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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1200

Board Organization

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is republishing its organization and function statements to reflect the current alignment of the principal organizational units of the Board, their titles, and their primary functions. This action reflects a recent realignment of Board offices that strengthened management controls and added emphasis to sensitive programs, including the Board's ethics responsibilities.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Bentley Roberts (202) 653–8892.

SUPPLEMENTARY INFORMATION: Since the Board last updated and published its organization and function statements on May 23, 1990 (55 FR 21171), the following organizational changes have been made: (1) The offices of Equal Employment Opportunity, the Inspector General, and the General Counsel now report directly to the Chairman; (2) public affairs functions are now centralized in the Office of Management Analysis; and (3) the title of the Personnel division in the Office of Administration has been changed to Human Resources Management.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1200

Organization and functions (Government agencies).

For the reasons set out in the preamble, title 5, chapter II, subchapter A, of the Code of Federal Regulations, is amended as set forth below.

Subchapter A—Organization and Procedures

Part 1200 is revised to read as follows:

PART 1200—BOARD ORGANIZATION

Subpart A—General

Sec.
1200.1 What is the Merit Systems Protection Board?
1200.2 Who is on the Board?

Subpart B—Offices of the Board

1200.10 Who assists the Board?

Subpart A—General

Authority: 5 U.S.C. 1201 et seq.

§ 1200.1 What is the Merit Systems Protection Board?

The Merit Systems Protection Board (the Board) is an independent Government agency that operates like a court. The Board was created to ensure that all Federal government agencies follow Federal merit systems practices. The Board does this by adjudicating Federal employee appeals of agency personnel actions, and by conducting special reviews and studies of Federal merit systems.

§ 1200.2 Who is on the Board?

(a) The Board has three members whom the President appoints and the Senate confirms. Members of the Board serve seven-year terms.

(b) The President appoints, with the Senate's consent, one member of the Board to serve as Chairman and chief executive officer of the Board. The President also appoints one member of the Board to serve as Vice Chairman. If the office of the Chairman is vacant or the Chairman cannot perform his or her duties, then the Vice Chairman performs the Chairman's duties. If both the Chairman and the Vice Chairman cannot perform their duties, then the remaining Board Member performs the Chairman's duties.

Subpart B—Offices of the Board

Authority: 5 U.S.C. 1204(h) and (j).

§ 1200.10 Who assists the Board?

(a) A staff helps the Board carry out its work. The staff is organized into the following offices:

(1) Office of the Executive Director.
(2) Office of Equal Employment Opportunity.
(3) Office of the Inspector General.
(4) Office of Management Analysis.
(5) Office of Administration.
(6) Office of the Administrative Law Judge.
(7) Office of Appeals Counsel.
(8) Office of the Clerk of the Board.
(9) Office of the General Counsel.
(10) Office of Policy and Evaluation.
(11) Office of Regional Operations.
(12) Regional Offices.

(b) *Office of the Executive Director.* The Executive Director manages the operations and programs of the Board's headquarters and regional offices under the direction of the Chairman.

(c) *Office of Equal Employment Opportunity.* The Director, Office of Equal Employment Opportunity, manages the Board's equal employment programs and reports directly to the Chairman.

(d) *Office of the Inspector General.* The Inspector General is the Board's internal auditor and reports directly to the Chairman. The Inspector General plans and directs audits, investigations, and internal control evaluations.

(e) *Office of Management Analysis.* The Director, Office of Management Analysis, develops and coordinates internal management programs and projects, conducts agencywide management reviews, and manages the Board's public affairs program.

(f) *Office of Administration.* The Director, Office of Administration, manages the Board's three administrative divisions: Financial and Administrative Management; Information Resources Management; and Human Resources Management.

(g) *Office of the Administrative Law Judge.* The Administrative Law Judge hears Hatch Act cases, disciplinary and corrective action complaints brought by the Special Counsel, actions against administrative law judges, appeals of actions taken against MSPB employees, and other cases that the Board assigns.

(h) *Office of Appeals Counsel.* The Director, Office of Appeals Counsel, prepares proposed decisions that recommend appropriate action by the Board in petition for review cases and other cases assigned by the Board.

(i) *Office of the Clerk of the Board.* The Clerk of the Board enters petitions for review and original jurisdiction cases onto the Board's docket and

monitors their processing. The Clerk of the Board also does the following:

(1) Gives information on the status of cases;

(2) Manages the Board's records, reports, and correspondence style and control programs; and

(3) Answers requests under the Freedom of Information and Privacy Acts at the Board's headquarters.

(j) *Office of the General Counsel.* The General Counsel provides legal advice to the Board and its headquarters and regional offices, represents the Board in court proceedings, manages legislative policy, and performs congressional liaison. The General Counsel reports directly to the Chairman.

(k) *Office of Policy and Evaluation.* The Director, Policy and Evaluation, conducts special reviews and studies of Federal merit systems, including actions of the Office of Personnel Management under 5 U.S.C. 1206.

(l) *Office of Regional Operations.* The Director, Office of Regional Operations, manages the appellate functions of the 11 MSPB regional offices.

(m) *Regional Offices.* The Board has 11 regional offices located throughout the country (See appendix II to 5 CFR part 1201 for a list of the regional offices). The regional offices enter initial appeals onto their dockets and decide these cases as provided for in the Board's regulations.

Dated: August 19, 1991.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 91–20146 Filed 8–22–91; 8:45 am]

BILLING CODE 7400–01–M

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5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending part 1201: (1) By adding a new provision to § 1201.3, Appellate jurisdiction; (2) by amending § 1201.56, Burden and degree of proof; affirmative defenses; (3) by amending the areas served by its Chicago and St. Louis regional offices in appendix II to part 1201; and (4) by adding a new facsimile number for its Denver Regional Office in appendix II to part 1201. The amendments to §§ 1201.3 and 1201.56 reflect a legislative change in the Board's jurisdiction, and the amendments to appendix II are administrative changes. The amendments are needed to provide accurate information to Federal employees exercising their appeal rights to the Board.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Duward Sumner (202) 653–8892.

SUPPLEMENTARY INFORMATION: Section 506 of the Ethics Reform Act of 1989 (Pub.L. 101–194, November 30, 1989) adds a new section 3393a to title 5 of the U.S.C., requiring that career appointees in the Senior Executive Service (SES) be recertified by their agencies every third year, beginning in calendar year 1991. Under the Act and the implementing regulations issued by the Office of Personnel Management (OPM) on January 3, 1991 (56 FR 165), a career appointee in the SES who is removed from the SES for failure to be recertified may appeal to the Merit Systems Protection Board. Both the Act and the implementing regulations issued by OPM provide that the agency action shall be sustained if it is supported by substantial evidence. The Board, therefore, is amending its regulations at 5 CFR 1201.3(a) to include removal of a career appointee from the SES for failure to be recertified as an agency action that is appealable to the Board. The Board is also amending its regulations at 5 CFR 1201.56(a)(i) to state that an action brought under 5 U.S.C. 3592(a)(3) must be sustained if it is supported by substantial evidence as defined at 5 CFR 1201.56(c)(1).

The amendment to appendix II to part 1201 with respect to the areas served by the Chicago and St. Louis regional offices transfers part of the state of Illinois from the geographic jurisdiction of the Chicago Regional Office to the geographic jurisdiction of the St. Louis Regional Office. This amendment is made to improve the efficiency of case adjudication and cost-effectiveness. The amendment to appendix II to part 1201 with respect to the Denver Regional Office reflects a change in the facsimile number.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends part 1201 as follows:

PART 1201—[AMENDED]

1. The authority for 5 CFR part 1201 continues to read:

Authority: 5 U.S.C. 1204 and 7701 unless otherwise noted.

2. Section 1201.3 is amended by removing "and" from the end of paragraph (a)(18); by removing the period at the end of paragraph (a)(19); and by adding in its place "; and." A new paragraph (a)(20) is added to read as follows:

§ 1201.3 Appellate jurisdiction.

(a) * * *

(20) Removal of a career appointee from the Senior Executive Service for failure to be recertified (5 U.S.C. 3592(a)(3), 5 CFR 359.304).

* * * * *

§ 1201.56 [Amended]

3. Section 1201.56(a)(1)(i) is amended by adding "5 U.S.C. 3592(a)(3)," after "under."

* * * * *

4. Paragraphs 3. and 8., Appendix II to Part 1201, are revised to read:

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

* * * * *

3. Chicago Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604–1669 (Illinois (all locations north of Springfield), Indiana, Michigan, Minnesota, Ohio, Wisconsin).

* * * * *

8. St. Louis Regional Office, 911 Washington Avenue, suite 615, St. Louis, Missouri 63101–1203 (Illinois (Springfield and all locations south), Iowa, Kentucky, Missouri, Tennessee).

* * * * *

5. Paragraph 5., Appendix II to Part 1201, is amended by removing Facsimile No.: "(303) 233–5438" and adding "(303) 231–5205."

* * * * *

Dated: August 19, 1991.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 91–20181 Filed 8–22–91; 8:45 am]

BILLING CODE 7400–01–M

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5 CFR Part 1203

Procedures for Review of Rules and Regulations of the Office of Personnel Management

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its rules under part 1203 to remove the requirement that all Board orders granting or denying a request for regulation review be published in the **Federal Register.** The Board has determined that it does not need regulatory authority to publish its

orders granting or denying a request for regulation review. This action will enhance the Board's case management functions.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Duward Sumner (202) 653–8892.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 1204(a) and 1204(f), the Board is authorized to review rules or regulations issued by the Office of Personnel Management (OPM). The Board may review OPM rules or regulations on its own motion, on the filing of a complaint by the Special Counsel, or on granting a request for review from any interested person. Under 5 U.S.C. 1204(f), the Board is given sole discretion to grant or deny an interested person's request for regulation review. Because it has sole discretion to grant or deny an interested person's request for regulation review, the Board has determined that it is unnecessary to publish its orders granting or denying such requests in the Federal Register, as currently required by 5 CFR 1203.12(c). Therefore, the Board is deleting § 1203.12(c) from its rules under part 1203. The Board retains the discretion to solicit briefs in a request for regulation review from interested persons when necessary or desirable.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1203

Administrative practice and procedure, Government employees.

Accordingly, the Board amends part 1203 as follows:

PART 1203—[AMENDED]

1. Authority for 5 CFR part 1203 continues to read:

Authority: 5 U.S.C. 1204(a), 1204(f), and 1204(h).

2. Section 1203.12 is amended by removing paragraph (c).

* * * * *

Dated: August 19, 1991.

Robert E. Taylor,

Clerk of the Board.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On May 6, 1991, the Commodity Credit Corporation (CCC) issued a proposed rule with respect to the cotton price support program which is conducted by the CCC in accordance with The Agricultural Act of 1949, as amended (the 1949 Act). This rule is necessary to amend the regulations at 7 CFR part 1427 and implement the changes made by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act). Generally, this rule amends the manner in which producers may participate in the CCC price support program for cotton and the terms and conditions of the CCC price support program for cotton for 1991 and subsequent year's crops.

EFFECTIVE DATE: August 23, 1991. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Sharp, Program Specialist, Cotton, Grain, and Rice Price Support Division (GGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013, telephone (202) 447–7988.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and it has been determined to be "non-major" because these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this final rule applies is Commodity Loans and Purchases, 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the cotton price support program that this program will have no significant impact on the quality of the human environment.

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

Public reporting burden for the information collections contained in this regulation with respect to the price support program for cotton is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Accept for Form CCC-605 the information collection has previously been cleared by OMB and assigned number 0560–0074. A request for expedited clearance of Form CCC–605 (attachment 1) will be submitted to OMB. A proposed rule was published in the **Federal Register** on May 6, 1991, at 56 FR 20554 which would amend regulations found at 7 CFR part 1427 with respect to the price support program for cotton which is conducted by CCC. The proposed rule provided a 30-day public comment period which ended June 5, 1991.

Discussion of Comments

Six respondents commented on CCC's proposal to provide that a producer shall not be considered to have divested beneficial interest in a commodity if the producer executes an option to purchase contract with a buyer, with or without an advance payment by the buyer, with respect to cotton under loan, if the option to purchase contract provides that title, risk of loss, and beneficial interest in the cotton remains with the producer until the buyer exercises the option to purchase, and if such option to purchase expires in the event CCC claims title to the cotton. This proposal, in effect, eliminates equity trading among cotton buyers on Form CCC-813. All commenters declared that equity trading, which has been facilitated by the use of CCC-813, moves cotton into commercial channels, maximizes producer marketing opportunities, and serve to minimize CCC's cost exposure. Two of the commenters understand the concern about protecting CCC's security interest; however, both stated that the elimination of CCC-813 would severely disrupt a significant portion of the U.S. cotton trading system. In addition, both

commenters believed that CCC-813 could be retained with the addition of a provision specifying that CCC's collateral interest is not subordinated to the holder of the CCC-813 until the purchaser redeems the cotton from the loan. CCC must ensure that the statutory provisions authorizing the cotton price support program are accomplished and that CCC must have a perfected interest in the cotton pledged as collateral for loan. In the past, equity trading on cotton pledged as collateral for loan made CCC vulnerable to that equity interest. For these reasons CCC has determined that equity trading through the use of CCC-813 adversely affects CCC's interest in the commodity. Further, such activity is not consistent with the nonrecourse nature of the price support loans which CCC is required by statute to make available to producers. However, CCC is aware of the necessity to allow the free and open trading of cotton. Accordingly, CCC has determined to allow producers to designate an agent for the purpose of redeeming all or a portion of the loan collateral by execution of a CCC Form 605. The designation of agent does not relieve the producer from the terms and conditions of the security agreement in that the producer is ultimately responsible for the repayment of the loan indebtedness. In addition, an agent so designated may, in turn, designate a subsequent agent for the purpose of redeeming all or a portion of the loan collateral by endorsement on CCC-605 by both parties. In addition, if the producer designates an agent to redeem loan collateral the producer may also designate that agent to extend such loan if CCC authorizes loan extensions. The agent so designated may also designate a subsequent agent for loan extensions by endorsement on Form CCC-605. CCC has determined that allowing the producer to designate an agent on CCC-605 will in no way impede the free marketing and trading of cotton. As additional protection to the agent, the agent may enter into a separate agreement with the producer to restrict the authority of either the agent or producer to redeem loan collateral. However, such agreements are executed solely between the agent and the producer and CCC shall have not been a party to such an agreement. According, §§ 1427.5, 1427.7, and 1427.19 is amended to provide for procedures designating an agent for the redemption of CCC Price Support loan collateral and for the extension of CCC such loans.

