restitution and fines. Where the guidelines provide probation as an option, these factors may be relevant in this determination. If a defendant is sentenced to probation or supervised release, family ties and responsibilities that are met may be relevant in the determination of the length and conditions of supervision.

Family responsibilities that are complied with may be relevant to the determination of the amount of restitution (§5E1.1 (Restitution)) and fine (§5E1.2 (Fines for Individual Defendants)).

* * *

§5H1.11. Military, Civic, Charitable, or Public Service; Employment-Related Contributions; Record of Prior Good Works (Policy Statement)
Military, civic, charitable, or public service; employment-related contributions; and similar prior good works are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.

§5K1.1. Substantial Assistance to Authorities

35. Proposed Amendment: Section 5K1.1 is amended by deleting "(a)" and inserting in lieu thereof "(b)"; by inserting "(a)" immediately before "Upon"; and by inserting the following additional subsection:

"(c) In determining the extent of any departure below the applicable guideline range, substantial weight should be given to the government's evaluation of the extent and value of the defendant's assistance, particularly where the extent and value of the assistance are difficult to ascertain.".

The Commentary to §5K1.1 captioned "Application Notes" is amended by deleting Note 1 as follows:

"1. Under circumstances set forth in 18 U.S.C. § 3553(e) and 28 U.S.C. § 994(n), as amended, substantial assistance in the investigation or prosecution of another person who has committed an offense may justify a sentence below a statutorily required minimum sentence.",

and inserting in lieu thereof:

"1. Under 18 U.S.C. § 3553(e), the sentencing court is authorized to reward a defendant's substantial assistance by imposing a sentence below a statutory minimum sentence, but only upon motion of the government. The Commission has similarly determined that a government motion is a necessary prerequisite to a departure below the applicable guideline range based upon a defendant's substantial assistance. In addition to providing consistency with the procedure for reducing a sentence below a statutory minimum, the requirement of a government motion is 'predicated on the reasonable assumption that the government is in the best position to supply the court with an accurate report of the extent and effectiveness of the defendants assistance ...' United States v. White, 869 F.2d 822, 829 (5th Cir. 1989). In an extraordinary case where the government in bad faith breaches an agreement to file the requisite motion, a court may recognize a defendant's demonstrated substantial assistance by departing below the applicable range in the absence of a government motion.",

and by deleting Note 3 as follows:

"3. Substantial weight should be given to the government's evaluation of the extent of the defendant's assistance, particularly where the extent and value of the assistance are difficult to ascertain.".

The Commentary to §5K1.1 captioned "Background" is amended by inserting, as the first sentence, the following:

"This section implements 28 U.S.C. § 994(m) and 18 U.S.C. § 3553(e).".

Reason for Amendment: In two recent cases, court of appeals reached opposite results on the issue of whether, under the policy statement, a court could depart below the guideline range in the absence of a government motion. Neither case involved a mandatory minimum, and neither involved a situation in which the government acted in bad faith or breached an agreement; however, in both cases the district court found that the defendant had rendered substantial assistance and, since §5K1.1 was "only a policy statement," departed below the guideline range. At the appellate level, the Eighth Circuit ultimately upheld the departure (U.S. v. Gutierrez, No. 89-1950 (8th Cir. Nov. 1, 1990)), while the Eleventh Circuit reversed (U.S. v. Chotas, 913 F.2d 897 (11th Cir. 1990)). This amendment is designed to reinforce the view of the Eleventh Circuit that the Commission has adequately considered the mitigating circumstance of substantial assistance by a defendant and has determined that this circumstance should not result in a downward departure absent the prerequisite government motion. At the same time, the amendment is designed to recognize that, where the court finds that the government in bad faith breached an agreement to file the requisite motion, consideration of a departure without a government motion may be warranted.

Illustration of §5K1.1 as amended by proposed amendment 35:

§5K1.1. Substantial Assistance to Authorities (Policy Statement)

(a) Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.

(a)*(b)* The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following:

(1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;

(2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;

(3) the nature and extent of the defendant's assistance;

(4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;

(5) the timeliness of the defendant's assistance.

(c) In determining the extent of any departure below the applicable guideline range, substantial weight should be given to the government's evaluation of the extent and value of the defendant's assistance, particularly where the extent and value of the assistance are difficult to ascertain.

Commentary

Application Notes:

1. Under circumstances set forth in 18 U.S.C. § 3553(e) and 28 U.S.C. § 994(n), as amended, substantial assistance in the investigation or prosecution of another person who has committed an offense may justify a sentence below a statutorily required minimum sentence.

1. Under 18 U.S.C. § 3553(e), the sentencing court is authorized to reward a defendant's substantial assistance by imposing a sentence below a statutory minimum sentence, but only upon motion of the government. The Commission has similarly determined that a government motion is a necessary prerequisite to a departure below the applicable guideline range based upon a defendant's substantial assistance. In addition to providing consistency with the procedure for reducing a sentence below a statutory minimum, the requirement of a government motion is "predicated on the reasonable assumption that the government is in the best position to supply the court with an accurate report of the extent and effectiveness of the defendants assistance ..." United States v. White, 869 F.2d 822, 829 (5th Cir. 1989). In an extraordinary case where the government in bad faith breaches an agreement to file the requisite motion, a court may recognize a defendant's demonstrated substantial assistance by departing below the applicable range in the absence of a government motion.

2. The sentencing reduction for assistance to authorities shall be considered independently of any reduction for acceptance of responsibility. Substantial assistance is directed to the investigation and prosecution of criminal activities by persons other than the defendant, while acceptance of responsibility is directed to the defendant's affirmative recognition of responsibility for his own conduct.

3. Substantial weight should be given to the government's evaluation of the extent of the defendant's assistance, particularly where the extent and value of the assistance are difficult to ascertain.

Background: *This section implements 28 U.S.C. § 994(m) and 18 U.S.C. § 3553(e).* A defendant's assistance to authorities in the investigation of criminal activities has been recognized in practice and by statute as a mitigating sentencing factor. The nature, extent, and significance of assistance can involve a broad spectrum of conduct that must be evaluated by the court on an individual basis. Latitude is, therefore, afforded the sentencing judge to reduce a sentence based upon variable relevant factors, including those listed above. The sentencing judge must, however, state the reasons for reducing a sentence under this section. 18 U.S.C. § 3553(c). The court may elect to provide its reasons to the defendant in camera and in writing under seal for the safety of the defendant or to avoid disclosure of an ongoing investigation.

§6A1.3. Resolution of Disputed Factors

36. Proposed Amendment: The Commentary to §6A1.3 is amended by inserting the following additional paragraphs at the end:

"The Commission believes that use of a preponderance of the evidence standard is appropriate to meet due process requirements and policy concerns in resolving disputes regarding application of the guidelines to the facts of a case.

The Commission also believes that the burden of persuasion in resolving guideline application disputes appropriately rests with the government if the guideline adjustment would enhance the sentence (aggravating factors) and with the defendant if the adjustment would reduce the sentence (mitigating factors).".

Reason for Amendment: This amendment expresses the Commission's approval of the use of a preponderance of the evidence standard in respect to disputed sentencing factors, with the government having the burden of persuasion as to aggravating factors and the defendant as to mitigating factors.

Miscellaneous Substantive, Clarifying, Conforming, and Technical Amendments

37(A). Proposed Amendment to §1B1.1 (Application Instructions): The Commentary to §1B1.1 captioned "Application Notes" is amended in Note 1(e) by deleting:

"'Firearm' means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive."

and inserting in lieu thereof:

"'Firearm' means (A) any weapon (including a starter gun, handgun, rifle, shotgun, short barreled rifle or shotgun, or machinegun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
(B) the frame or receiver of any such weapon; (C) any firearm muffler or silencer; or (D) any destructive device.",

and by inserting "a" immediately before "'BB' or pellet gun".

Reason for Amendment: This amendment defines "firearm" to track the statutory definition, and corrects a clerical error.