There was one respondent to CCC's proposal to allow persons with an interest in storing, processing, or merchandising any commodity to act as an agent for a producer if that person is delegated authority which is restricted specifically to repaying outstanding loan amounts plus interest and charges, and the delegation is on file at the county office. This respondent agreed with CCC's proposal. CCC has determined that this provision of the proposed rule is adopted without change.

There was one comment about CCC's proposal to provide that a producer may repay an upland cotton loan at a level that is the lesser of the loan level and charges, plus accrued interest or the higher of the loan multiplied by 70 percent of the adjusted world price. The commenter agreed with the proposal. CCC has determined to adopt this provision of the proposed rule without change.

There was one comment about CCC's proposal to provide that loan deficiency payments be available for the quantity of upland cotton that is eligible to be pledged as collateral for a price support loan. The commenter agreed with the proposal. CCC has determined to adopt this provision of the proposed rule without change.

One respondent commented that provisions permitting the issuance of marketing certificates when the adjusted world price is less that 70 percent of the loan rate were not addressed in the proposed rule and assumed that subsequent regulations would include such provisions.

Provisions permitting the issuance of marketing certificates were issued as a separate proposed rule on June 18, 1991.

One respondent urged CCC to continue efforts in instituting an electronic transfer system to replace the use of paper warehouse receipts so that the U.S. cotton industry can operate in a more efficient and economical manner. CCC is continuing to review this issue.

It has also been determined that all other provisions of the proposed rule should be adopted as the final rule with certain technical and grammatical corrections.

List of Subjects in 7 CFR Part 1427

Cotton Incorporation by reference, Loan programs/agriculture, Price support programs, Warehouses.

According, 7 CFR part 1427 is amended by revising Subpart—Cotton Loan Program Regulations (§§ 1427.1—1427.26) and Subpart—Seed Cotton Loan Program Regulations (§§ 1427.160—1427.175) as follows:

PART 1427—COTTON

The authority citation for part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

Subpart—Cotton Loan Program Regulations

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1427.22 Death, incompetency, or disappearance.
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1427.24 Recourse loans.
1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.
1427.26 Paperwork Reduction Act assigned numbers.

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Subpart—Seed Cotton Loan Program Regulations

1427.160 General statement.
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1427.166 Insurance.
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1427.170 Quantity for loan.
1427.171 Approved storage.
1427.172 Settlement.
1427.173 Foreclosure.
1427.174 Maturity of loans.
1427.175 Restrictions in use of agents.

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Subpart—Cotton Loan Program Regulations

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 1991 and subsequent crops of upland cotton and extra long staple (ELS) cotton. These regulations set forth the terms and conditions under which price support loans and, for upland cotton, loan deficiency payments shall be made available by the Commodity Credit Corporation ("CCC").

Additional terms and conditions are set forth in the note and security agreement and loan deficiency payment application which must be executed by a producer in order to receive such price support loans and loan deficiency payments.

(b) The following are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices," respectively):

(1) Price support rates,

(2) For upland cotton, the schedules of premiums and discounts for:

(i) Grade and staple,

(ii) Micronaire, and

(iii) Strength.

(3) For ELS cotton, the schedules of:

(i) Loan rates, and

(ii) Discounts for micronaire.

(4) Loan service and related fees, and

(5) Forms which are used in administering the price support and loan deficiency payment programs for a crop of cotton. The forms for use in connection with the programs in this part shall be prescribed by CCC.

(c) Price support loans and loan deficiency payments shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.2 Administration.

(a) The price support and loan deficiency payment programs which are applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, or Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees," respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1427.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 719 of this title and 1413 of this chapter shall also be applicable.

Authorized loan servicing agent (LSA) means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The authorized LSA may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including but not limited to the following:

(1) Preparing and executing loan documents;

(2) Disbursing loan proceeds;

(3) Handling the extension of loans as authorized by CCC;

(4) Accepting cotton loan repayments;

(5) Handling documents involved with forfeiture of cotton loan collateral to CCC; and

(6) Providing loan and accounting data to CCC for statistical purposes.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for price support. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Cotton means, as defined in part 1413 of this chapter, upland cotton and ELS cotton as applicable, produced in the United States.

Financial institution means:

(1) A bank in the United States which accepts demand deposits; and

(2) an association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Form A loans means a loan executed on Form CCC—Cotton A, Cotton Producer's Note and Security Agreement.

Form G loans means a cotton loan to an approved marketing cooperative on eligible cotton delivered to a cooperative by eligible members of the cooperative executed on Form CCC—Cotton G, Cotton Cooperative Loan Agreement.

Lint cotton means cotton which has passed through the ginning process.

Loan clerk means a person approved by CCC to assist producers in preparing Form A loan documents.

Seed cotton means cotton which has not passed through the ginning process.

Servicing agent bank means the bank designated as the financial institution for a cooperative marketing association approved in accordance with part 1425 of this chapter, which has been approved by CCC.

§ 1427.4 Eligible producer.

(a) An eligible producer of a crop of cotton shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop of cotton as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12 and 718 of this title, and 1413 of this chapter.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, and executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive price support and loan

deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note and security agreement signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) Two or more producers may obtain a single joint loan with respect to cotton which is stored in an approved warehouse if the warehouse receipt which is pledged as collateral for the loan is issued jointly to such producers. The cotton in a bale may have been produced by two or more eligible producers on one or more farms if the bale is not a repacked bale.

(e) Loans may be made to a warehouseman who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouseman on cotton produced by such warehouseman only in those States where the issuance and pledge of such warehouse receipts are valid under State law.

(f) A cooperative marketing association which has been approved in accordance with part 1425 of this chapter may obtain price support on the eligible production of such cotton or loan deficiency payments with respect to such cotton on behalf of the members of the cooperative who are eligible to receive price support loans or loan deficiency payments with respect to a crop of cotton. For purposes of this subpart, the term "producer" includes an approved cooperative marketing association.

(g) A producer shall not delegate to any person, or the person's representative, who has any interest in storing, processing, or merchandising any commodity which is otherwise eligible for price support or a loan deficiency payment under a program to which this section is applicable, authority to exercise on the behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement or other price support document, unless the person (or the person's representative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer or unless the authority delegated is restricted specifically for the purpose of repaying the loan amount and charges plus interest or, for the purpose of extending the loan or, for the purpose of obtaining loan deficiency payments, and such delegation is filed through the execution of Form ASCS-211, Power of Attorney, or other form as approved by CCC, with the county office and accepted by CCC.

§ 1427.5 General eligibility requirements

(a) In order to receive price support for a crop of cotton, a producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested. Price Support loans at a national average support rate of 50.77 cents per pound for the 1991 crop of upland cotton and 82.99 cents per pound for the 1991 crop of extra loan staple cotton are available to producers as determined and announced by CCC. A Form A loan must be signed by the producer or the producer's agent and mailed or delivered to the county office or an authorized LSA within 15 days after the producer signs the Form A loan and within the period of loan availability.

(1) A producer, except for a cooperative, must request price support and loan deficiency payments:

(i) At the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced, or

(ii) Form an authorized LSA.

(2) An authorized agent which has an agreement with CCC and which is designated by the producer to obtain a loan or loan deficiency payment on behalf of such producers may obtain such loans through a central county office designated by CCC.

(3) An approved cooperative marketing association must request loans and loan deficiency payments:

(i) At a servicing agent bank approved by CCC, or

(ii) At the county office for the county in which the principal office of the cooperative is located unless the State committee designates some other county office as the office where such association must request price support.

(b)(1) Cotton must be tendered to CCC by an eligible producer and must:

(i) Be in existence and in good condition at the time of disbursement of loan or loan defficiency payment proceeds;

(ii) For ELS cotton, be a grade and staple length specified in the schedule of loan rates for ELS cotton.

(iii) For upland cotton, be a grade, staple length, micronaire, and strength specified in:

(A) The schedule of premiums and discounts for grade and staple,

(B) The schedule of strength premiums and discounts, and

(C) The schedule of micronaire premiums and discounts.

(iv) Be represented by a warehouse receipt meeting the requirements of § 1427.11;

(v) Not be false-packed, water-packed, mixed-packed, reginned, or repacked and:

(A) Upland cotton must not:

(*1*) Have been reduced more than two grades because of preparation; and

(*2*) Have a strength reading of 18 grams per tex, rounded to whole grams, or below.

(B) ELS cotton must:

(*1*) Have been ginned on a roller gin,

(*2*) Must have been produced in a county designated as suitable for the production of such cotton,

(*3*) Must not have a micronaire reading of 2.6 or less, and

(*4*) Must not have been reduced in grade for any reason;

(vi) Not be compressed to universal density where side pressure has been applied or to high density at a warehouse;

(vii) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan or to obtain a loan deficiency payment; and

(viii) Not have been previously sold and repurchased; or pledged as collateral for a CCC price support loan and redeemed except as provided in § 1427.172(b) (3) or (4).

(ix) For upland cotton, have been graded by Agricultural Marketing Service (AMS) using a High Volume Instrument (HVI).

(2) Each bale of cotton must:

(i) Weigh not less than 325 pounds net weight;

(ii) If compressed to standard or higher density either at warehouse or at a gin, have not less than eight bands;

(iii) Be packaged in materials which meet specifications adopted and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging materials in the June 1991 Specifications for Cotton Bale Packaging Materials. Heads of bales must be completely covered.

(A) Copies of the June 1991 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Copies may be inspected at the South Agriculture Building, room 3624, 14th and Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(B) Information with respect to experimental packaging material may be obtained from JCIBPC.

(C) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51;

(iv) Be ginned by a ginner:

(A) Who has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag, and

(B) Who has entered into CCC–809, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(2)(iii) of this section.

(c)(1) To be eligible to receive price support, a producer must have the beneficial interest in the cotton which is tendered to CCC for a loan or loan deficiency payment. The producer must always have had the beneficial interest in the cotton unless, before the cotton was harvested, the producer and a former producer whom the producer tendering the cotton to CCC has succeeded had such an interest in the cotton. Cotton obtained by gift or purchase shall not be eligible to be tendered to CCC for price support. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan shall be eligible to receive price support whether succession to the cotton occurs before or after harvest as long as the heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer retains control of the commodity, including the right to make all decisions regarding the tender of the cotton to CCC for price support, and:

(i) Executes an option to purchase whether or not an advance payment is made by the potential buyer with respect to such cotton if the option to purchase contains the following provision:

"Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR part 1427, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any Commodity Credit Corporation price support loan which is secured by such commodity; (2) the date the Commodity Credit Corporation claims title to such commodity; or (3) such other date as provided in this option." or

(ii) Enters into a contract to sell the cotton if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser does not pay to the producer any advance payment amount or any incentive payment amount to enter into such contract except as provided in part 1425 of this chapter.

(iii) Executes CCC Form 605, Designation of Agent—Upland Cotton. Such Designation:

(A) Allows the producer to authorize an agent or subsequent agent to redeem all or a portion of the cotton pledged as collateral for a loan. The form will identify the warehouse receipts for which the authorization is given.

(B) Allows the producer to also authorize an agent or subsequent agent to extend the loan when extensions of upland cotton loans are authorized by CCC.

(C) Expires upon maturity of the loan.

(D) Allows agents so designated by the producer to designate a subsequent agent by endorsement of the form by both parties.

(E) Must be presented at the time the loan is repaid or the loan is extended at the county office where the loan originated if the agent or subsequent agent exercises any authority granted by the producer.

(3) If price support is made available to producers through an approved marketing cooperative in accordance with part 1425 of this chapter, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the cooperative or its member cooperative, except as otherwise provided in this subsection. Cotton delivered to such a cooperative shall not be eligible to receive price support if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.

(d) If the person tendering cotton for a loan is a landowner, landlord, tenant, or sharecropper, such cotton must represent such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper or have been received in payment of fixed or standing rent.

(e) Each bale of upland cotton sampled by the warehouseman upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouseman, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn in accordance with AMS dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

(f) The quantity of cotton for which a loan deficiency payment has been made is not eligible to be pledged for a price support loan.

§ 1427.6 Disbursement of price support loans.

(a) Disbursement of loans to individual producers may be made by:

(1) County offices,

(2) Authorized LSA's, or by

(3) Central county offices designated by CCC to provide centralized service to a person or firm which has been designated as a producer's agent and which has entered into a written agreement with CCC.

(b) Loan proceeds may be disbursed by approved servicing agent banks to approved cooperative marketing associations.

(c) The loan and loan deficiency payment documents shall not be presented for disbursement unless the commodity covered by the mortgage or pledge of security is eligible, in existence, in approved storage, and in good condition. If the commodity was not either an eligible commodity, in existence and in good condition at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.7 Maturity of loans.

(a) Form A cotton loans and Form G loans to cotton cooperative marketing associations, mature on demand by CCC and no later than the last day of the 10th calendar month from the first day of the month in which the loan or loan advance is disbursed, except that

(1) Upland cotton loans may, at the producer's request or at the request of the agent or subsequent agent authorized on CCC Form 605, be extended for an additional eight months during the 10th month of the initial loan provided the average spot market price for the base quality of cotton as determined by CCC during the ninth month of the loan did not exceed 130 percent of the average spot market price for such base quality of cotton for the preceding 36 months.

(2) If authorized by CCC, ELS cotton loans may, at the producer's request, be extended for an additional eight months during the tenth month of the initial loan.

(3) CCC may, by public announcement, extend the time for repayment of the loan indebtedness or carry the loan in a past due status.

(4) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 15 days in advance of the accelerated maturity date.

(b) If a producer's upland cotton price support loan is extended for 8 months in accordance with paragraph (a)(2) of this section and the loan collateral is:

(1) Thereafter forfeited to CCC, the producer shall pay to CCC:

(i) All storage costs associated with the storage of the forfeited cotton, beginning with the first month of such extension; and

(ii) A handling fee of $1.00 per bale.

(2) Thereafter redeemed by repayment to CCC, the producer shall pay to CCC an amount which shall include interest that has accrued with respect to such collateral, beginning with the first month of such extension.

(c) If the loan is not repaid by the maturity date of the loan, title to the cotton shall vest in CCC the day after such maturity date and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan, plus interest and charges.

§ 1427.8 Amount of loan.

(a) The quantity of cotton which may be pledged as collateral for a loan shall be the net weight of the eligible cotton as shown on the warehouse receipt issued by an approved warehouse, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted by CCC.

(b) The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (a) of this section, by the applicable loan rate and subtracting:

(1) Any unpaid warehouse receiving charges,

(2) Any warehouse storage charges in excess of 60 days as of the date of tender to CCC, as provided in § 1427.11(g), and

(3) Any unpaid charge for furnishing new bale ties as prescribed in § 1427.11(g).

(c) CCC will not increase the amount of the loan made with respect to any bale of cotton as a result of a redetermination of the quantity or quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made with respect to the weight of the bale or the classification for the bale as specified on the AMS Form A–1, such error may be corrected.

§ 1427.9 Classification of cotton.

References made to "classification" in this subpart shall include micronaire, and for upland cotton, strength, readings. All cotton tendered for loan must be classed by an AMS Cotton Classing Office ("Cotton Classing Office") and tendered on the basis of such classification.

(a) An AMS Cotton Classification Memorandum Form 1 ("AMS Form 1") showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples under the Smith-Doxey program.

(b) If the producer's cotton has not been sampled for an AMS Form 1 classification, the warehouse shall sample such cotton and forward the samples to the Cotton Classing Office serving the district in which the cotton is located. Such warehouse must be licensed by AMS to draw samples for submission to the Cotton Classing Office.

(c) If a sample has been submitted for classification, another sample shall not be drawn and forwarded to a Cotton Classing Office except for a review classification. Review classifications are recorded on AMS Form 1, Review Memorandum ("AMS Form 1 Review").

(d) Where review classification is not involved, if through error or otherwise, two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value.

(e) The classification on AMS Form 1 or AMS Form 1 Review must be dated not more than 15 days prior to the date the warehouse receipt was issued; however, State committees may, in arid regions, extend this period to not to exceed 30 days prior to the date the warehouse receipt was issued upon determining that such extension will not result in reduction in the grade of the cotton during the extension period, otherwise a new sample must be drawn and a review classification based on the new sample will be required.

(f) If an AMS Form 1 Review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

§ 1427.10 Approved storage.

(a) Except as provided in accordance with § 1427.16, eligible cotton may be pledged as collateral for loans only if stored at warehouses approved by CCC.

(1) Persons desiring approval of their facilities should communicate with the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205.

(2) The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices.

(b) When the operator of a warehouse receives notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, promptly place such cotton within such warehouse.

(c) Storage charges paid by a producer to CCC as security for a loan will not be refunded by CCC. If cotton is redeemed from the loan, the person removing the cotton from storage shall pay all unpaid warehouse charges at the established tariff rate.

(d) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1427.23.

§ 1427.11 Warehouse receipt and insurance.

(a) Producers may obtain loans on eligible cotton represented by warehouse receipts only if the warehouse receipts:

(1) Are negotiable machine cardtype warehouse receipts,

(2) Are issued by CCC approved warehouses,

(3) Provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt, and

(4) Otherwise are acceptable to CCC.

(b) The warehouse receipt must:

(1) Contain the tag number (warehouse receipt number),

(2) Show that the cotton is covered by fire insurance, and

(3) Be dated on or prior to the date the producer signs the note and security agreement.

(c) If a bale is stored at the origin warehouse (the warehouse to which the bale was first delivered for storage after ginning), the warehouse receipt must contain the gin bale number. If a bale has been moved from the origin warehouse, the warehouse receipt shall, in lieu of the gin bale number, contain the tag number and identification of the origin warehouse.

(d) Open yard endorsement, if any, on the warehouse receipt must have been rescinded with the legend "open yard disclaimer deleted" with appropriate signature of the authorized representative of the warehouse.

(e) Block warehouse receipts will be accepted when authorized by CCC only under the following conditions:

(1) The owner of the warehouse issuing the block warehouse receipt shall also own the cotton represented by the block warehouse receipt, and

(2) The warehouse shall not be licensed under the U.S. Warehouse Act.

(f) Each receipt must set out in its written or printed terms the tare and the net weight of the bale represented thereby. (1) The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight, except that the warehouse receipt may show the net weight established at a gin:

(i) In case the gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC, and

(ii) If the showing of gin weights on the warehouse receipts is permitted by the licensing authority for the warehouse.

(2) The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A warehouse receipt reflecting an alteration in tare or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (tare or net) weight
(Name of warehouse)
By (Signature)
Date

(3) Alterations in other inserted data on the receipt must be initialed by an authorized representative of the warehouse.

(g) If warehouse storage charges have been paid, the receipt must be stamped or otherwise noted to show that date through which the storage charges have been paid. (1) For receipts showing accrued storage charges in excess of 60 days as of the date of tender to CCC, the loan amount will be reduced for each month of unpaid storage or fraction thereof in excess of 60 days by the monthly storage charge specified in the storage agreement between the warehouse and CCC.

(2) If warehouse receiving charges have been paid or waived, the receipt must be stamped or otherwise noted to show such fact.

(3) If the receipt does not show that receiving charges have been paid or waived, CCC shall reduce the loan amount the amount of the receiving charges specified in the storage agreement between the warehouse and CCC. However, except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must show such receiving charges and state: "Receiving charges due include charge for new set of ties, or similar notation, and CCC shall reduce the loan amount by the amount of the receiving charges shown on the warehouse receipt (this will be the amount payable by CCC if it pays for receiving, notwithstanding the provisions of the storage agreement)".

(4) In any case where the loan amount is reduced by unpaid storage or receiving charges, such charges will be paid to the warehouse by CCC after loan maturity if the cotton is not redeemed from the loan, or as soon as practicable after the cotton is ordered shipped by CCC or destroyed by fire while in loan status. Except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, or Virginia, if the bale is stored at a warehouse which does not have compress facilities or arrangements, and if the bale ties are not suitable for reuse when the bale is compressed, the warehouse receipt must show this fact, and the loan amount will be reduced by the charge which will be assessed by the nearest compress in line of transit for furnishing new bale ties.

(h) If the bale was received by rail, the receipt must be stamped or otherwise noted to show such fact.

(i) The warehouse receipt must show the compression status of the bale, i.e., flat, modified flat, standard, gin standard, gin universal, or warehouse universal density. If the compression charge has been paid, or if the warehouse claims no lien for such compression, the receipt must be stamped or otherwise noted to show such fact.

§ 1427.12 Liens.

If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to an authorized LSA, at a rate determined by CCC. Any such fee shall be in addition to any loan clerk fee paid to a loan clerk in accordance with paragraph (b) of this section. The amount of such fees is available in State and county offices and are shown on the note and security agreement.

(b) Loan clerks may only charge fees for the preparation of loan documents at the rate determined by CCC. (1) Such fees may be deducted from the loan proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available in State and county offices and are shown on the note and security agreement.

(c) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter. All or a portion of such interest may be waived with respect to a quantity of cotton which has been redeemed in accordance with § 1427.19 at a level which is less than the principal amount of the loan plus charges and interest.

(d) For each crop of upland cotton, the producer, as defined in the Cotton Research and Promotion Act (7 U.S.C. 2101), shall remit to CCC an assessment which shall be transmitted by CCC to the Cotton Board and shall be deducted from the:

(1) Loan proceeds for a crop of cotton and shall be at a rate equal to one dollar per bale plus up to one percent of the loan amount, and

(2) Loan deficiency payment proceeds for a crop of cotton and shall be at a rate equal to up to one percent of the loan deficiency payment amount.

§ 1427.14 Offsets.

(a) If any installment on any loan made by CCC on farm-storage facilities or drying equipment is due and payable such amount due to CCC shall be offset from loan proceeds made available to the producer in accordance with this part, after deduction of clerk fees, service charges, research and promotion fees.

(b) If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under regulations in this subpart, after deduction of amounts payable under paragraph (a) of this section shall be applied to such indebtedness as provided in part 3 of this title and part 1403 of this chapter.

§ 1427.15 Special procedure where note amount advanced.

(a) This special procedure is provided to assist persons or firms, which, in the course of their regular business of handling cotton for producers, have made advances to eligible producers on eligible cotton to be placed under loan and desire to obtain credit at a financial institution for the amounts advanced. A financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) To loan documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts shown on the Form A loan, except for:

(i) Authorized loan clerk fees.

(ii) The research and promotion fee collected for transmission to the Cotton Board, and

(iii) CCC loan service charges, and

(2) If such person or firm is entitled to reimbursement from the proceeds of the loans for the amounts advanced and has been authorized by the producer to deliver the loan documents to a county office for disbursement of the loans.

(c)(1) Each Form A loan and related documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the loans, except for CCC loan service charges, for disbursement to:

(i) The financial institution which is to allow credit to the person or firm which made the loan advances or to such financial institution and such person or firm as joint payees, or

(ii) The financial institution which made the loan advances to the producers.

(2) When received in a county office (or postmarked, if mailed) warehouse receipts and loan documents must reflect not more than 60 days accrued storage, or the loan amount must be reduced by the excess storage as specified in § 1427.11.

(3) The documents shall be accompanied by Form CCC–825, Transmittal Schedule of Form A Cotton Loans, in original and two copies, numbered serially for each county office by the financial institution. The Form CCC–825 shall show the amounts invested by the financial institution in the loans, which shall be the amounts of the notes minus the amounts of CCC loan service charges shown on the notes.

(4) Upon receipt of the loan documents and Form CCC–825, the county office will stamp one copy of the Form CCC–825 to indicate receipt of the documents and return this copy to the financial institution.

(d) County offices will review the loan documents prior to disbursement and will return to the financial institution any documents determined not to be acceptable because of errors or illegibility. County offices will disburse the loans for which loan documents are acceptable by issuance of one check to the payee indicated on the Form A and will mail the check to the address shown for such payee on the Form A loan with a copy of Form CCC–825. The Form CCC–825 will show the date of disbursement by a county office and amount of interest earned by the financial institution.

(e) The financial institution shall be deemed to have invested funds in the loans as of the date loan documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(f) Interest will be computed on the total amount invested by the financial institution in the loan represented by accepted loan documents from and including the date of investment of funds by the financial institution to, but not including, the date of disbursement by a county office.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the financial institution in the investment in loans disbursed during a month will be paid by county offices after the end of the month.

§ 1427.16 Reconcentration of cotton.

(a) Loans on cotton to be reconcentrated shall be available only on cotton received at CCC approved warehouses in areas where there is a shortage of storage space and the local warehouse certifies such fact to CCC. A producer who desires to obtain a loan on cotton to be reconcentrated under the provisions of this paragraph shall request such reconcentration and present the same documents as required for a regular loan.

(1) The Forms CCC-Cotton A-1, Schedule of Pledged Cotton (Form CCC-Cotton A-1), and warehouse receipts covering such cotton to be reconcentrated must show the reconcentration order number furnished by the county office or authorized LSA under which the cotton will be shipped.

(2) The county office or authorized LSA shall arrange for reconcentration of the cotton under the direction of the Kansas City Commodity Office.

(3) Any fees, cost, or expenses incident to such actions shall be charges against the cotton.

(4) After the cotton is reconcentrated, the Kansas City Commodity Office shall obtain new warehouse receipts, allocate to individual bales shipping and other charges incurred against the cotton, and return new warehouse receipts and reconcentration charges applicable to each bale to the county office or authorized LSA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loan.

(b) CCC may under certain conditions, before loan maturity, compress, store, insure, or reinsure the cotton against any risk, or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the producer or CCC.

(1) CCC may also move the cotton from one storage point to another with the written consent of the producer or borrower and upon the request of the local warehouse and certification that there is congestion and lack of storage facilities in the area: Provided, however, that if CCC determines such loan cotton is improperly warehoused and subject to damage, or if any of the terms of the loan agreement are violated, or if carrying charges are substantially in excess of the average of carrying charges available elsewhere and the local warehouse, after notice, declines to reduce such charges, such written consent need not be obtained.

(2) The county office or authorized LSA shall arrange for reconcentration of the cotton under the direction of the Kansas City Commodity Office.

(3) Any fees, costs, or expenses incident to such actions shall be charges against the cotton.

(4) After the cotton is reconcentrated, the Kansas City Commodity Office shall obtain new warehouse receipts, allocate to individual bales, shipping and other charges incurred against the cotton, and return new warehouse receipts and reconcentration charges applicable to each bale to the county office or authorized LSA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loan.