(B). Proposed Amendment to §1B1.2 (Applicable Guidelines): Comment is requested as to whether §1B1.2(a) (regarding stipulations to a more serious offense) should be amended to provide expressly that such a stipulation must be as part of a formal plea agreement.

(C). Proposed Amendment to §1B1.8 (Use of Certain Information): The Commentary to §1B1.8 captioned "Application Notes" is amended by inserting the following additional notes:

"5. This guideline limits the use of certain incriminating information furnished by a defendant in the context of a defendant-government agreement for the defendant to provide information concerning the unlawful activities of other persons. The guideline operates as a limitation on the use of such incriminating information in guideline application, and not merely as a restriction of the government's presentation of such information. E.g., where the defendant subsequent to having entered into a cooperation agreement repeats such information to the probation officer preparing the pre-sentence report, the use of such information remains protected by this section. To allow otherwise would unfairly penalize the defendant for truthfulness.
6. Unless the cooperation agreement relates to the provision of information about the unlawful activities of others, this guideline does not apply (i.e., an agreement by the defendant to simply detail the extent of his own unlawful activities, not involving an agreement to provide information concerning the unlawful activity of another person, is not covered by this guideline).".

Reason for Amendment: This amendment clarifies the operation of this guideline.

(D). Proposed Amendment to §2A2.1 (Assault With Intent to Commit Murder; Attempted Murder): The Commentary to §2A2.1 captioned "Application Notes" is amended by inserting the following additional note:

"3. If the offense created a substantial risk of death or serious bodily injury to multiple individuals, an upward departure may be warranted.".

Reason for Amendment: This amendment adds commentary to address the case in which an attempted murder results in a substantial risk of death or serious bodily injury to multiple individuals.

(E). Proposed Amendment to §§2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse); 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts); and 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact): Section 2A3.2(b)(1) is amended by deleting "1 level" and inserting in lieu thereof "2 levels".

The Commentary to §2A3.2 captioned "Application Notes" is amended by inserting the following additional note:

"2. If an enhancement from subsection (b)(1) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).",

and in the caption by deleting "Note" and inserting in lieu thereof "Notes".

Section 2A3.4(b) is amended by inserting the following additional subdivision:

"(3) If the victim was in the custody, care, or supervisory control of the defendant, increase by 2 levels.".

The Commentary to §2A3.4 captioned "Application Notes" is amended by inserting the following additional note:

"3. If an enhancement from subsection (b)(1) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to §2A3.1 captioned "Application Notes" is amended by inserting the following additional note:

"3. If an enhancement from subsection (b)(3) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

Reason for Amendment: This amendment makes the enhancements in this subpart concerning a victim in the custody, care, or supervisory control of the defendant consistent with each other and consistent with a similar enhancement in §2G2.1.

(F). Proposed Amendment to §§2D1.1 (Unlawful Manufacturing, Exporting, or Trafficking) and 2D1.8 (Renting or Managing a Drug Establishment): Section 2D1.1(b)(1) is amended by deleting "during commission of the offense".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 3 by deleting "The adjustment is to be applied even if several counts are involved and the weapon was present in any one of them.".

Section 2D1.8(b)(1) is amended by deleting "during commission of the offense".

Reason for Amendment: This amendment is intended allow the provisions of §1B1.3(a)(2) to apply to this enhancement. The phrase "during commission of the offense" read in conjunction with the last sentence of Application Note 3 (" This adjustment is to be applied even if several counts are involved and the weapon was present in any one of them.") currently can be interpreted as requiring the weapon to have been possessed during the act constituting the count of conviction, rather than during any of the conduct constituting relevant conduct.

Comment is requested as to whether the specific offense characteristic of possession of a dangerous weapon in drug cases is being applied too broadly (i.e., should every defendant in a drug conspiracy case be held liable under the guidelines for the possession of a weapon by a co-defendant?).

(G). Proposed Amendment: Section 2D1.1(c) is amended in the Drug Quantity Table by deleting "Pure PCP" wherever it appears and inserting in lieu thereof "PCP (actual)", and by deleting "Pure Methamphetamine" wherever it appears and inserting in lieu thereof "Methamphetamine (actual)".

Section 2D1.1(c) is amended in the note designated by a single asterisk by inserting the following additional sentence as the third sentence "The terms 'PCP (actual)' and 'Methamphetamine (actual)' refer to the weight of the controlled substance, itself, contained in the mixture or substance. E.g., a mixture weighing 10 grams containing PCP at 50% purity contains 5 grams of PCP (actual)."; and in the last sentence by deleting "pure PCP or methamphetamine" and inserting in lieu thereof "PCP ('PCP (actual)') or methamphetamine ('methamphetamine (actual)') contained in the mixture or substance".

Reason for Amendment: This amendment clarifies the operation of the guideline in cases involving methamphetamine or PCP by amending the terms "Pure PCP" and "pure methamphetamine" to read "PCP (actual)" and "methamphetamine (actual)," and by providing an example of their application.

(H). Proposed Amendment: Section 2D1.1 is amended by deleting "Schedule I and II Depressants" wherever it appears and inserting in lieu thereof "Secobarbital (or the equivalent amount of other Schedule I or II Depressants)".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 by inserting "Secobarbital and Other" immediately before "Schedule I and II Depressants"

Reason for Amendment: The purpose of this amendment is to clarify the interaction of the guideline and drug equivalency tables in respect to Schedule I and II Depressants. This amendment adopts the form used elsewhere in this guideline (e.g., heroin or the equivalent amount of other Schedule I or II Opiates)).

(I). Proposed Amendment: The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the Drug Equivalency Tables by deleting the tables titled "Schedule III Substances," "Schedule IV Substances," and "Schedule V Substances" in their entirety and inserting in lieu thereof:

"Schedule III Substances

1 gm of Schedule III Substance =	2 mg of heroin/2 gm of marihuana

Schedule IV Substances

1 gm of Schedule IV Substance =	0.125 mg of heroin/0.125 gm of marihuana

Schedule V Substances
1 gm of Schedule V Substance = 0.0125 mg of heroin/ 0.0125 gm of marihuana".

Reason for Amendment: The purpose of this amendment is to simplify the application of this guideline and to account for the numerous unlisted substances that fall into these schedules. This consolidated treatment is feasible because, unlike the equivalencies for Schedule I or II Opiates or Schedule I or II Stimulants, the equivalencies for Schedule III, IV, and V Substances are not legislatively based. Nor are the pharmacological equivalencies for Schedule III, IV, or V substances as clear as for other substances. Although the Commission has set different equivalencies in the case of 4 of 24 Schedule III Substances, these equivalencies are pharmacologically based only within subsets of Schedule III substances (e.g., within Schedule III Depressants). But since Schedule III substances contain both depressants and stimulants and there is no good pharmacological method for comparing a Schedule III stimulant with a Schedule III depressant, the effort to determine different equivalencies within subcategories may not be worthwhile. Thus, a generic equivalency for each of these substances seems adequate to meet this task, and is consistent with the Drug Quantity Table in the guideline itself which treats Schedule III, IV, and V substances generically.

(J). Proposed Amendment: The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 by inserting one asterisk immediately following the caption "Schedule I or II Depressants" and by inserting immediately below the line beginning "1 gm of Secobarbital =" the following:

"*Provided, however, the combined equivalent weight of all Schedule I and II depressants, Schedule III substances, Schedule IV substances, and Schedule V substances shall not exceed 59.99 gms of heroin or 59.99 kilograms of marihuana.".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 by inserting two asterisks immediately following the caption "Schedule III Substances" and by inserting immediately below the line beginning "1 ml of Hydrocodone Cough Syrup =" the following:

"**Provided, however, the combined equivalent weight of all Schedule III Substances, Schedule I or II depressants, Schedule IV substances, and Schedule V substances shall not exceed 59.99 gms of heroin or 59.99 kilograms of marihuana.".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 by inserting three asterisks immediately following the caption "Schedule IV Substances" and by inserting immediately below the line beginning "1 gm of Nitrozepam" the following:

"***Provided, however, the combined equivalent weight of all Schedule IV and V substances shall not exceed 4.99 grams of heroin or 4.99 kilograms of marihuana.".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 by inserting four asterisks immediately following the caption "Schedule V Substances" and by inserting immediately below the line beginning "1 gm of codeine cough syrup" the following:

"****Provided, however, the combined equivalent weight of Schedule V controlled substances shall not exceed 999 milligrams of heroin or 999 grams of marihuana.".

Reason for Amendment: The purpose of this amendment is to clarify the application of the guideline section in accordance with the decision in U.S. v. Gurgiolo, 894 F.2d 56 (3d Cir. 1990). As currently written ambiguity in the commentary could produce a result inconsistent with the guideline itself.

(K). Proposed Amendment: The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the subsection titled "Drug Equivalency Tables" by deleting all conversions listed in right-hand column which refer to heroin, cocaine, or PCP and inserting in lieu thereof the appropriate conversion to marihuana. [For example, in the table titled "Schedule I or II Opiates," "1 gram of Alpha-Methylfentanyl = 10 gm of heroin" would be amended to read "1 gram of Alpha-Methylfentanyl = 10 kg of marihuana"]."

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the first paragraph by deleting "grams of a substance containing heroin" and inserting in lieu thereof "kilograms of marihuana"; in the second paragraph by deleting "If all the drugs are 'equivalents' of the same drug, e.g., stimulants that are grouped with cocaine, covert them to that drug. In other cases," and inserting in lieu thereof "In each case,"; by deleting "either the heroin or " and inserting in lieu thereof "its" and by deleting the last two sentences; in the fourth paragraph by deleting the "Both PCP and LSD are grouped together in the Drug Equivalency Tables under the heading 'LSD, PCP, and Other Schedule I and II Hallucinogens,' which provide PCP equivalencies. The 250 milligrams of LSD is equivalent to 25 grams of PCP." and inserting in lieu thereof "The PCP converts to 70 kg of marihuana; the LSD converts to 25 kg of marihuana."; by inserting "equivalent to" immediately before "ninety-five", by deleting "grams of PCP" and inserting in lieu thereof "kilograms of marihuana"; by deleting "grams" immediately following "sixteen" and inserting in lieu thereof "kilograms"; by deleting "heroin; the marihuana, to five grams of heroin" and inserting in lieu thereof "marihuana" and by deleting grams of heroin and inserting in lieu thereof "kilograms of marihuana".

Reason for Amendment: This amendment simplifies the

application of the Drug Equivalency Tables by using one substance as the "equivalent" substance throughout the tables, rather than four substances, and therefore should reduce the likelihood of error in using these tables. No substantive change results.

(L). Proposed Amendment to §2E2.1 (Making, Financing, or Collecting an Extortionate Extension of Credit): Section 2E2.1 is amended in the title by deleting ", Financing, or Collecting an Extortionate Extension of Credit" and inserting in lieu thereof "or Financing an Extortionate Extension of Credit; Collecting an Extension of Credit by Extortionate Means".

Section 2E2.1(b)(3) is amended by deleting "the commission of the offense or an escape from the scene of the crime" and inserting in lieu thereof "commission of the offense or to facilitate escape".

Reason for Amendment: This amendment corrects an error in the title of this section, and conforms the wording in subsection (b)(3)(A) with the wording used in subsection (b)(3)(B) as well as in other guidelines.

(M). Proposed Amendment to §2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct): Section 2G1.2(d)(1) is amended by deleting "the defendant".

Reason for Amendment: This amendment conforms the language used in this cross reference to that used in the other cross references in this Part.

(N). Proposed Amendment to §§2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct) and 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production): Section 2G1.2(b) is amended by inserting the following additional subsection:

"(4) If the defendant was a parent, relative, or legal guardian of the minor involved in the offense, or if the minor was otherwise in the custody, case, or supervisory control of the defendant, increase by 2 levels.".

The Commentary to §2G1.2 captioned "Application Notes" is amended by inserting the following additional note:

"6. If an enhancement from subsection (b)(4) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to §2G2.1 captioned "Application Notes" is amended by inserting the following additional note:

"4. If an enhancement from subsection (b)(2) applies, do not apply §3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

Reason for Amendment: This amendment provides consistent treatment among the guidelines in this part for similar offense conduct. The specific offense characteristic relating to abuse of a position of trust found at §2G2.1(b)(2) appears equally applicable to §2G1.2. In addition, consistent with other guidelines, the amendment would create an application note in §§2G2.1 and 2G2.2 stating that where this subsection applies, §3B1.3 (Abuse of Position of Trust or Use of Special Skill) is not applied.

(O). Proposed Amendment to §2G1.2 (Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct): Section 2G1.2(d) is amended by inserting the following additional subsections:

"(2) If the offense involved criminal sexual abuse or attempt or assault with intent to commit criminal sexual abuse, apply §2A3.1 (Criminal Sexual Abuse; Attempt or Assault With Intent to Commit Criminal Sexual Abuse).

(3) If neither subsection (d)(1) nor (d)(2) is applicable, and the offense did not involve transportation for the purpose of prostitution, apply §2A3.2 (Criminal Sexual Abuse of a Minor or Attempt to Commit Such Acts) or §2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact).".

Reason for Amendment: The statutes referenced to this guideline may be used as "jurisdictional" statutes in some cases to prosecute conduct that is more appropriately covered under other guidelines (§§2A3.1, 2A3.2, and 2A3.4). This amendment would provide consistent offense levels in such cases.

(P). Proposed Amendment to §2J1.6 (Failure to Appear by Defendant): The Commentary to §2J1.6 captioned "Application Notes" is amended by inserting the following additional notes:

"4. Any term of imprisonment for a failure to appear by defendant (18 U.S.C. § 3146(a)) must be imposed consecutively to any other sentence of imprisonment (18 U.S.C. § 3146(b)(2)). Therefore, the provisions of §§3D1.2-3D1.5 do not apply in respect to such counts (see §3D1.1(b)) and the guideline range for the failure to appear count is to be determined independently of the guideline range for the underlying offense (the offense in respect to which the defendant failed to appear).

5. In some cases, the defendant may be sentenced on the underlying offense (the offense in respect to which the defendant failed to appear) before being sentenced on the failure to appear offense. In such cases, criminal history points for the sentence imposed on the underlying offense are to be counted in determining the guideline range on the failure to appear offense only

where the offense level is determined under subsection (a)(1) (i.e., where the offense constituted a failure to report for service of sentence).".

Reason for Amendment: This amendment addresses a complex issue of the interaction of guideline provisions (§§2J1.6 and 4A1.1). The question has arisen as to whether, in a sentencing proceeding for failure to appear by a defendant, criminal history points for any sentence imposed on the underlying offense (the offense in respect to which the defendant failed to appear) should be applied in the determination of this guideline. By law, any term of imprisonment imposed under 18 U.S.C. § 3146(b)(1) must run consecutively to any other term of imprisonment imposed. Consequently, the multiple count rules do not apply in such cases and two separate guideline ranges are calculated. The answer consistent with the overall structure of the guidelines and the least subject to the extraneous factors of whether the sentence for the failure to appear precedes, follows, or is imposed at the same time as the sentence for underlying offense, is that criminal history points for any sentence imposed on the underlying offense should not be counted in respect to the failure to appear, except where the failure to appear is based upon a failure to report for the service of sentence on the underlying offense.

(Q). Proposed Amendment to §2K1.5 (Possessing Dangerous Weapons or Materials While Boarding an Aircraft): Section 2K1.5(c)(1) is amended by inserting "or possessed" immediately following "used"; and by inserting ", as applicable," immediately before "if the".