§ 1427.17 Custodial offices.

Forms A and CCC-Cotton A–1, collateral warehouse receipts, cotton classification memoranda, and related documents will be maintained in custody of the local county office, authorized LSA, central county office, or any financial institution defined in § 1427.2 and approved by CCC, whichever disbursed the loan evidenced by such documents.

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining, or settling a loan or disposes of or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan or loan deficiency payment;

(ii) Any additional amounts paid by CCC with respect to the loan or loan deficiency payment;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts, and

(v) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of cotton with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1427.19.

(2)(i) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral delivered to or acquired by CCC shall be determined by CCC, and shall be the lower of:

(A) The market value of the commodity at the close of the market on the final date for repayment; or

(B) The loan settlement value of the commodity.

(ii) Notwithstanding the provisions of paragraphs (a)(2) of this section, if CCC sells the loan collateral in order to determine the market value of the cotton, the value of the cotton shall be the lower of:

(A) The sales price of the cotton less any costs incurred by CCC in completing the sale; or

(B) The loan settlement value of the cotton.

(b) If the amount disbursed under a loan, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan or loan deficiency payment is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such cotton, or loan proceeds, after execution of the note and security agreement by CCC.

§ 1427.19 Repayment of support price loans.

(a) Warehouse receipts will not be released except as provided in this section.

(b) A producer or agent or subsequent agent authorized on CCC Form 605, may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined in accordance with this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts and, if requested, the classification memoranda applicable to such cotton. The producer may also request that the warehouse receipts and classification memoranda be forwarded to a bank for payment, in which case:

(1) The amount of the loan, interest, and charges must be paid to the bank within 5 business days after the documents are received by the bank, and

(2) All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(c) A producer or agent or subsequent agent authorized on CCC Form 605, may repay the loan amount for one or more bales of cotton pledged as collateral for a loan:

(1) For upland cotton, at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for such bales; or

(ii) The higher of:

(A) The loan level determined for such bales multiplied by 70 percent for the 1991 and subsequent years crops; or

(B) The adjusted world price, as determined by CCC in accordance with § 1427.25, in effect on the day the repayment is received by the county office or authorized LSA that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

(d) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(e) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to part 1497 of this chapter.

(f) Notwithstanding any other provision in this part, if an upland cotton loan has been extended in accordance with § 1427.7(a)(2), and is repaid in accordance with paragraph (c)(1) of this section, the repayment amount shall include interest that has accrued on the cotton under loan in accordance with § 1427.7(b)(2).

(g) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

§ 1427.20 Handling payments and collections not exceeding $9.99.

To avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less will be paid to the producer only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be

disregarded unless demand for payment is made by CCC.

§ 1427.21 Settlement.

(a) The settlement of loans shall be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC.

(b) Settlements made by CCC with respect to eligible cotton which are acquired by CCC which are stored in an approved warehouse shall be made on the basis of the entries set forth on the applicable warehouse receipt and other accompanying documents.

(c) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall take title to the cotton in accordance with § 1427.7(c).

§ 1427.22 Death, incompetency, or disappearance.

In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any proceeds in settlement of a loan or loan deficiency payment, payment shall, upon proper application to the county office which disbursed the loan or loan deficiency payment, be made to the person or persons who would be entitled to such producer's payment as provided in the regulations entitled Payment Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, part 707 of this title.

§ 1427.23 Cotton loan deficiency payments.

(a) Producers may obtain loan deficiency payments for 1991 and subsequent crops of upland cotton in accordance with this section.

(b) In order to be eligible to receive such loan deficiency payments, the producer of such commodity must:

(1) Comply with all of the program requirements to be eligible to obtain loans in accordance with this part;

(2) Agree to forego obtaining such loans; and

(3) Otherwise comply with all program requirements.

(c) The loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the loan payment rate, as determined in accordance with paragraph (c) of this section by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan.

(d) The loan deficiency payment rate for a crop of upland cotton shall be the amount by which the level of price support loan determined for a bale of such crop exceeds the amount at which CCC has announced that producers may repay the price support loan for such bale.

(e) The total amount of any loan deficiency payments that a person may receive is subject to part 1497 of this chapter.

§ 1427.24 Recourse loans.

CCC may make recourse loans available to eligible producers. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

§ 1417.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton shall be determined by CCC as follows:

(1) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1 3/32 inch) cotton C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year ("current shipment price") and a price quotation for cotton for shipment no earlier than October/November of the current calendar year ("forward shipment price") are available for growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe ("Northern Europe current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe ("Northern Europe forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and the Northern Europe forward price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

(i) *Weeks 1 and 2:* (2 × Northern Europe current price) + Northern Europe forward price/3.

(ii) *Weeks 3 and 4:* Northern Europe current price + Northern Europe forward price/2.

(iii) *Weeks 5 and 6:* Northern Europe current price + (2 × Northern Europe forward price)/3.

(iv) *Week 7 through July 31:* Northern Europe forward price.

(3) The prevailing world market price for upland cotton as determined in accordance with paragraphs (a)(1) or (a)(2) of this section shall hereinafter be referred to as the "Northern Europe price."

(4) If quotes are not available for one or more days in the five-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by CCC.

(b) The prevailing world market price for upland cotton, adjusted in accordance with paragraph (c) of this section ("adjusted world price"), shall be applicable to the 1991 through 1995 crops of upland cotton.

(c) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with paragraph (a) of this section, adjusted as follows:

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined in accordance with paragraph (c)(1) of this section shall be adjusted to reflect the

price of Strict Low Middling (SLM) 1 1/16 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton ("U.S. base quality") by deducting the difference, as announced by CCC, between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

(3) The price determined in accordance with paragraph (c)(2) of this section shall be adjusted to average U.S. location by deducting the difference between the average loan rate for a crop of upland cotton of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for a crop of upland cotton of the U.S. base quality, as announced by CCC.

(4)(i) If it is determined that the prevailing world market price, as adjusted in accordance with paragraph (c)(1) through (c)(3) of this section, is less than 115 percent of the current crop year loan level for SLM 1 1/16 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton, and that the Friday through Thursday average price quotation for the lowest-priced U.S. growth as quoted for M 1 3/32 inch cotton C.I.F. northern Europe is greater than the Northern Europe price, such price may be adjusted on the basis of some or all of the following data, as available:

(A) The U.S. share of world exports;

(B) The current level of cotton export sales and/or cotton export shipments; and

(C) Other data determined by CCC to be relevant in establishing an accurate prevailing world market price determination adjusted to United States quality and location.

(ii) The adjustment may not exceed the difference between the Friday through Thursday average price for the lowest-priced U.S. growth as quoted for M 1 3/32 inch cotton C.I.F. northern Europe and the Northern Europe price.

(d) In determining the average difference in the 52-week period as provided in paragraph (c)(1) of this section:

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual cost shall be substituted in lieu thereof for such week.

(ii) Less than 85 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 85 percent of such actual cost shall be substituted in lieu thereof for such week.

(2) If a Thursday price quotation for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe is not available for any week, CCC:

(i) May use the available northern Europe quotation to determine the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets for that week, or

(ii) May not take that week into consideration.

(3) If Thursday price quotations for any week are not available for either,

(i) both the Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe, or

(ii) the average price of M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted in the designated U.S. spot markets, that week will not be taken into consideration.

(e) The adjusted world price for upland cotton, as determined in accordance with paragraph (c) of this section and the amount of the additional adjustment, as determined in accordance with paragraph (f) of this section, shall be determined weekly by CCC and shall be announced as soon as possible after 4 p.m. Eastern time each Thursday, beginning July 25, 1991, and continuing through the last Thursday of July 1996. In the event that Thursday is a nonworkday, the determination will be announced the next workday.

(f)(1) The adjusted world price, as determined in accordance with paragraph (c) of this section, shall be subject to further adjustments as provided in this subsection with respect to any grade of upland cotton with a staple length of 1 1/32 inch or shorter and the following grades of upland cotton with a staple length of 1 1/16 inch or longer:

(i) *White Grades*—Strict Good Ordinary Plus, Strict Good Ordinary, Good Ordinary Plus and Good Ordinary;

(ii) *Light Spotted Grades*—Low Middling and Strict Good Ordinary;

(iii) *Spotted Grades*—Middling, Strict Low Middling, Low Middling, and Strict Good Ordinary;

(iv) *Tinged Grades*—Strict Middling, Middling, Strict Low Middling and Low Middling;

(v) *Yellow Stained Grades*—Strict Middling and Middling;

(vi) *Light Gray Grades*—Strict Low Middling;

(vii) Gray Grades—Middling and Strict Low Middling. Grade and staple length must be determined in accordance with § 1427.9. If no such official classification is presented, the adjustment shall not be made.

(2) The adjustment for upland cotton provided for by paragraph (f)(1) of this section shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price, and

(A) During the period when only one daily price quotation for each growth quoted for "coarse count" cotton C.I.F. northern Europe is available the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe.

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for "coarse count" cotton C.I.F. northern Europe, the result calculated by the following procedure: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe ("Northern Europe coarse count current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe ("Northern Europe coarse count forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(*1*) *Weeks 1 and 2:* (2 x Northern Europe coarse count current price) +

Northern Europe coarse count forward price/3.

(2) *Weeks 3 and 4:* Northern Europe coarse count current price + Northern Europe coarse count forward price/2.

(3) *Weeks 5 and 6:* Northern Europe coarse count current price + (2 x Northern Europe coarse count forward price)/3.

(4) *Week 7 through July 31:* The Northern Europe coarse count forward price, minus:

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton and the loan rate for a crop of upland cotton for SLM 1 1/32 inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton.

(iii) The result of the calculation as determined in accordance with this paragraph (f)(2) shall hereinafter be referred to as the "Northern Europe coarse count price."

(3) With respect to the determination of the Northern Europe coarse count price in accordance with paragraph (f)(2)(i) of this section:

(i) If no quotes are available for one or more days of the five-day period, the available quotes will be used.

(ii) If quotes for three growths are not available for any day in the five-day period, that day will not be taken into consideration; and

(iii) If quotes for three growths are not available for at least three days in the five-day period, that week will not be taken into consideration, in which case the adjustment determined in accordance with paragraph (f)(2) of this section for the latest available week will continue to be applicable.

(g) If the 6-week transition periods from using current shipment prices to using forward shipment prices in the determination of the Northern Europe price in accordance with paragraph (a)(2) of this section, and the Northern Europe coarse count price in accordance with paragraph (f)(2)(i)(B) of this section do not begin at the same time, CCC shall use either current shipment prices, forward shipment prices, or any combination thereof, to determine the Northern Europe price and/or the Northern Europe coarse count price used in the determination of the adjustment for upland cotton provided for by paragraph (f)(1) of this section and determined in accordance with paragraph (f)(2) of this section, in order to prevent distortions in such adjustment.

(h) The adjusted world price, determined in accordance with paragraph (c) of this section, shall be subject to further adjustments, as determined by CCC based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced in accordance with the upland cotton price support loan program for a crop of upland cotton.

§ 1427.26 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations will be submitted to the Office of Management and Budget in accordance with 44 U.S.C. chapter 35 and an OMB number will be assigned.

Subpart—Seed Cotton Loan Program Regulations.

§ 1427.160 General Statement.

(a) The regulations in this subpart are applicable to the 1991 and subsequent crops of upland and extra long staple (ELS) seed cotton. Such loans will be available through March 31 of the year following the calendar year in which such crop is normally harvested. This is the loan availability period. CCC may change the loan availability period to conform to State or locally imposed quarantines. Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Price support rates and the forms which are used in administering the program for a crop of upland and ELS cotton are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively). Price support rates shall be based upon the location at which the loan collateral is stored.

(c) A producer must, unless otherwise authorized by CCC, request price support at the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support at a servicing agent bank approved by CCC. All note and security agreements and related documents necessary for the administration of the price support programs shall be determined by CCC and are available at State and county offices.

(d) price support loans shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.161 Administration.

Section 1427.2 of this part shall be applicable to this subpart.

§ 1427.162 Definitions.

Section 1427.3 of this part shall be applicable to this subpart.

§ 1427.163 Disbursement of loans.

(a) A producer or the producer's agent shall request a loan at the county office for the county which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced, which will assist the producer in completing the loan documents, except that approved cooperatives designated by producers to obtain loans in their behalf may obtain loans through a central county office designated by the State committee.

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced except that approved cooperatives designated by producers to obtain loans in their behalf may obtain disbursement of loans at a central county office designated by the State committee. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, shall promptly return the proceeds.

§ 1427.164 Eligible producer.

Section 1427.4 of this part shall be applicable to this subpart.

§ 1427.165 Eligible seed cotton.

(a) Cotton pledged as collateral for a loan must be tendered to CCC by an eligible producer and must be:

(1) In existence and in good condition at the time of disbursement of loan proceeds;

(2) Stored in identity preserved lots in approved storage meeting requirements of § 1427.171; and

(3) Insured at the full loan value against loss or damage by fire.

(4) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan; and

(5) Not have been previously sold and repurchased; or pledged as collateral for a CCC price support loan and redeemed.

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS), Cotton Classing Office, the quality for the lot shall be the quality shown on the AMS Form 1 or Form 3 classification card issued for the control sample.

(c) To be eligible for price support, the beneficial interest in the commodity must be in the producer who is pledging the commodity as collateral for a loan as provided in § 1427.5(c).

§ 1427.166 Insurance.

The cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

§ 1427.168 Offsets.

(a) If any installment on any loan made by CCC on farm-storage facilities or drying equipment is due and payable such amount due to CCC shall be offset from loan proceeds made available to the producer in accordance with this part, after deduction of clerk fees, service charges, research and promotion fees.