Reason for Amendment: This amendment is an editorial amendment to clarify application of the cross-reference in subsection (c)(1). Because there is no comma in front of "if the", a literal reading of this subsection commands use of the guideline "for such other offense" even if the result is lower than determined above, a result not intended by the Commission. Moreover, because the term "used" in reference to a weapon has a more restrictive meaning in other portions of the guidelines (see, for example §2B3.1 (Robbery)), the addition of "or possessed" is intended to remove the possible argument that the term "used" must have the same restrictive meaning in this content.

(R). Proposed Amendment to §2Q2.1 (Specially Protected Fished, Wildlife, and Plants; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants): Section 2Q2.1(b)(3)(A) is amended by deleting "specially protected".

Reason for Amendment: This amendment removes language inadvertently retained when this guideline was consolidated with the former 2Q2.2. The former §2Q2.2 contained an equivalent enhancement, but that enhancement did not contain the language "specially protected" because §2G2.2 did not apply to specially protected wildlife, fish, and plants. Because the words "specially protected" were not deleted when §§2Q2.1 and 2Q2.2 were consolidated, the current guideline may be read to unduly restrict application of this specific offense characteristic, and thereby produce a result contrary to the result intended by the Commission.

(S). Proposed Amendment to §2T1.6 (Failing to Collect or Truthfully Account for and Pay Over Tax): Section 2T1.6 is amended by inserting the following additional subsection:

"(b) Cross Reference
(1) Where the offense involved embezzlement of an employee's withholding by collecting tax and willfully failing to account to the employee for it, apply §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) if the resulting offense level is greater than that determined above.".

The Commentary to §2T1.6 captioned "Application Notes" is amended in Note 1 by deleting "In such cases, an upward departure may be warranted" and inserting in lieu thereof "A cross reference at subsection (b)(1) is provided to address such cases".

Reason for Amendment: Currently, the Commentary to this guideline recommends consideration of an upward departure where the court finds that tax offense was used to embezzle an employee's funds. This amendment substitutes a cross reference that requires application of §2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) where that guideline results in the greater offense level. The use of a cross reference rather than a departure instruction is consistent with the treatment of similar offenses (e.g., §2E5.3 and §2E5.5).

(T). Proposed Amendment to Chapter Two, Part T, Subpart 3 (Customs Taxes): Sections 2T3.1 and 2T3.2 are amended by deleting "Level from §2T4.1 (Tax Table) corresponding to the tax loss." and inserting in lieu thereof:

"(1) The level from §2T4.1 (Tax Table) corresponding to the tax loss, if the tax loss exceeded $1,000; or
(2) 5, if the tax loss exceeded $100 but did not exceed $1,000; or
(3) 4, if the tax loss did not exceed $100.";

and by inserting the following additional subsection:
"(b) If sophisticated means were used to impede discovery of the nature or existence of the offense, increase by 2 levels.".

Reason for Amendment: Currently, these guidelines treat evasion of small amounts of import duty as more serious than theft of the same amount. On the other hand, there is no enhancement, as in §§2T1.1-2T1.4, for using sophisticated means to impede discovery of the nature of extent of the offense. This amendment increases the offense level if sophisticated means were used to impede

discovery of the nature and existence of the offense, and reduces the offense levels for evasion of import duties of less than $1,000 where such evasion is unsophisticated.

(U). Proposed Amendment to §2X1.1 (Attempt, Solicitation, or Conspiracy): Section 2X1.1, and accompanying Commentary, are amended by deleting "object" wherever it appears and inserting in lieu thereof in each instance "substantive".

Section 2X1.1(b)(1) is amended by inserting "substantive" immediately before "offense".
Section 2X1.1(b)(2) is amended by inserting "substantive" immediately before "offense".
Section 2X1.1(b)(3) is amended by deleting "the offense" wherever it appears and inserting in lieu thereof in each instance "the substantive offense".

The Commentary to §2X1.1 captioned "Application Notes" is amended in Note 2 by deleting the first sentence and inserting in lieu thereof: "'Substantive Offense,' as used in this guideline, means the offense that the defendant was convicted of soliciting, attempting, or conspiring to commit. Under §2X1.1(a), the base offense level will be the same as that for the substantive offense.".

Reason for Amendment: This is a technical amendment to enhance clarity by replacing the term "object offense" with the more commonly used term "substantive offense" and conforming the language used in various subsections of this guideline. Greater clarity in the guideline language should reduce the likelihood of litigation over the meaning of this language. See e.g., United States v. Rothman, No. 89-3896, 1990 U.S. App. LEXIS 17381 (5th Cir. 1990).

(V). Proposed Amendment to §2X5.1 (Other Offenses): Section 2X5.1 is amended by inserting immediately before the period at the end of the second sentence:

", except that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline shall remain applicable".

The Commentary to §2X5.1 is amended by inserting immediately after "Commentary" the following:

"Application Note:
1. Guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline include: §5B1.3 (Conditions of Probation); §5B1.4 (Recommended Conditions of Probation and Supervised Release); §5D1.1 (Imposition of a Term of Supervised Release); §5D1.2 (Term of Supervised Release); §5D1.3 (Conditions of Supervised Release); §5E1.1 (Restitution); subsection (c)(1)(B) of §5E1.2 (Fines for Individual Defendants) as a lower limit; §5E1.3 (Special Assessments); §5E1.4 (Forfeiture); Chapter Five, Part F (Sentencing Options); §5G1.3 (Imposition of a Sentence on a Defendant Serving an Unexpired Term of Imprisonment); Chapter Five, Part H (Specific Offender Characteristics); Chapter Five, Part J (Relief from Disability); Chapter Five, Part K (Departures); Chapter Six, Part A (Sentencing Procedures); Chapter Six, Part B (Plea Agreements).".

Reason for Amendment: This amendment inserts an application note to clarify that, in the case of an offense for which there is no sufficiently analogous offense guideline, any guidelines and policy statements that can be meaningfully applied in the absence of a Chapter Two offense guideline remain applicable.

(W). Proposed Amendment to §3A1.3 (Unlawful Restraint): The Commentary to §3A1.3 captioned "Application Notes" is amended by deleting Note 2 and inserting in lieu thereof:

"2. Do not apply this adjustment where the offense guideline specifically incorporates this factor, or where the unlawful restraint of a victim is an element of the offense itself (e.g., this adjustment does not apply to offenses covered by §2A4.1 (Kidnapping, Abduction, Unlawful Restraint)).".

Reason for Amendment: This amendment clarifies the application of this guideline.

(X). Proposed Amendment to Chapter Five, Part K, Subpart 2 (Other Grounds for Departure): Chapter Five, Part K, Subpart 2 is amended by inserting the following additional sections:

"§5K2.16. Restitution Prior to Discovery of the Offense (Policy Statement)
If the defendant made full restitution for the offense prior to its discovery, a departure below the applicable guideline range may be warranted, particularly where the offense was an unplanned, isolated incident.

§5K2.17. Voluntary Disclosure of Offense (Policy Statement)
If the defendant voluntarily disclosed the existence of, and his responsibility for, the offense to authorities prior to the discovery of such offense, and if such offense was unlikely to have been discovered otherwise, a departure below the applicable guideline range may be warranted. For example, a downward departure under this section might be considered where a defendant, motivated by remorse, discloses an offense that otherwise would have remained undiscovered. This provision would not apply where the motivating factor is the defendant's knowledge that discovery of the offense is likely or imminent.".

Reason for Amendment: This amendment sets forth two additional policy statements relevant to possible departures. Both policy statements address a defendant's action prior to the discovery of the offense.

[FR Doc. 91-1126 Filed 1-16-91; 8:45 am]
BILLING CODE 2210-40-C

federal register

Thursday
January 17, 1991

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Literacy Program (GED Standard)

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Literacy Program (GED Standard)

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its rule on Adult Basic Education by renaming it the Literacy Program and by raising the current 8.0 academic grade level literacy standard to a General Educational Development (GED) or high school diploma level. This amendment is being proposed in recognition of the higher standards of literacy required in the workplace.

DATES: Comments due by February 19, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 741, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on the Adult Basic Education (ABE) program. A final rule on this subject was published in the **Federal Register** August 3, 1989 (54 FR 32026 et seq.) On June 13, 1990 (55 FR 24064), a notice was published in the **Federal Register** announcing a pilot program in selected Bureau institutions to assess the merits of raising the literacy standard from an 8.0 academic grade level to a GED or high school diploma level. That assessment has been completed, and the Bureau in this document is proposing to adopt the GED or high school diploma level as the literacy standard for almost all sentenced inmates.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 741, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 544

Prisoners.

Dated: January 11, 1991.

Wade B. Houk,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), it is proposed to amend part 544 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart H of part 544, consisting of §§ 544.70 through 544.76, is revised to read as follows:

Subpart H—Literacy Program

Sec.

544.70 Purpose and scope.
544.71 Applicability: Who must attend the literacy program.
544.72 Applicability: Who may be promoted.
544.73 Procedures.
544.74 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.
544.75 Incentives.
544.76 Disciplinary action.

Subpart H—Literacy Program

§ 544.70 Purpose and scope.

An inmate confined in a federal institution who does not have a verified General Educational Development (GED) or high school diploma is required to attend an adult literacy program for a minimum of 120 calendar days or until a GED is achieved, whichever occurs first. The Warden shall establish incentives to encourage an inmate to complete the literacy program.

§544.71 Applicability: Who must attend the literacy program.

(a) All inmates in federal institutions must attend the literacy program except:

(1) Pretrial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced aliens with a deportation detainer;

(4) Other inmates who, for good cause, the Warden may excuse from attending the literacy program.

(b) Staff shall document in the inmate's education file and central file the specific reasons for not requiring the inmate to participate in the literacy program.

§ 544.72 Applicability: Who may be promoted.

(a) An inmate must show prior attainment of a GED or high school diploma in order to be promoted above grade 4 UNICOR and Inmate Performance Pay (IPP) assignments except:

(1) An inmate already in a UNICOR or IPP position above pay grade 4 at the time of implementation of this rule January 17, 1991, who does not have a GED or a high school diploma but was previously approved for promotion above grade 4.

(2) Other inmates who, for good cause, the Warden may determine are exempt from completing the academic requirements for promotion above grade 4. An inmate who is exempted from attending the literacy program under § 544.71(a) ordinarily may not be promoted above the fourth grade of compensation unless he or she meets the GED requirement.

(b) Staff shall document in the inmate's education file and central file the specific reasons for allowing pay promotion exemptions.

§ 544.73 Procedures.

(a) The Warden at each federal institution shall ensure that an inmate who does not have a verified GED or high school diploma is enrolled in the literacy program.

(b) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's literacy program. The literacy coordinator or designated education staff shall meet initially with the inmate for the purpose of enrolling the inmate in the literacy program. Subsequently, the literacy coordinator or designated education staff shall formally interview each inmate involved in the literacy program at least once every 30 days during the mandatory 120 day period, to review and record the inmate's progress in this program. The literacy coordinator shall place documentation of these interviews in the Literacy Program Record in the inmate's education file.

(c) At the end of 120 calendar days, excluding sick time, furloughs, or other absences from scheduled classes, the unit team shall meet with the inmate to encourage continued participation in the literacy program until the inmate attains a GED or high school diploma. At this time, the inmate may elect not to continue in the literacy program, and no disciplinary action will be taken. The inmate may not discontinue this program where participation is mandated by statute.

§ 544.74 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.

(a) Inmates who wish to secure a UNICOR or IPP work assignment above grade 4 of compensation or who wish to work in non-graded incentive pay (piece-rate) positions must be able to demonstrate the prior obtainment of a GED or high school diploma. However, if labor force needs require, inmates who do not meet the literacy requirements may be employed in UNICOR incentive pay positions if they are simultaneously enrolled in a literacy or related program, and provided they are found to be progressing at an acceptable level as defined by the supervisor of education. Failure to maintain satisfactory progress shall result in termination of UNICOR incentive pay employment. Local UNICOR management may elect to place the terminated piece-rate employee in an hourly rated 4th grade position. The Warden may, for good cause, exempt inmates from this requirement.

(b) An inmate may be assigned to the fourth grade of compensation in a UNICOR or IPP work assignment contingent on the inmate's enrollment, and satisfactory participation, in the literacy program. Failure of an inmate to make adequate progress in the literacy program may be used as the basis to remove the inmate from the UNICOR or IPP work assignment.

§ 544.75 Incentives.

The Warden shall establish a system of incentives to encourage an inmate to obtain a GED.

§ 544.76 Disciplinary action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate whose academic level is below GED or high school level when that inmate refuses to enroll in, or to complete, the mandatory 120 calendar days literacy program.

[FR Doc. 91-1172 Filed 1-16-91; 8:45 am]
BILLING CODE 4410-05-M

federal register

Thursday
January 17, 1991

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1991.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of January 1, 1991, of 7 deferrals contained in the first special message for FY 1991. This message was transmitted to Congress on October 4, 1990.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Table A and Attachment A)

As of January 1, 1991, $1,120.2 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1991.

Information From Special Messages

The special message containing information on deferrals covered by this cumulative report is printed in the **Federal Register** cited below:

55 FR 41436, Thursday, October 11. 1990.

Richard G. Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1991 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	1,120.2
Routine Executive releases through January 1, 1991.	0
Overturned by the Congress.....	0
Currently before the Congress.....	1,120.2

Attachments

ATTACHMENT A
Status of FY 1991 Deferrals - As of January 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 01-1-91
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D91-1	149,319		10-04-90					149,319
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D91-2	135,955		10-04-90					135,955
Cooperative work	D91-3	273,468		10-04-90					273,468
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D91-4	1,186		10-04-90					1,186
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction)	D91-5	7,127		10-04-90					7,127

ATTACHMENT A

Status of FY 1991 Deferrals - As of January 1, 1991

(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 01-1-91
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive....	D91-6	14,529		10-04-90					14,529
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D91-7	538,659		10-04-90					538,659
TOTAL, DEFERRALS.....		1,120,244	0		0	0		0	1,120,244

[FR Doc. 91–1222 Filed 1–16–91; 8:45 am]

BILLING CODE 3110–01–C

Federal Register

Thursday
January 17, 1991

Part V

Department of Energy

Office of Fossil Energy

10 CFR Part 1048

Trespassing on the Strategic Petroleum Reserve; Interim Final Rulemaking

DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Part 1048

Trespassing on the Strategic Petroleum Reserve

AGENCY: Strategic Petroleum Reserve, Department of Energy.

ACTION: Interim final rulemaking.

SUMMARY: The Department of Energy (DOE) is issuing an interim final rule to implement section 662 of the Department of Energy Organization Act, *as amended* (42 U.S.C. 7270b) ("the DOE Organization Act"). Section 662 made it a crime to violate regulations issued by the Secretary relating to unauthorized: (1) Entry into or upon Strategic Petroleum Reserve facilities or other real property subject to the jurisdiction or administration, or in the custody of the Department of Energy under part B of title I of the Energy Policy and Conservation Act; or (2) carrying, transporting, or otherwise introducing or causing to be introduced into or upon such property a dangerous weapon, explosive, or other dangerous material likely to produce substantial injury or damage or persons or property. These interim regulations: (1) Prohibit unauthorized entry and unauthorized introduction of dangerous materials; and (2) as required by the DOE Organization Act, provide for the posting of notices on property subject to these provisions, stating the prohibitions contained in these interim regulations and the penalties for violations of these interim regulations.

EFFECTIVE DATE: January 17, 1991.

OTHER DATES: Written comments must be received on or before March 15, 1991. Interested persons may request a public hearing by February 15, 1991. If any requests for a public hearing are received by that date, the Department will conduct a public hearing at the Department of Energy, Project Management Information Center, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123 at 9:30 a.m. on March 15, 1991. If no requests for a hearing are received, the hearing will be cancelled. The Department will attempt to give adequate advance public notice of any cancellation.