(b) If the producer is indebted to CCC or any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under regulations in this subpart, after deduction of amounts payable under paragraph (a) of this section shall be applied to such indebtedness as provided in part 3 of this title and part 1403 of this chapter.

§ 1427.169 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

§ 1427.170 Quantity for loan.

(a) The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined in accordance with paragraph (b) of this section.

(b) The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout factor shall not exceed 32 percent for machine picked cotton and 22 percent for machine stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) Loans shall not be made on more than a percentage established by the county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basic of one or more of the following risk factors:

(1) Condition or suitability of the storage site or structure,

(2) Condition of the cotton,

(3) Location of the storage site or structure, and

(4) Other factors peculiar to individual farms or producers which related to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer's request.

§ 1427.171 Appoved storage

Approved storage shall consist of storage located on or off the producer's farm (excluding public or commercial warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, of an approved gin. If the cotton is stored off the producer's farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton. The producer must provide satisfactory evidence that the producer and any person having an interest in the cotton including CCC, have the right to enter the premises to inspect and examine the cotton and shall permit a reasonable time to such persons to remove the cotton from the premises.

§ 1427.172 Settlement

(a) A producer may, at any time prior to maturity of the loan, obtain release of all or any part of the loan cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer's agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from the county committee for removal of such cotton. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cottonseed obtained therefrom. The ginner shall inform the county office in writing immediately after the cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan interest and charges thereon must be satisfied not later than the earlier of:

(i) The date established by the county committee;

(ii) 5 days of the date of the producer received the AMS classification in accordance with § 1427.9 (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or

(iii) The loan maturity date.

(2) If the seed cotton or lint cotton is sold, the loan, interest, and charges must be satisfied immediately.

(3) A producer, except a cooperative, may obtain a warehouse stored loan in accordance with this part, on the lint cotton, but the loan, interest, and charges on the seed cotton must be satisfied out of the proceeds of the warehouse stored loan.

(4) An approved cooperative must repay the seed cotton loan, interest, and charges before pledging the cotton for a warehouse stored loan. If approved cooperatives authorized by producers to obtain loans in their behalf remove seed cotton from storage prior to obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless:

(i) The cooperative notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnished CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan, plus interest and charges within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the cotton or to release the producer or approved cooperative from liability for the loan, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately so notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan, plus interest and charges on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a warehouse-stored loan on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the cotton shall be considered abandoned.

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been ginned and pledged as collateral for a warehouse-stored loan in accordance with this part by the loan maturity date may be removed from storage by CCC and ginned and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon such terms as CCC may determine at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds are less than the amount due on the loan (including interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference and there shall be no obligation on the part of CCC to pay for any proceeds which may be in excess of the loan amount including interest and other charges.

§ 1427.174 Maturity of loans.

Seed cotton loans mature on demand by CCC but no later than May 31 following the calender year in which such crop is normally harvested.

§ 1427.175 Restrictions in use of agents.

A producer shall not delegate to any person, or the person's representative, who has any interest in storing, processing, or merchandising any commodity which is otherwise eligible for price support or a loan deficiency payment under a program to which this section is applicable, authority to exercise on the behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement or other price support document, unless the person (or the person's representative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer or unless the authority delegated is restricted specifically for the purpose of repaying the loan amount and charges plus interest or, for the purpose of extending the loan or, for the purpose of obtaining loan deficiency payments, and such delegation is filed through the execution of Form ASCS–211, Power of Attorney, or other form as approved by CCC, with the county office and accepted by CCC.

Note: The following Attachment 1 will not appear in the Code of Federal Regulations.

Signed this August 15, 1991, in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

BILLING CODE 3410-05-M

ATTACHMENT 1

CCC-605

(07-31-91)

Form Approved - OMB No. 0560-0074

USDA-CCC

DESIGNATION OF AGENT - UPLAND COTTON

The producer must complete Items 1-6.

PART A - LOAN AND AGENT DATA

1. PRODUCER'S NAME AND ADDRESS	2. AGENT'S NAME AND ADDRESS	3. COUNTY OFFICE HOLDING WAREHOUSE RECEIPTS
4. Maturity Date	5. Loan Number	6. Crop Year

PART B - DESIGNATION OF AGENT FOR LOAN REDEMPTION

THE UNDERSIGNED PRODUCER(S) ("PRODUCER") hereby authorizes the undersigned agent or subsequent agent transferred by endorsement on the reverse side of this form, to redeem all or a portion of the cotton pledged as collateral for the loan identified in Part A. The Producer agrees that no other Form CCC-605 has been or will be executed with respect to such cotton. If this form covers all the warehouse receipts pledged as security for the loan as described in Part A, mark "all" in Item 7. If this form is for only some of the warehouse receipts pledged as security for the loan, mark "see CCC-605-1 or attached list" and enter the bale receipt number(s) in numerical order on Form CCC-605-1 or other list properly dated and signed by the producer. Attach CCC-605-1 or other list to this form.

7. LOAN QUANTITY APPLICABLE TO THIS AGREEMENT:	8. NUMBER OF BALES
ALL ☐ See CCC-605-1 or attached list ☐	

Title to the cotton shall, without a sale thereof, immediately vest in CCC upon maturity of the loan. CCC shall have no obligation to pay for any market value which the cotton may have in excess of the amount of the loan. CCC may sell, transfer and deliver the cotton or documents evidencing title thereto at such time, in such manner, and upon such terms and conditions as CCC may determine, without demand, advertisement, or notice of the time and place of sale. CCC does not guarantee that the cotton subject to this agreement will be permitted to be redeemed at a level lower than the original loan level if the producer has exceeded statutory payment limitation amounts. Unless the producer's name and address are shown exactly as they appear on the Note and Security Agreement for the loan identified in Part A, this document is void.

9 A. SIGNATURE OF PRODUCER	DATE	9 C. SIGNATURE OF PRODUCER	DATE
9 B. SIGNATURE OF PRODUCER	DATE	10. SIGNATURE OF AGENT	DATE

PART C - DESIGNATION OF AGENT FOR LOAN EXTENSION

With respect to the loan identified above, if the Producer has executed Part B of this form, the undersigned Producer does also hereby appoint the agent identified in Item 2 as the Agent to act on behalf of the undersigned Producer to extend the loan identified above when extensions are authorized by CCC. Such Agent is authorized to appoint another person to act as said Agent for the undersigned Producer. The designation of such other person shall be transferred by endorsement on the reverse side of this form.

11 A. SIGNATURE OF PRODUCER	DATE
11 B. SIGNATURE OF PRODUCER	
11 C. SIGNATURE OF PRODUCER	

SAMPLE COPY

NOT FOR REPRODUCTION

REMARKS

NOTE

These statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552a). The authority for requesting the information to be supplied on this form is the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act, as amended. Furnishing the data is voluntary; however, without it assistance cannot be provided. The information will be used to determine who may repay or extend cotton price support loans. This information may be furnished to any agency responsible for enforcing the provisions of the upland cotton program.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0074), Washington, D.C. 20503.

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or handicap.

[FR Doc. 91-19963 Filed 8-22-91; 8:45 am]

BILLING CODE 3410-05-C

Farmers Home Administration

7 CFR Parts 1944 and 1951

RIN 0575-AA87

Section 502 Rural Housing Loan Policies, Procedures and Authorizations; Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to include a deferred payment mortgage option in the Rural Housing loan making program. The intended effect is to make home ownership affordable for a greater number of very low-income families. This action is being taken to implement the requirements of the Cranston-Gonzalez National Affordable Housing Act. This Act authorized, subject to funding approval in appropriations Acts, a Deferred Mortgage Demonstration program for fiscal years 1991 and 1992. The Act also mandated that this program be implemented within 120 days of the date of enactment of the Act.

DATES: This action is effective on August 23, 1991. Comments must be received on or before October 22, 1991.

ADDRESSES: Submit written comments to the Office of the Chief, Regulation Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th and Independence SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address. The reporting and recordkeeping requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 2 hours per response, with an average of 1.4 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room, 404-W, Washington, DC 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ray McCracken, Senior Loan Specialist, Farmers Home Administration, USDA, room 5334-S, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone (202) 382-1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions, or significant adverse effects on competition, employment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion

It is the policy of the Department to publish notice of proposed rulemaking with a comment period before rules are issued even though 5 U.S.C. 553 exempts rules relating to public property, loan, grants, benefits, or contracts. However, exemptions are permitted where an Agency finds, for good cause, that compliance would be impracticable, unnecessary or contrary to the public interest. This rulemaking package is issued to implement portions of Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, which required implementation within 120 days of enactment. Because of this short time frame, this rulemaking document is issued as an interim final rule.

Section 534 of the Housing Act of 1949 requires that all rules and regulations issued pursuant to that Act must be published for public comment. The one exception is for a rule or regulation issued on an emergency basis. This action is not published for proposed rule making since it involves an emergency situation because there is not enough time to go through the proposed rulemaking process and still be able to establish a deferred payment mortgage option that would function in this fiscal year as intended by the Cranston-Gonzalez National Affordable Housing Act. By implementing the regulations as an interim final rule, it will permit FmHA to assist the maximum number of very low-income families needing deferred payment assistance. The time period FmHA will have to evaluate the program will also increase. Comments will be accepted for a 60-day period after this interim rule. FmHA will consider such comments before issuing a final rule.

The Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, provides for a program, subject to approval in appropriation Acts, whereby not more than 10 percent of the Section 502 rural Housing funds will be used to carry out a deferred mortgage program. This program will be used for applicants, who are otherwise eligible for the Section 502 program, but lack repayment to afford the mortgage payments when amortized at 1 percent for a 38 year period. The amount deferred will not exceed 25 percent of the mortgage payment due at 1 percent interest. Deferred mortgage payments will be converted to repayment status as soon as the borrower has the repayment ability. Any amount that remains unpaid at the time of termination of the mortgage is subject to recapture.

FmHA grants interest credit on loans to low- and very low-income borrowers to assist them in obtaining and retaining decent, safe, and sanitary Housing. This interest is subject to recapture when the loans are paid. The deferred payment mortgage option is being added to the interest credit program to make Housing more affordable for very low-income families. Many of the features of interest credit are applicable to the deferred payment mortgage option including the requirement that the deferred amounts are subject to recapture. Under the interest credit program, the borrower's payment is the greater of: the difference between 20 percent of the borrower's adjusted annual income plus taxes and insurance, or the difference between the annual installment due on the promissory note and the loan amortized at an interest rate of 1 percent. The deferred mortgage option is available to those borrowers that would be required under the interest credit program to pay in excess of 20 percent of their adjusted family income after they have received maximum interest credit.

The term of the deferred mortgage payment loan is 38 years, or 30 years for a manufactured home. This term was chosen to provide borrowers an extended repayment period with lowest possible amortized payments. Borrowers under the deferred mortgage program may be eligible for deferred payments up to 15 years after the effective date of the initial interest agreement. This was

done to provide borrowers a reasonable time period to improve their income, yet have sufficient time to pay the loan by the end of amortization period. During the 15 years maximum period for deferral the portion of the payment to be deferred will consist primarily of interest, but may include principal. No interest will accrue on the deferred interest. Any deferred principal will accrue interest at a 1 percent rate.

Instructions are included for servicing accounts with deferrals, handling the deferred portion after various servicing actions have been used, and collecting the deferred portion of the payments when the borrower is eligible for repayment. Borrowers with deferred mortgage payments are eligible for all servicing actions.

Regulatory Flexibility Act

La Verne Ausman, Administrator of Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect FmHA processing of section 502 loans and individual applicant eligibility for the program.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Programs Affected

This program is listed in the catalog of Federal Domestic Assistance under 10.410, Low Income Housing Loans.

Intergovernmental Consultation

For the reason set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects

7 CFR Part 1944

Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile Homes, Mortgages, Rural Housing, Subsidies.

7 CFR Part 1951

Accounting, Housing, Loan programs—Housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.35 is added to read as follows:

§ 1944.35 Deferred mortgage payments.

(a) *General.* It is the policy of FmHA to defer up to 25 percent of the payment, calculated at 1 percent interest rate, due on loans to qualified borrowers, to assist them in obtaining decent, safe, and sanitary dwellings and related facilities. Only principal and interest can be deferred. When FmHA contracts out servicing, all actions assigned to the County Supervisor may be performed by the contractor, except approval or cancellation of deferrals.

(b) *Approval authority.* FmHA officials authorized to approve section 502 loans are also authorized to approve the deferral.

(c) *Eligibility.* In order to qualify for deferred mortgage payments under this section, the following conditions must exist:

(1) The borrower's adjusted family income, at the time of initial loan approval, does not exceed the applicable very low-income limits in exhibit C of this subpart.

(2) The term of the loan is 38 years, or 30 years for manufactured housing units,

(3) The borrower's payment at 1 percent interest, plus real estate taxes and insurance, exceeds 20 percent of the adjusted family income by more than $5 per month, and

(4) Deferral under this section is granted at the time of initial loan closing, and for renewal

(5) Annually, the borrower received deferment assistance and it is within 15 years of the effective date of the initial interest credit agreement.

(d) *Amount and terms of deferral.* (1) No more than 25 percent of the amount of the payment due at 1 percent interest shall be deferred.

(2) The deferral amount is determined as follows:

(i) The borrower will be granted the maximum interest credit allowable under § 1944.34 of this subpart.

(ii) That portion of the principal and interest payment, amortized at 1 percent, plus real estate taxes and homeowner's insurance premiums (or escrow amounts for taxes and homeowner's insurance premiums due during the current year, where applicable), in excess of 20 percent of the borrower's adjusted family income may be deferred, up to 25 percent of the monthly payment calculated at 1 percent interest rate.