ADDRESSES: Send comments and requests to speak to: Durinda Robinson, Office of the Chief Counsel, Department of Energy, Project Management Office, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123.

FOR FURTHER INFORMATION CONTACT:

Ralph LaMonda, Office of the Strategic Petroleum Reserve, Department of Energy, Mail Stop FE–421, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 (Telephone Number).

Durinda Robinson, Office of Chief Counsel, Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123, (504) 734–4311.

I. Background

Due to the necessity of assuring adequate security of the Strategic Petroleum Reserve and other associated real property under DOE jurisdiction, and persons in or upon such property, section 1(a) of Public Law No. 100–531, October 25, 1988, 102 Stat. 2652 (42 U.S.C. 7270b), added a new section 662 to the DOE Organization Act. Section 662(a) authorizes the Secretary to issue regulations concerning unauthorized: (1) Entry into or upon the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary of Energy under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231–6247); and (2) carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or upon such property.

Section 662(b) of the Act provides that any person who willfully violates these regulations is guilty of a misdemeanor, and shall be punished upon conviction by a fine of not more than $5,000, imprisonment of not more than one year, or both. Under the Sentencing Reform Act of 1984, *as amended* (18 U.S.C. 3571), which contains alternative fines, a person found guilty of a misdemeanor under Federal law is subject to an increased fine of up to $250,000.

II. Purpose

Section 662(a) of the Act permits the Secretary to issue these interim regulations. The purpose of these interim regulations is to provide for the security of persons and property in or upon the Strategic Petroleum Reserve or other real property subject to DOE jurisdiction by deterring unauthorized entry and unauthorized introduction of weapons or dangerous materials into or upon such property. Section 662(b) of the Act provides sanctions for violation of these interim regulations.

Section 662(a) of the Act also states that the Secretary shall post conspicuously, on the property subject to the interim regulations, notification such property is subject to these regulations. Thus, these interim regulations provide for the posting of notices at the perimeters of Strategic Petroleum Reserve sites and other property under DOE jurisdiction to provide adequate notice to persons that such property is subject to these regulations.

III. Discussion

This section briefly describes the contents of each subpart of the interim rule and a discussion of the intended effect of each subpart of the interim rule.

Section 1048.1 Purpose

Prior to enactment of section 662, no Federal law of general applicability governed unauthorized entry or introduction of weapons or dangerous materials into Federal property. Other statutes applicable to other Federal facilities proved to be useful in maintaining security at those installations. Section 662 gives similar authority to DOE to provide for the security of persons and property in or upon the Strategic Petroleum Reserve, its sites, and associated real property subject to DOE jurisdiction.

Section 1048.1 states that purpose of these interim regulations is to provide for the protection and security of: (a) The Strategic Petroleum Reserve, its storage or related facilities, and other real property subject to the jurisdiction or administration, or in the custody of DOE under part B, title I of the Energy Policy and Conservation Act, *as amended* (42 U.S.C. 6231–6247) (EPCA); and (b) persons upon the SPR or other property subject to DOE jurisdiction under part B, title I of the EPCA.

Section 1048.2 Scope

Section 662(a) of the Act states that the Secretary shall post conspicuously, on the property subject to these interim regulations, notification that the property is subject to these interim regulations. Section 1048.2 states that these interim regulations apply to unauthorized entry or introduction of weapons or dangerous materials into or upon property which has been posted with notices of the prohibitions contained in these regulations and the penalties authorized by section 662(b) of the DOE Organization Act, *as amended* and the Sentencing Reform Act of 1984, *as amended*.

Currently, persons that enter the property subject to these regulations are subject to prosecution under State laws. Property under DOE jurisdiction under part I, title B of the EPCA (42 U.S.C.

6231–6247) is currently posted with notices to that effect. The boundaries of such property are clearly marked. These regulations are not intended to affect the existing boundaries or the location of notices currently posted on such property.

Section 1048.3 Unauthorized Entry

Under § 1048.3, entry upon Strategic Petroleum Reserve facilities without prior authorization is prohibited. Entry for any unauthorized purpose is an unauthorized entry.

Section 1048.4 Unauthorized Introduction of Weapons or Dangerous Materials

Under § 1048.4, the unauthorized introduction of weapons or dangerous materials as the unauthorized carrying, transporting or otherwise introducing or causing to be introduced into or upon the Strategic Petroleum Reserve of a dangerous weapon, explosive, or other dangerous material likely to produce substantial injury or damage to persons or property is prohibited. The introduction of weapons or dangerous materials for any unauthorized purpose is a violation of these interim regulations.

Section 1048.5 Violations and Penalties

Section 1048.5 states that willful unauthorized entry, or willful unauthorized introduction of weapons or dangerous materials into or upon real property subject to this part, constitutes a violation of these regulations. Section 662(b) of the DOE Organization Act provides that a violation of these interim regulations is a misdemeanor, and that the penalty for a person convicted of violating these interim regulations is subject to a fine of not more than $5,000, imprisonment for not more than one year, or both.

The Sentencing Reform Act of 1984, *as amended*, (18 U.S.C. 3571), contains alternative fines. The Sentencing Reform Act authorizes a sentence of fine of not more than $100,000 for an individual found guilty of a misdemeanor that does not result in death, and a fine of not more than $250,000 for an individual found guilty of a misdemeanor that results in death. The Sentencing Reform Act does not increase the maximum term of imprisonment authorized by section 662(b) of the DOE Organization Act.

Section 1048.6 Posting

Section 1048.6 states that notices stating the pertinent prohibitions of §§ 1048.3 and 1048.4 and the penalties of § 1048.5 will be conspicuously posted at all entrances of each facility or parcel of real property subject to the interim regulations in this part, and at such intervals along the perimeters thereof as will provide reasonable assurance of notice to persons about to enter. DOE considers posting such notices to be adequate notice to persons of the property subject to these interim regulations. The only intended effect of posting is to provide actual notice that unauthorized entry and introduction of weapons or dangerous materials is a violation of Federal law, and that violations of these interim regulations is subject to the maximum penalty permitted by Federal law. DOE will post such notices at locations currently posted in accordance with State laws.

IV. Environmental Review

The interim rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act.

V. Review Under Executive Order 12291

DOE has determined that the incremental effect of today's interim rule, if finalized, will not have the magnitude of effects on the economy to bring the interim rule within the definition of a "major rule" contained in Executive Order 12291. The interim rule imposes no regulatory burden on the economy, on individuals, or public or private organizations, or on state and local governments. The interim rule is not likely to 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, and local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Executive Order, the interim rule has been submitted to the Office of Management and Budget (OMB) for prepublication regulatory review.

VI. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. The rulemaking to implement section 662 of the DOE Organization Act will not have any substantial direct effects on state and local governments within the meaning of the Executive Order. The interim rule will affect Federal agency property that is not subject to direct State regulation.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law No. 96–345 (5 U.S.C. 601–612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the interim rule is published. The requirement (which appears in section 603 of the Act) does not apply if the agency "certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This interim rule will not have any economic impact.

VIII. Effective Date

The prohibitions contained in this interim rule are effective January 17, 1991.

IX. Procedural Requirements

A. Section 501 of the DOE Organization Act

Under section 501(e) of the DOE Organization Act, we may waive the prior notice and hearing requirements of subsections (b), (c) and (d) of section 501 upon our finding that strict compliance with these requirements is likely to cause serious harm or injury to the public health, safety, or welfare. For the following reasons, DOE believes that such a finding can and should be made in this instance. First, the imminent threat of hostilities in the Persian Gulf greatly increases the substantial threat of terrorist activities directed at Strategic Petroleum Reserve facilities. Second, DOE's ability to respond to the real and present threat of attack by terrorists is severely restricted because there is no Federal law of general applicability, other than section 662 of the DOE Organization Act, to provide for the security of persons and property in or upon the Strategic Petroleum Reserve or other real property subject to DOE jurisdiction by deterring unauthorized entry and unauthorized introduction of weapons or dangerous materials into or upon such property. Therefore, we have waived these requirements to the extent necessary to adopt this interim rule effective immediately.