(iii) Only regularly scheduled principal and interest payments, and real estate taxes and insurance bills due for the current year will be included when calculating the amount of payment to be deferred. Protective advances, additional payment agreements, and other payment agreements will not be considered.

(3) Deferrals will be effective for a 12 month period. The effective date shall coincide with the anniversary date of an interest credit agreement processed. Deferred payments may be continued for up to 15 years after the effective date of the initial interest credit agreement.

(4) Interest deferred will not accrue interest. Any principal deferred will accrue interest at a 1 percent rate. Interest payments deferred under this section cannot be converted to principal through reamortization or other servicing action.

(e) *Review process.* The borrower's income will be reviewed annually to determine if the borrower is eligible for continued payment deferral and interest credit benefits. The review for both benefits shall be performed at the same time. Deferrals will be effective for a 12 month period.

(1) *Annual review.* The annual review will be scheduled to take place during the interest credit review period as defined in § 1944.34 of this subpart.

(2) *Reviews outside of the regular review period.* It is not the responsibility of the FmHA to monitor changes in the borrower's income. If a borrower whose payments are being deferred experiences a change in income that qualifies under § 1944.34(i)(3) of this subpart for a change in interest credit, the amount of deferral may also be changed.

(3) *Responsibilities of the borrower.* The borrower is responsible for providing FmHA with the following before a deferral can be approved:

(i) Income verification, considered satisfactory by FmHA,

(ii) The information needed to complete the deferral section of Form FmHA 1944–6 and signing the form, and

(iii) An interview to review the deferral information, either in person or by telephone.

(4) *Responsibilities of the FmHA.* (i) The Finance Office will indicate on the interest credit renewal report sent to the County Office, which borrowers currently have payment deferrals which must be reviewed and that have one year of eligibility remaining.

(ii) If a borrower fails to respond to the interest credit or deferral renewal letter, a second notice will be sent by certified mail, return receipt requested. The returned receipt will be kept in the casefile.

(iii) An FmHA employee or contractor will determine the borrower's payment and document the calculations on a form designated by FmHA.

(iv) Accept the borrower's reported real estate tax and property insurance expenses, unless uncharacteristic for the area, or the payment is being escrowed. Payment deferrals will not be delayed solely because of the borrower's failure to provide paid receipts for these expenses.

(f) *Cancellation of deferral.* Deferrals may be canceled for any of the conditions outlined in § 1944.34(k) of this subpart. The same effective dates of cancellations will be used and appeal rights will be granted in accordance with paragraph (h) of this section. Deferred payments may be continued for up to 15 years after the effective date of the initial interest credit agreement. After this time period, the borrower is no longer eligible for deferred payments.

(g) *Notification of deferral requirements.* (1) The applicant will be notified, through the mortgage subsidy paragraph of Form FmHA 1944–6, that the mortgage payment deferral is subject to repayment and/or recapture.

(2) For all loans receiving payment deferral, until the mortgage forms are revised, the following additional covenant will be inserted above the signature line on the mortgage and be initialed at loan closing by all parties signing the mortgage:

This instrument also secures the recapture of any deferred principal and interest which may be granted to the borrower(s) pursuant to § 502(g) of the Housing Act of 1949, as amended.

(h) *Appeal/review rights.* Because the deferral regulations are based on the objective application of formulas, deferral calculations are not appealable, however, a review may be requested. Borrowers who request and are denied mortgage payment deferral, or whose deferral amount has been reduced, cancelled, or not renewed based on contested income calculations, will be notified of their appeal rights as required by Subpart B of Part 1900 of this chapter. If a decision is not appealable, such as decisions based on verified income or clear and objective statutory or regulatory requirements, the applicant or borrower will receive review rights in accordance with subpart B of part 1900 of this chapter.

2a. Section 1944.50 is removed and reserved to read as follows:

§ 1944.50 [Reserved]

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart G—Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts

4. Section 1951.309 is amended by revising introductory text in paragraph (b)(1), paragraphs (b)(1)(v) and (b)(3), and adding paragraph (b)(1)(vi) to read as follows:

§ 1951.309 Receiving and applying payments.

* * * * *

(b) *Application of payment*—(1) *Regular payments.* Regular payments are all payments other than extra payments and refunds and include the items in paragraphs (b)(1) (i) through (vi) of this section. All direct payments are considered regular payments. Regular payments will be applied by FmHA in the following order of priority:

* * * * *

(v) Scheduled repayment of deferred mortgage payments, if applicable.

(vi) Principal on the note account.

* * * * *

(3) *Extra payments and refunds.* Payments derived from cash proceeds of real property insurance, the sale or refinancing of real estate not mortgaged to the Government, or similar transactions are considered extra payments. Refunds are the return of unused loan or grant funds. Extra payments and refunds will be credited to the borrower's note account(s) as of the date of Form FmHA 451–2, "Schedule of Remittance," and will be applied as prescribed in paragraphs (b)(1)(iv), (v) and (vi) of this section. Extra payments and refunds do not relieve borrowers from making their next scheduled payment.

* * * * *

5. Section 1951.313 is amended by revising the introductory text of paragraphs (g) and revising paragraph (i) to read as follows:

§ 1951.313 Moratoriums.

* * * * *

(g) *Action at the end of the moratorium period.* At the end of the moratorium period, FmHA will verify the borrower's annual income and obtain a current budget to determine the borrower's repayment ability. The borrower will be advised by letter of the action taken, the reasons for the action, and the new repayment schedule. Loans with a portion of the payment deferred under § 1944.35 of subpart A of part 1944 of this chapter will be handled in accordance with this paragraph and § 1951.330 of this subpart.

* * * * *

(i) *Interest accrual.* Interest will accrue during the moratorium at the rate shown on the promissory note as modified by any Interest Credit Agreement in effect. Interest credit will be granted and renewed throughout the period a moratorium is in effect for borrowers eligible for interest credit as authorized in subpart A of part 1944 of this chapter. Interest on the principal portion of deferred mortgage payments will accrue at the rate of 1 percent.

* * * * *

6. The introductory text of § 1951.314 is amended by adding a new last sentence to read as follows:

§ 1951.314 Reamortizations.

* * * loans with a portion of the payments deferred under § 1944.35 of subpart A of part 1944 of this chapter may be reamortized in accordance with § 1951.330 of this subpart.

* * * * *

7. Section 1951.330 is added to read as follows:

§ 1951.330 Servicing loans with deferred mortgage payments.

This section describes servicing of loans with a portion of the payments deferred under § 1944.35 of subpart A of part 1944 of this chapter.

(a) *General servicing.* (1) Borrowers who have loans with deferred payments are eligible for all servicing actions.

(2) Borrowers who have loans with deferred payments whose accounts become delinquent will be serviced in accordance with § 1951.312(e) of this subpart.

(3) Interest deferred will not accrue interest. Any principal deferred will accrue interest at a 1 percent rate.

(b) *Repayment of deferred mortgage payments.* (1) When 20 percent of the borrower's adjusted family income exceeds the full note rate payment, plus taxes and insurance premium, the borrower is required to begin repaying the deferred portion of the payments.

(2) The amount of payment will be calculated by subtracting the full note rate payment, real estate taxes and insurance premiums from twenty percent of the adjusted family income.

(3) The borrower will execute a new form designated by FmHA based on the amount calculated in paragraph (b)(2) of this section.

(4) The borrower's household income will continue to be verified annually, and a new form designated by FmHA executed annually, at the time of review. If the borrower experiences a change in household income, changes may be made in the repayment of deferred payments in accordance with the guidelines provided in § 1944.34 of subpart A of part 1944 of this chapter.

(5) The borrower will continue to pay the deferred installment, based on 20 percent of the adjusted household income, until the deferred payments are paid in full, or the mortgage is terminated and the total deferment is recaptured.

(c) *Reamortization.* Loans with a portion of the payments deferred under § 1944.35 of subpart A of part 1944 of this chapter may be reamortized under the conditions set forth in § § 1951.313 and 1951.314 of this subpart. However, the deferred portion of the interest payments will not be converted to principal and capitalized.

(d) *Recapture.* If the borrower sells or otherwise transfers title of the property to another party before the total amount deferred is repaid, deferred mortgage payments not already repaid are included in total subsidy granted, and recapture will be calculated in accordance with subpart I of this part.

Dated: June 14, 1991.

Jonathan I. Kislak,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc. 91-20128 Filed 8-22-91; 8:45 am]

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DEPARTMENT OF JUSTICE

8 CFR Parts 103 and 274a

[INS No. 1259R-90]

RIN 1115-AB73

Powers and Duties of Service Officers; Availability of Service Records, Control of Employment of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 8 CFR parts 103 and 274a by providing technical as well as substantive amendments to the rules governing employer sanctions and employment authorization. This rule is necessary to incorporate changes caused by new legislation and case decisions, as well as the experience gained in implementing the employer sanctions program during the first four years. The rule gives further guidance to the public through expanded definitions, clarification of certain requirements of the employment verification system, and revision of documentary procedures used to verify the identity and employment eligibility of new employees.

EFFECTIVE DATE: November 21, 1991.

FOR FURTHER INFORMATION CONTACT: Michael J. Creppy, Deputy General Counsel, Immigration and Naturalization Service, 425 Eye Street, NW., room 7048, Washington, DC 20536, telephone (202) 514-3195.

SUPPLEMENTARY INFORMATION: Part 274a, which was published as a final rule in the **Federal Register** on May 1, 1987, at 52 FR 16216, with an effective date of June 1, 1987, was necessitated by the Immigration Reform and Control Act of 1986, Public Law 99-603 (hereinafter "IRCA"), which amended the Immigration and Nationality Act (hereinafter "the Act") by adding provisions relating to the control of employment of aliens in the United States. These provisions make it unlawful for a person or entity to knowingly hire, recruit or refer for a fee, for employment in the United States aliens who are not authorized to work in the United States. Since implementation on June 1, 1987, of part 274a of title 8 of the Code of Federal Regulations, the U.S. Immigration and Naturalization Service (hereinafter "INS" or "the Service") received numerous comments and proposals on the regulations recommending certain amendments and revisions to clarify the language in that final rule and in a related section of title 8 Code of Federal Regulations. As a result, the INS published an interim final rule with request for comments on June 25, 1990, (hereinafter "interim final rule"). Although the comment period ended on July 25, 1990, the INS considered comments that were received after this date. What follows is a section-by-section analysis of the final revisions to the interim final rule and a discussion of comments concerning the sections to which they apply.

1. General Comments

Some general comments were critical of the regulation being published in interim final form. Three commenters stated that it was improper for the Service to publish interim regulations and make them effective on the date of publication. Concern was expressed that post-promulgation comments would not be seriously considered by the agency. However, the scope and specificity of this Supplementary Information section reflect the care and deliberation that the Service has given to each and every comment submitted, including those received after the comment deadline. The comments next noted that since there was no statutory deadline by which the Service was obligated to effectuate the changes, these regulations need not have been published in interim final form. To the contrary, the standardized application for employment authorization (Form I-765), the fee associated with this document, and the standardized Employment Authorization Document (EAD) (Form I-688B) were already in effect, and the regulations were required to be amended in order to support their existence. The commenters also stated that the changes will exacerbate the employer confusion that was cited in the third GAO report (GAO/GGD-90-62, March 29, 1990). The INS is cognizant that employer understanding of the employer sanctions statute and regulations is crucial to achieving the Service's stated goal of voluntary compliance. To that end, the INS has published this final rule after careful consideration of all comments.

More specifically, one commenter stated that the rules should not be effective until the Interagency Task Force can review them. The Service is unable to locate any legal support for the proposition that any task force should review the regulations promulgated by this agency. Another commenter stated that since the regulations have a significant impact on a substantial number of small entities, a regulatory flexibility analysis should have been done. The service disagrees that this final rule will have a significant

impact on a substantial number of small entities. This final rule merely provides technical and procedural changes to the employer sanctions provisions that have been in effect since June 1, 1987. The Service notes that 5 U.S.C. 603 requires an initial regulatory flexibility analysis. This analysis was done at the time that part 274a was originally proposed. 5 U.S.C. 604 also requires a final regulatory flexibility analysis that includes a succinct statement of the need for, and the objectives of, the rule, a summary of the public comments and the agency's analysis thereof, and a description of the significant alternatives. In any event, since 5 U.S.C. 605(a) allows this analysis to be done in conjunction with, or as part of, any other analysis required by law, this Supplementary Information section would satisfy this requirement.

One commenter suggested that the Office of Management and Budget (OMB) should have approved the information collection requirements of the interim final rule. OMB did approve the information collection requirements when the regulations governing the employment verification system were originally promulgated. The changes made by the interim final rule and those made by this final rule do not materially alter the information collection requirements as originally set forth in the May 1, 1987, regulations. The rule still requires employers to verify the identity and employment eligibility of all employees by completion of the Form I–9. However, only those recruiters and referrers for a fee who are agricultural associations, agricultural employers or farm labor contractors need to complete the Form I–9 for individuals recruited or referred for a fee. The same information is required to be collected, and the amount of time to complete the form is unchanged. In addition, OMB has separately approved the collection of information on Form I–765 until August 1993.

Two commenters noted that although published on June 25, 1990, the rule was dated by the Commissioner on March 16, 1990. This passage of time is attributable to the intense internal scrutiny that the rule received before publication. This internal review continued beyond the date of signature and even beyond March 29, 1990, the date of the third GAO report, and April 24, 1990, the date the INS submitted a request for an extension of the current Form I–9 to OMB. One commenter suggested that the interim final rule was published in June to undercut the ability of small businesses to comment "because early summer is the most popular vacation time." Without expressing a view on what is the most popular vacation time, the Service rejects the notion that the publication of the interim final rule was timed so as to deny any opportunity for public comment.

One commenter cited to the lack of publicity associated with the changes effectuated by the interim final rule, and stated that "[p]ublication only in the **Federal Register** is no way to inform millions of small businesses." This commenter ignored long-standing precedent that the public is held to be on notice of all material published in the **Federal Register.** In addition, the Service recognizes that increased public education, through a revised Handbook for Employers (Form M–274) or some other informational brochure, will assist employers in understanding the changes made by this final rule. The dissemination of the revised Form M–274 will be timed to coincide with the effective date of this final rule.

Finally, during review of the public comments to the interim rule, the Immigration Act of 1990, Public Law 101–649 (November 29, 1990) (hereinafter "the Immigration Act of 1990") was enacted. This law, *inter alia,* eliminated the employment verification requirements for all recruiters and referrers for a fee except agricultural employers, agricultural associations and farm labor contractors, and gave access to Forms I–9 to the Office of Special Counsel for Immigration-Related Unfair Employment Practices. This final rule merely mirrors these two statutory changes.

2. Reopening or Reconsideration

Section 103.5 paragraph (a) was amended in the interim final rule to make it clear that motions to reopen are not applicable to employer sanctions cases commenced under section 274A of the Act. Contrary to the views of one commenter, the Service believes the plain language of the statute dictated this change. Section 274A(e)(3)(A) of the Act states that the absence of a timely request for hearing (defined at 8 CFR 274a.9(d) as a written request received by the designated Service office within thirty days) "the Attorney General's imposition of the order *shall* constitute a final and unappealable order." (Emphasis added). One commenter stated that "the taking of summary judgment 30 days after the NIF [Notice of Intent to Fine] is akin to a default judgment taken in civil court for failure to answer a lawsuit in time." A Final Order (Form I–764) is issued in the absence of a timely request for hearing. The Service rejects the idea that this process is in any way akin to summary judgment, which, under the Federal Rules of Civil Procedure, is entered only after the pleadings filed by both sides indicate that there is no genuine issue of material fact to be tried. The Service also disagrees that issuance of a Final Order is analogous to a default judgment. Issuance of a Final Order occurs much earlier in the process. Unlike a civil cause of action, the Service, as the complainant, issues the charging document (NIF). Congress determined that in the absence of a timely, written request for hearing, the Service *shall* issue a final, unappealable order. Although one commenter suggested that "[d]eadlines must be allowed to be extended for reasonable cause," failure to timely request a hearing mandates the issuance of a final, unappealable order. Finally, one commenter correctly points out that 8 CFR 103.5(a) was amended May 21, 1990, [55 FR 20770] with an effective date of June 20, 1990. Therefore, this final rule reproduces the amendment effective June 20, 1990, and also incorporates the amendment intended by the publication of the interim final rule on June 25, 1990.

3. Definition of "Hire"

Section 274a.1 paragraph (c) defines the term "hire." The interim final rule was intended to ensure that the term incorporated the use of labor through contract. Resort to the legislative history is instructive on this point.

> The Committee does not intend to impose a continuing verification obligation on employers. However, if an employer has knowledge that an alien's employment becomes unauthorized due to a change in nonimmigrant status, or that the alien has fallen out of a status for which work permission is authorized, sanctions would apply.
>
> H.R. Rep. No. 682, Part 1, 99th Cong., 2d Sess. 57 (1986), reprinted in 1986 U.S. Code Cong. & Admin. News 5649, 5661.
>
> Some sanctions laws of foreign countries have proved to be ineffective because of loopholes which enable the use of subcontractors to avoid liability [sic]. The Committee intends to prevent any such loophole in the instant legislation. To accomplish this objective, the bill specifically provides that an employer "who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of enactment * * * to obtain the labor of an alien in the United States knowing that the alien is an unauthorized (undocumented) alien" shall be considered to have hired the alien for employment.
>
> *Id.* at 62, reprinted in 1986 U.S. Code Cong. & Admin. News 5649, 5666. These passages make it clear that the coverage

of the fictitious hire set forth at section 274A(a)(4) of the Act is to be broadly construed. A contract that pre-dated IRCA could still form the basis of an unlawful hire if it was renegotiated or extended after November 6, 1986. This is unlike a true employer-employee scenario, in which an employer may lawfully continue to employ any individual, including an unauthorized alien, who has been continuously employed since prior to the enactment of IRCA.

One commenter expressed uncertainty about the Service's emphasis on the word "use." The Service intends to make it clear the operative term in the statute is use of the contract, a term that is significantly broader than entry into a contract. The commenter suggested that the "use" of a contract "to obtain" the labor of an unauthorized alien means that an employer who gains knowledge of the unauthorized status of an independent contractor (or that contractor's employees) after entering into the contract is not liable for knowingly hiring an unauthorized alien. However, such an interpretation would encourage individuals entering into a contract for labor or services to intentionally avoid learning of the employment eligibility of the contractor or the contractor's employees. In addition, the statute clearly indicates that a violation may occur after entry into the contract, since it speaks of renegotiation and extension of preexisting contracts. The commenter also suggested that the regulation is *ultra vires* since the use of labor through contract [section 274A(a)(4) of the Act] is only a knowing hire violation [section 274A(a)(1)(A) of the Act] and not a knowingly continue to employ violation [section 274A(a)(2) of the Act]. The commenter's premise supporting the argument that this rule is *ultra vires* is incorrect. The employment scenario described in section 274A(a)(4) of the Act is not, in fact, an employer-employee relationship. Congress legislatively converted that scenario into a "hire" for employer sanctions purposes to close a potential loophole in the law. The reference to section 274A(a)(1)(A) of the Act merely reflects that this "fictitious hire" created by operation of section 274A(a)(4) of the Act is a violation of the prohibition against knowingly hiring, and not knowingly continuing to employ, an unauthorized alien.

4. Definition of "Employment"

Section 274a.1 paragraph (h) defines the term "employment." One commenter suggested that the interim final rule "unjustifiably expands the extraterritorial reach of the statute and impermissibly burdens international commerce." Specifically, the commenter stated that this section "would presumably require Form I–9 completion even if the only services or labor rendered by the ship or aircraft personnel occurred in international waters or airspace, and personnel were seeking entry in B–1 or B–2 rather than D status." The Service intended to clarify what is defined as employment in the United States, since only that type of employment is covered by the employer sanctions provisions. For employer sanctions to apply, the vessel must have: (1) Arrived in the United States and (2) been inspected. Arrival occurs when the vessel crosses into the territorial waters, defined for employer sanctions purposes as up to three miles from the coastline. The Service agrees with the commenter that "the vessel's arrival and inspection [serves] as the triggering act invoking IRCA." In addition, the labor or services performed on the vessel or aircraft must be performed in the United States. It is also the intention of the Service to make it clear that D-crewman functions performed by D-visa holders do not constitute "employment." This interpretation is required since D-visa holders are not, by the terms of their nonimmigrant status, authorized to work in the United States.

5. Independent Contractor

Section 274a.1 paragraph (j) sets forth factors to determine whether an employment relationship is one of an employer-employee or an independent contractor. The interim final rule added two factors (the opportunity for profit and loss, and investment in the facilities for work) to the list. One commenter suggested that there is no rationale for these additions, and that the additions are ambiguous. The Service rejects these suggestions. The issue of whether an individual is an employee or an independent contractor is a question of fact. No one factor is controlling. These additional factors are based upon established case law. If the worker stands to lose money that he or she has invested in the venture, or has expended funds in the normal operating costs of the business (e.g., for tools and materials), especially where there is a substantial risk of loss or substantial amounts of money are involved, these factors indicate that the worker may be an independent contractor. *Enochs* v. *Williams Packing & Navigation Co.*, 370 U.S. 1 (1982); *Wolfe* v. *United States*, 570 F.2d 278, 281 (8th Cir. 1978); *Morish* v. *United States*, 555 F.2d 794, 799 (Ct. Cl. 1977); *McCormick* v. *United States*, 531 F.2d 554, 559 (Ct. Cl. 1976); *Air Terminal Cab, Inc.* v. *United States*, 478 F.2d 575, 578 (8th Cir. 1973). The Service rejects the commenter's ambiguity assertion. The "opportunity for profit and loss" is tied to the "labor or services provided." The commenter suggested that every business arrangement fits this definition, stating that if the contractor "provides quality, timely and reliable services, [he or she] has the 'opportunity' for future profit because the purchaser of the contract services will be a repeat customer." This assumption is purely speculative and leads to a conclusion that is not supported by a plain reading of the regulation. Similarly, "facilities" for work is to be given its customary definition, so as to include the physical plant, material, tools, equipment, etc.

6. Pattern or Practice Violation(s)

Section 274a.1(k) relates to criminal pattern or practice charges. Eight commenters suggested that the modification made by the interim final rule, namely changing the conjunction "and" to "or," was an error. These commenters point out that the prior version which utilized "and" comported with the legislative history. H.R. Rep. No. 682, part 1, 99th Cong., 2d Sess. 59, reprinted in 1986 U.S. Code Cong. & Admin. News 5649, 5663. Furthermore, the conjunction "or" would seem to permit regular or repeated activity to constitute a pattern or practice violation without the requisite intent. Conversely, an intentional act, without proof that it was done regularly or repeatedly, would also constitute a criminal violation. The Service agrees with the commenters and the wording is restored to read "regular, repeated and intentional activities."

7. Definition of "Knowing"

Section 274a.1 paragraph (l) defines the term "knowing." One commenter suggested that including constructive knowledge is beyond the scope of the statute. This same commenter "would prepare a definition of 'knowing' drawn from standard jury charges on 'conscious avoidance' in the criminal area by which a person could be charged with knowledge if he acts in deliberate disregard of an alien's lack of employment authorization and with a conscious purpose to avoid learning the truth unless he actually believed the alien was authorized see, e.g., A.L.I. Model Penal Code p. 202(7)." First and foremost, section 274A of the Act is primarily a civil statute, and employer sanctions proceedings before administrative law judges (ALJs) are civil proceedings. Additionally, the commenter would provide that if the employer actually believed that the

alien was work authorized, then liability would not attach. The Service rejects the commenter's suggestion that an employer must merely believe that the alien is authorized for employment to avoid employer sanctions liability. Such an interpretation is patently invalid, since the employer's belief must at least be "reasonable" to conform with the mandate of the statute. An employer's belief would not be reasonable if there are facts and circumstances present that would put a reasonable person on notice that the individual was not authorized for employment.

One commenter suggested that it was "appropriate to reevaluate the standard enunciated in *USA* v. *Mester Manufacturing*, 879 F.2d 561, 567 (9th Cir. 1989) in light of the GAO Report's conclusions." Nevertheless, the commenter stated that including constructive knowledge will increase discrimination. The commenter cited to the criminal provisions of section 274(a)(1)(B) and (C) for the proposition that when other than actual knowledge was intended by Congress, it used language such as "in reckless disregard." The definition of constructive knowledge set forth in *Mester* is the knowing standard, albeit sustained by a different type of proof. A second commenter expressed concern that knowledge of an employee's unauthorized status may be imputed to the employer merely because the employee appears "foreign." The Service rejects this concept. It is clear that employment authorization is totally separate and distinct from a person's physical appearance. It would be unreasonable for the Service to even consider physical appearance in attempting to prove that an employer had knowledge that an individual is an unauthorized alien. Language to this effect has been added to the final rule.

Another commenter stated that the Service should not define "knowing" in the regulations, but should allow the definition to be worked out through case decisions. This definition, however, has support even in pre-IRCA case law relating to analogous civil statutes. *Counterman* v. *United States Dept. of Labor*, 776 F.2d 1247, 1248 (5th Cir. 1985) (affirming ALJ decision that if farm labor contractor had maintained proper records, he would have known that 42 workers were undocumented, and thereby violated Farm Labor Contractor Registration Act). The Service further believes that the need for guidance in this area outweighs any potential confusion caused as case law develops in this area.

One commenter opined that the regulatory definition was vague and ambiguous. "The employer is not being asked to make a judgment about a factual condition, but about a *legal conclusion* [emphasis original]. Employers are not, nor expected to be, immigration experts." The Service agrees that employers need not be immigration experts. In fact, Congress specifically mandated that an employer may rely on a document that "reasonably appears on its face to be genuine." Section 274A(b)(1)(A) of the Act. A second commenter added that the constructive knowledge standard "effectively rejects" this "good faith" defense. The Service fails to see how the knowledge standard set forth in the interim final rule requires an employer to make a legal conclusion or obviates the good faith defense. The interim final rule merely reflects that knowledge of an employee's unauthorized status may be acquired directly or through notice of certain facts that would lead a person, through the exercise of reasonable care, to know of the unauthorized status. Certain non-exclusive examples of constructive knowledge have been added to this final rule for guidance. The reasonableness standard should allay the concerns of one commenter that rumor and hearsay in the workplace could lead to a violation. If the employer accepts documents that reasonably appear on their face to be genuine and are sufficient for purposes of section 274A(b) of the Act, and complies with all other requirements of the employment verification system, then he or she will indeed have raised a good faith defense to a charge of knowingly hiring an unauthorized alien in violation of section 274A(a)(1)(A) of the Act.

The Service deems it impermissible to deviate from the "knowing" standard set forth in the statute and retains the definition of knowing, with certain clarifying language, as set forth in the interim final rule.

8. Photocopies Forms I–9

Section 274a.2 paragraph (a) was amended by the interim final rule to require that if Forms I–9 are photocopied, then both sides must be reproduced. Three commenters stated that it is inappropriate to require employers to photocopy both sides of the Form I–9. The Service promulgated this change in order to ensure that the instructions contained on the reverse side of the Form I–9 are available to both the employer and employee at the time the form is completed. One commenter suggested adding the phrase "or otherwise make available to all employees completing Form I–9 the instructions contained thereon" to the end of this section. The Service anticipates that the Form I–9 will be revised. In anticipation of this revision, both sides of the form must continue to be reproduced. However, if the instructions appear separately after the form is revised, then the Service accepts the commenter's suggested rationale.