B. Section 553 of the Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act requires that a substantive rule not become effective

less than thirty days after its publication, unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. We have determined that good cause is found to waive the section 553(d) requirement for the reasons stated above in support of adopting the interim rule effective immediately.

C. Public Hearing

1. Procedures for Submitting Requests to Speak. The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in today's interim rule, or who is a representative of a group of class of persons that has an interest in the interim rule, to make a request for an opportunity to make an oral presentation. Such requests should be directed to the address indicated at the beginning of this notice. Requests may be hand delivered to such address. If no requests to speak are received by the date indicated at the beginning of this notice, the hearing will be cancelled.

The person making the request should give a telephone number where he or she may be contacted. Each person to be heard must submit six copies of his or her statement at the hearing registration desk. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Project Management Office in advance of the hearing by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing. DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation shall be limited to 20 minutes. A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553. At the conclusion of all initial oral statements each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in order in which the official statements were made and will be subject to time limitations.

Any interested person who wished to ask a question at the hearing may submit the question, in writing, to the presiding officer to be asked of any person making a statement at the hearing. The presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for an answer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the Project Management Office between the hours of 9:30 a.m. and 5:30 p.m. In addition, any person may purchase a copy of the hearing transcript from the court reporter.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq., as amended,* Public Law No. 100–531.

List of Subjects in 10 CFR Part 1048

Security measures, Government contracts, Arrest authority, and Use of force.

In consideration of the foregoing, a new part is added to chapter X, title 10 of the *Code of Federal Regulations,* as set forth below:

Issued in Washington, DC, on January 16, 1991.

Robert H. Gentile,

Assistant Secretary for Fossil Energy.

Part 1048 is added to 10 CFR chapter X to read as follows:

PART 1048—TRESPASSING ON STRATEGIC PETROLEUM RESERVE FACILITIES AND OTHER PROPERTY

Sec.

1048.1 Purpose.
1048.2 Scope.
1048.3 Unauthorized entry.
1048.4 Unauthorized introduction of weapons or dangerous materials.
1048.5 Violations.
1048.6 Posting.
1048.7 Effective date.
1048.8 Applicability of other laws.

Authority: Sec. 662, Pub. L. No. 100–531, 102 Stat. 2652 (42 U.S.C. 7270b); section 6, Pub. L. No. 100–185, 101 Stat. 1280 (18 U.S.C. 3571(b)(5).

§ 1048.1 Purpose.

The regulations in this part are issued for the protection and security of: (a) The Strategic Petroleum Reserve (SPR), its storage or related facilities, and real property subject to the jurisdiction or administration, or in the custody of DOE under part B, title I of the Energy Policy and Conservation Act, *as amended* (42 U.S.C. 6231–6247) (EPCA); and (b) persons upon the SPR or other property subject to DOE jurisdiction under part B, title I of the EPCA.

§ 1048.2 Scope.

The regulations in this part apply to entry into or upon all SPR storage or related facilities, and real property subject to DOE jurisdiction or administration, or in its custody under part B, title I of the EPCA, which have been posted with a notice of the prohibitions and penalties contained in this part.

§ 1048.3 Unauthorized entry.

Unauthorized entry into or upon an SPR facility or real property subject to this part, without authorization, is prohibited.

§ 1048.4 Unauthorized introduction of weapons or dangerous materials.

Unauthorized carrying, transporting, introducing or causing to be introduced into or upon an SPR facility or real property subject to this part, of a dangerous weapon, explosive or other dangerous material likely to produce substantial injury or damage to persons or property, is prohibited.

§ 1048.5 Violations.

Willful unauthorized entry, or willful unauthorized introduction of weapons or dangerous materials into or upon real property subject to this part, constitutes a violation of these regulations. Violation of these regulations is a misdemeanor, and a person convicted of violating these regulations is subject to the maximum fine permitted by law, imprisonment for not more than one year, or both.

§ 1048.6 Posting.

Notices stating the pertinent prohibitions of §§ 1048.3 and 1048.4 and the penalties of § 1048.5 will be conspicuously posted at all entrances of each facility or parcel of real property subject to the regulations in this part, and at such intervals along the perimeters thereof as will provide reasonable assurance of notice to persons about to enter.

§ 1048.7 Effective date.

The prohibitions in §§ 1048.3 and 1048.4 take effect immediately.

§ 1048.8 Applicability of other laws.

Nothing in this part shall be construed to affect the applicability of the provisions of State law or of any other Federal law.

[FR Doc. 91–1404 Filed 1–16–91; 1:42 pm]

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Reader Aids

Federal Register

Vol. 56, No. 12

Thursday, January 17, 1991

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, JANUARY

1-162.....2
163-354.....3
355-478.....4
479-624.....7
625-770.....8
771-942.....9
943-1080.....10
1081-1344.....11
1345-1482.....14
1483-1558.....15
1559-1920.....16
1721-1910.....17

CFR PARTS AFFECTED DURING JANUARY

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

Executive Orders:
12543 (See Notice of January 2, 1991).....477
12544 (See Notice of January 2, 1991).....477
12687 (Amended by 12741).....475
12740.....355, 1561
(See Presidential Determination No. 91-11)
12741.....475
12742.....1079

Administrative Orders:
Memorandums:
November 16, 1990 (See Presidential Determination No. 91-10 of December 27, 1990).....163
December 19, 1990.....357
Notices:
January 4, 1990 (See Notice of January 2, 1991).....477
January 10, 1991.....1481
Presidential Determinations:
No. 91-10 of December 27, 1990.....163
No. 91-11 of December 29, 1990).....1561
No. 91-12 of January 2, 1991.....477

Proclamations:
6241.....1559
6242.....1719

5 CFR

213.....165
317.....165
359.....165
531.....771
842.....165
1601.....592
1603.....600
1606.....602
1650.....614
2636.....1721

7 CFR

47.....173, 175
58.....773
319.....1730
354.....1081
457.....1345
719.....479
760.....1358
793.....479
907.....1, 774, 775
908.....1
910.....2, 625
987.....777
1230.....4
1403.....359
1404.....360
1405.....479
1413.....479
1421.....479
1427.....479
1470.....360
1477.....364
1497.....479
1498.....479
1717.....558
1755.....1483
1728.....1563
1927.....943
1945.....1563

Proposed Rules:
46.....654
53.....801
275.....1578
301.....1121
319.....1122
918.....1124
932.....31
998.....804
1001.....732
1002.....732
1004.....732
1005.....732
1006.....732
1007.....732
1011.....732
1012.....732
1013.....732
1030.....732
1032.....732
1033.....732
1036.....732, 1125
1040.....732
1044.....732
1046.....732
1049.....732
1050.....732
1064.....732
1065.....732
1068.....732
1075.....732
1076.....732
1079.....732
1093.....732
1094.....732
1096.....732
1097.....732
1098.....732
1099.....732
1106.....732

1108.....732
1120.....732
1124.....732
1126.....732
1131.....732
1132.....732
1134.....732
1135.....732
1137.....732
1138.....732
1139.....732
1700.....32
1980.....202

8 CFR

3.....618
103.....618
214.....480
240.....618
264.....482, 1566
274a.....618
299.....618

Proposed Rules:

214.....502

9 CFR

78.....1082, 1083
91.....365
92.....365
97.....1081
317.....1359
381.....1359

Proposed Rules:

318.....503

10 CFR

20.....944
50.....944
1048.....1908

Proposed Rules:

50.....1749

11 CFR

Proposed Rules:

100.....106
106.....106
110.....106
9001.....106
9002.....106
9003.....106
9004.....106
9005.....106
9006.....106
9007.....106
9012.....106
9031.....106
9032.....106
9033.....106
9034.....106
9035.....106
9036.....106
9037.....106
9038.....106
9039.....106

12 CFR

34.....1229
201.....1566
208.....627
225.....1229
250.....627
323.....1229
564.....778, 1229
722.....1229
1608.....1229

Proposed Rules:

226.....103
563.....1126
567.....806, 966
571.....1126
575.....1126
936.....387

13 CFR

115.....627

Proposed Rules:

107.....1334

14 CFR

1.....344
23.....344
39.....6, 627–634, 778–781, 944, 945, 1567–1569
71.....635, 947, 948, 1569–1572
91.....466, 1229
93.....1059
97.....949, 950,
121.....156
129.....156
135.....156
170.....336, 1059
272.....1732

Proposed Rules:

Ch. I.....806, 966
21.....1750
25.....1750
39.....33, 655–662, 806–811, 967–972, 1585
71.....35, 663–665, 973, 974, 1074
75.....233, 975, 1228
91.....812
161.....667

15 CFR

19.....160
771.....1485
774.....1485, 1486
776.....1485
779.....1487
786.....1485
799.....1485
1201.....176

Proposed Rules:

303.....812

16 CFR

1500.....7, 558

17 CFR

211.....951

Proposed Rules:

240.....814–820

18 CFR

37.....10

20 CFR

10.....1359
200.....1572
209.....1572
234.....1572

Proposed Rules:

323.....1587

21 CFR

14.....559
176.....17, 367
178.....1084, 1085
442.....483

Proposed Rules:

101.....1151
104.....1151
105.....1151
173.....1753
175.....1753
176.....1753
177.....1753
178.....1753
179.....1753
180.....1753
181.....1753
1020.....1589

22 CFR

Proposed Rules:

1104.....389

24 CFR

8.....918
35.....918
200.....918
215.....918
571.....918
750.....918
813.....918
880.....918
881.....918
882.....918
883.....918
884.....918
886.....918
887.....918
904.....918
905.....918
912.....918
913.....918
966.....918
968.....918
969.....918
970.....918
990.....918

26 CFR

1.....484, 559, 1361
40.....179
43.....179
44.....179
45.....179
46.....179
48.....179
49.....179
52.....18, 179
138.....179
142.....179
145.....179
146.....179
147.....179
148.....179
154.....179
602.....484, 559, 1361

Proposed Rules:

1.....508, 732
31.....395, 398
40.....233
43.....233
46.....233
48.....36, 233, 1754
49.....233
52.....50, 233
154.....233
701.....733
702.....733

27 CFR

9.....23
53.....302

28 CFR

76.....1086

Proposed Rules:

544.....1898

29 CFR

2610.....1488
2622.....1488
2644.....1489
2676.....1490

Proposed Rules:

1910.....976

30 CFR

49.....1476
75.....1476
77.....1476
906.....1363
920.....1097
925.....190
936.....782
946.....368

Proposed Rules:

701.....1375
816.....1375
817.....1375
904.....51
915.....398
920.....822
934.....1505
938.....399

32 CFR

589.....370
811.....953
842.....1574
884.....1732
953.....371

Proposed Rules:

286b.....401
299.....1375

33 CFR

100.....783
117.....487, 635, 1490, 1491
161.....1737
165.....488, 783, 1108, 1109
401.....732

Proposed Rules:

100.....1152
110.....823
151.....824

34 CFR

74.....1697
80.....1697
690.....1700

36 CFR

228.....558
242.....103, 372
1152.....958

38 CFR

3.....1110

Proposed Rules:

4.....667, 1229
21.....1506

39 CFR

111.....1111
224.....785
232.....1112

40 CFR

35.....1492
52.....460
61.....1669
141.....636, 1556
142.....1556
180.....1575
228.....1112
261.....643
271.....643
280.....24
302.....643

Proposed Rules:

51.....1754
52.....51, 463, 826, 1754
180.....234, 1153, 1591
372.....1154

41 CFR

301.....1492

42 CFR

412.....568

43 CFR

Public Land Orders:

6827.....1492
4700.....786

Proposed Rules:

3840.....938
3850.....938

44 CFR

64.....1118, 1119

Proposed Rules:

67.....1593

45 CFR

205.....1493

46 CFR

67.....960
580.....1493
581.....1493
583.....1493
586.....1372

Proposed Rules:

25.....829
26.....829
162.....829
550.....668
580.....668
581.....668

47 CFR

Ch. I.....964
0.....787
1.....787
15.....372
36.....26
61.....1500
73.....373, 558, 787–796, 1372, 1737, 1739
97.....27, 28

Proposed Rules:

15.....1376
64.....402
68.....402
73.....1377, 1507–1509, 1779, 1780
74.....1510
76.....406
78.....1510

48 CFR

516.....376
523.....1739
546.....1739
552.....376, 377, 965, 1739

Proposed Rules:

27.....1159
37.....1076
52.....1159

49 CFR

172.....197
173.....197
396.....489
661.....926
1061.....1745
1103.....1374

Proposed Rules:

1033.....1781
1039.....1781
1145.....410

50 CFR

17.....797, 1228, 1450–1464
32.....796
100.....103
204.....377
611.....384, 492, 645, 736, 1575
622.....652
638.....1500
641.....558
655.....1745
663.....645, 736
672.....492
675.....30, 384, 492
695.....377

Proposed Rules:

17.....1159
20.....1378
228.....1606
301.....1378
625.....976
650.....1161
651.....979
661.....836
672.....1612
675.....1612

LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

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Authorization for Use of Military Force Against Iraq Resolution. (Jan. 14, 1991; 105 Stat. 3; 2 pages) Price: $1.00

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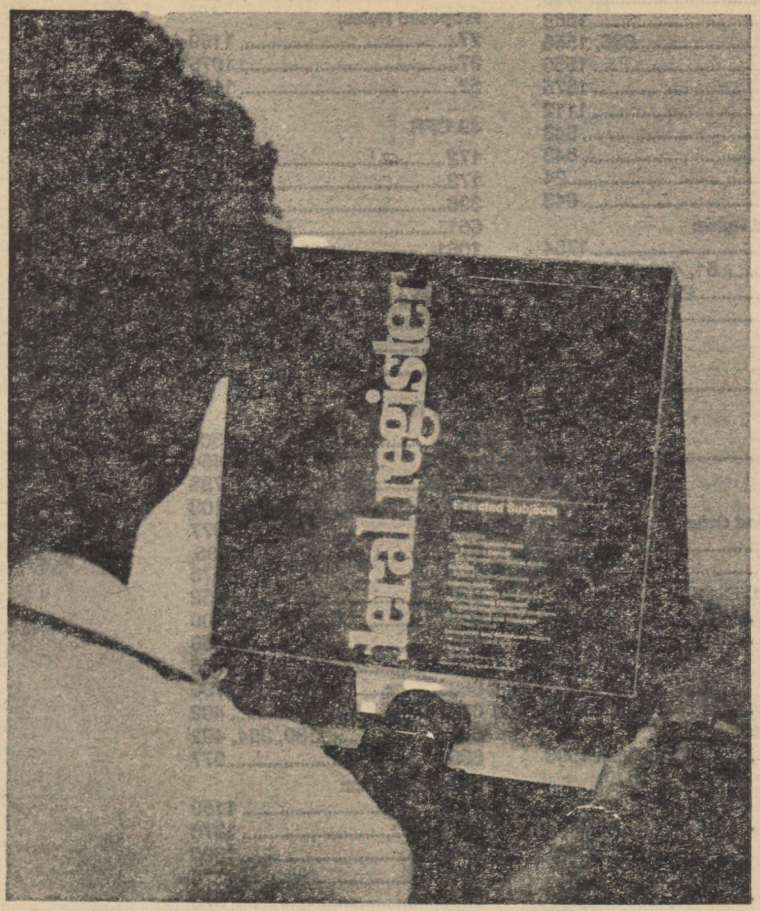

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