Section 521 of the Immigration Act of 1990 generally eliminates the verification requirements for recruiters and referrers for a fee. However, agricultural employers, agricultural associations and farm labor contractors continue to be bound by the verification requirements. This section is modified to merely mirror the statutory change.

9. Responsibility To Ensure That Section 1 of Form I–9 Is Completed

Section 274a.2 paragraphs (b)(1)(i) and (b)(1)(i)(A) reflect that it is the employer's responsibility to ensure that the employee completes section 1 of the Form I–9. One commenter stated that the revision makes employers "liable for new paperwork violations from errors in the information provided by the employee . * * *" The Service disagrees with this interpretation. No new liability is created by operation of this section. Since the passage of IRCA, employers are, and always have been, mandated to comply with all the requirements of the employment verification system, which includes ensuring that the employee properly completes section 1 of the Form I–9. See *United States* v, *Master Mfg. Co.*, OCAHO Case No. 87100001 (Morse, J., July 12, 1988), *aff'd.*, 879 F.2d 561 (9th Cir. 1989); *United States* v. *Big Bear Mkt.*, OCAHO Case No. 88100038 (Morse, J., April 12, 1989), *Aff'd sub. nom. Big Bear Super Market* v. *INS*, 913 F.2d 754 (9th Cir. 1990). The Service also rejects the commenter's notion that ensuring that an employee properly completes section 1 of the Form I–9 requires employers to ask individuals who present their green card or temporary resident card (List A documents) to *also* present their social security card or other employment eligibility documentation (List C documents). With respect to Section 1 of the Form there is no requirement that the employee present *any* documents whatsoever. The employee must fill in the information data, attest to employment eligibility by checking the appropriate box, and sign and date the certification. Documents are only required to be presented when completing section 2 of the Form I–9. There is simply no room to interpret this paragraph as requiring an alien in

possession of a valid List A document to present a social security card or any other work authorization document.

One commenter agreed that the interim final rule clarifies the employer's responsibility, but stated that section 1 requires the collection of unnecessary data such as address, date of birth, and social security number. Section 274A(b)(1)(A) of the Act gave the Attorney General the authority to establish an employment eligibility verification form. The Form I–9 was so designated (8 CFR 274a.2(a)). The purpose of the form is to ensure that only employment-eligible individuals are hired for employment in the United States. The employment verification system is based upon the presentation of documents. Recognizing the possibility of attempts to circumvent the law, and in anticipation of the presence of fraudulent documents, the Form I–9 was drafted to contain other indicators that allow the Service to monitor compliance. The employee's address, date of birth, and social security number are just such indicators. These entries allow the Service to conduct post-inspection records checks to ferret out unauthorized aliens using counterfeit and fraudulent documents. Although the employer may not be subject to penalties for hiring such an individual because of invocation of the good faith defense, the Service is charged with many facets of immigration compliance and enforcement. Cognizant of the importance of secure documents to the success of employer sanctions, the Service must actively and aggressively investigate fraud in the employment verification system. The information contained on the Form I–9 is critical to this effort.

The same commenter also stated that section 1 of the Form I–9 should be translated into foreign languages. The commenter stated that the translator portion of the current Form I–9 is not an acceptable substitute in that it "subjects the employer to accusations by the worker that the information was misinterpreted or that the employer directed him to record inaccurate data." The Service rejects this suggestion. To adopt this suggestion would require the Service to translate the Form I–9 into *all* languages. This in turn would require the employer to retain a stock of Forms I–9 in every language. Thus, the Preparer/Translator section of the current Form I–9 is a more practical and efficient solution to the problem presented.

10. Individuals Hire for a Duration of Less Than 3 Business Days

Section 274a.2 paragraph (b)(1)(iii) requires an employer who hires an individual for a duration of less than 3 business days to complete both sections 1 and 2 of the Form I–9 at the time of hire. Four commenters opposed this regulation, generally citing an increased burden on the employer. One of these commenters suggested that the requirement to complete a Form I–9 should attach *after* a firm offer of employment has been extended but *before* the actual commencement of work, thereby balancing the need for complete verification before the individual commences employment with reducing the possibility of discriminatory hiring practices. The Service feels that the current language strikes an even better balance, in that verification is required only at the time of hire. The time of hire necessarily includes not only a firm offer of employment but acceptance of that offer by the employee and the actual commencement of employment.

Contrary to one commenter's assertion, day laborers ("casual labor") are not exempt from the Form I–9 requirements unless they provide domestic service in a private home on a sporadic, irregular or intermittent basis. 8 CFR 274a.1(h).

Two commenters opposed this paragraph, stating that it removes the ability of an employee to present receipts in lieu of original documents if the hire is for a duration of less than 3 business days. Under the prior regulations, an employee in such a situation never had the ability to present receipts in lieu of original documents. One of the two commenters stated that this requirement was mentioned in the supplementary information section to the interim final rule but not in the rule itself. To the contrary, the regulation clearly states that "[a] receipt for the application of such documentation . . . may not be accepted by the employer." The second of the two commenters noted the potential hardship to United States citizens who have lost their documents. However, closing the loophole on day hires necessitates such a change. Since the employment verification system allows individuals to present any specified document or combination of documents, United States citizens would have a number of equally acceptable documents to obtain and present.

Two commenters contended that the interim final rule will work an undue hardship on employers who depend on "day hires." Specifically, one commenter cites to a scenario in which the employer hires workers for a 5-day job, but due to adverse weather conditions, the workers are not needed after the first day. The commenter assumes that the employer would be in violation of the interim final rule. The mere fact that the employer intended to hire the individual for 3 or more days triggers the 3-business-day rule for completion of section 2 of the Form I–9, even though section 1 must be completed at the time of hire. The regulations sufficiently set forth alternatives for employers in this situation, such as the use of agents, central clearinghouses, or multi-employer associations.

For these reasons, the language of the interim final rule is retained. Similarly, the language of the interim final rule with respect to paragraph (b)(1)(iv) relating to recruiters and referrers for a fee is also retained.

11. Noting Document Identification Numbers and Expiration Dates on the Form I–9

Section 274a.2 paragraph (b)(1)(v) requires an employer to note document identification numbers and expiration dates in section 2 of the Form I–9. Three commenters suggested that the regulation be more specific as to which document identification number and expiration date should be noted (e.g., the passport or the attached employment authorization document). The Service concurs with this recommendation and the interim final rule is amended to reflect that when an acceptable List A document is comprised of multiple documents, the identification number and expiration date of *each* document must be noted. Until the Form I–9 is revised, employers should place both document identification numbers and expiration dates in the space currently provided.

12. Acceptable Documents for Form I–9 Purposes

Section 274a.2 paragraph (b)(1)(v)(A) requires that documents presented to satisfy the requirements of the employment verification system must "relate to the individual." One commenter stated that "[w]hile IRCA only requires that employees' documents appear to be genuine, the regulations additionally require the documents 'relate to the individual' [sic]." However, it is obvious that an employee who presents someone else's documents (even though the document itself is valid and unaltered) is not presenting a document "that is sufficient to meet the requirements of the [employment verification system]."

Section 274A(b)(1)(A) of the Act. Although the commenter pointed to a potential problem associated with the use of hyphenated surnames, that problem is easily overcome by the employer if the document reasonably appears to be genuine and to relate to the employee in all other respects. The Form I–9 provides for both the birth name and last name to be placed in section 1. Thus, the language of the interim final rule is retained.

13. U.S. and Foreign Passports

Section 274a.2 paragraph (b)(1)(v)(A)(1) was revised in the interim final rule to add clarifying language that both expired and unexpired U.S. passports are acceptable List A documents. One commenter supported this change. This final rule retains this language. The commenter suggested that expired foreign passports with attached employment authorization also be acceptable List A documents. However, a valid, unexpired foreign passport is generally required for admission to the United States. See sections 211(a) and 212(a)(20) of the Act. The Service has jurisdiction over and may place limitations on an alien's ability to obtain employment authorization. A U.S. passport evidences U.S. citizenship, which allows the individual the unfettered right to be employed. This right continues regardless of whether the document evidencing this status is expired. The Service has determined that these differences justify distinguishing the two scenarios. Another commenter correctly noted that some nonimmigrants with a foreign passport with attached Form I–94 may have limited work authorization. This is true when the individual is only authorized for employment with a particular employer (e.g., H–1s, L–1s). However, the regulation covers this scenario when it states "so long as * * * the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94." 8 CFR 274a.2(b)(1)(v)(A)(4)(ii).

14. List A Documents

Section 274a.2 paragraphs (b)(1)(v)(A)(6), (7), (8), (9) and (10) added clarifying language that only unexpired Temporary Resident Cards (Forms I–688), Employment Authorization Cards (Forms I–688A), reentry permits (Forms I–327), Refugee Travel documents (Forms I–571), and INS Employment Authorization Documents with photographs (Forms I–688B) are acceptable List A documents. One commenter suggested that the INS should note that the validity of some of these cards has been extended by the addition of a sticker to the card. The Service agrees with the need to educate the business community of this fact. A second commenter expressed concern that the presence of an expiration date on an employment eligibility document may cause some employers to reject that job applicant. The commenters suggested that some general language be included in the regulation explaining that the mere existence of a future expiration date does not automatically mean that the individual will not receive a new or continuing grant of employment authorization beyond that date, and that an employer's refusal to hire an individual solely because he or she has work authorization with an expiration date may constitute employment discrimination under section 274B of the Act. The Service's commitment to reducing employment discrimination is unwavering. Nevertheless, the Service has determined that regulatory clarification on this subject is unwarranted, and that the perceived problems can be better addressed through other means such as a revised Handbook for Employers (Form M–274). The revised publication will contain the following information:

> Future expiration dates are frequently contained in the employment authorization documents of aliens, including, among others, temporary residents, conditional permanent residents, refugees, and asylees. The existence of a future expiration date does not preclude continuous employment authorization, does not mean that subsequent employment authorization will not be forthcoming, and should not be considered in determining whether the alien is qualified for a particular position.
>
> Employers are advised that consideration of a future employment authorization expiration date in determining whether an alien is qualified for a particular job may constitute employment discrimination prohibited by the antidiscrimination provision of section 274B of the Act.

With respect to the INS Employment Authorization Document (Form I–766), one commenter noted that although it has been added as a List A document (see 55 FR 2710 (January 26, 1990)), it has not been added to 8 CFR 274a.2(b)(1)(v)(A)(10). The Service is not currently issuing the Form I–766. It is anticipated that the Form I–766 will replace the Form I–688B in the future. At that time, the Service will add a reference to the Form I–766 to the regulations.

15. Voter's Registration Cards

Section 274a.2 paragraph (b)(1)(v)(B) was amended in the interim final rule to eliminate the voter's registration card as an acceptable List B identity document. Three commenters discussed this change. The first stated that the removal of this document was "arbitrary and capricious, because there is no evidence of fraud related to that document." The voter's registration card was not removed because it was not fraud-resistant. Rather, it was deleted because it lacks the proper indicia of identity, such as a photograph or other personal identifying information, that would qualify it as an acceptable List B document. However, based on comments submitted that indicate that some individuals' sole identity document is their voter's registration card, the voter's registration card will be reinstated as an acceptable List B document. The numbering of the subparagraphs will be revised to reinsert the reference to the Voter's registration card in its original position. The second commenter expressed general concern over changes to the lists of acceptable documents that may be used in completing Forms I–9. However, two documents (reentry permits (Form I–327) and INS Employment Authorization Documents (Form I–688B)) were "upgraded" from List C to List A, thereby allowing an alien in possession of one of these documents to present it without having to produce an identity document from List B.

To avoid ambiguity between paragraphs (b)(1)(v)(B)(1)(*i*) and (b)(1)(v)(B)(1)(*v*) and to make this section internally consistent, the limitations placed on drivers' licenses are hereby made applicable to identification documents.

16. List C Documents

Section 274a.2 paragraph (b)(1)(v)(C) was reorganized and revised in the interim final rule by removing unexpired reentry permits (Forms I–327), unexpired refugee travel documents (Forms I–571) and "employment authorization documents issued by the INS" (paragraphs (b)(1)(v)(C)(*2*) (*3*) and (*7*)), as acceptable employment authorization documents. Two commenters stated that an employment authorization document issued by the Service should not be eliminated as an acceptable List C employment authorization document since all aliens with employment authorization will not have List A documents. The Service concurs with these comments. The commenters also noted that although paragraph 18 of the supplementary information to the interim final rule stated that the language of § 274a.2(b)(1)(v)(C)(7) listing an "employment authorization document issued by the INS" as an acceptable List C document is removed, the language was still found at

§ 274a.2(b)(1)(v)(C)(8) of the interim final rule itself. Another commenter stated that the section should read "*unexpired* employment authorization document issued by the Immigration and Naturalization Service (emphasis added)."

The language in § 274a.2(b)(1)(v)(C)(8), that an employment authorization document issued by the Service is an acceptable List C document, is retained, with the word "unexpired" added before the word "employment." It was not intended that the language be removed from § 274a.2(b)(1)(v)(C)(7), but merely moved to § 274a.2(b)(1)(v)(C)(8). This final rule reflects that intent.

17. Preliminary Completion of Section 2 of the Form I–9—Acceptance of Receipts for Replacement Documents

Section 274a.2 paragraph (b)(1)(vi) was revised in the interim final rule as it relates to the length of time a receipt for a replacement document will suffice for Form I–9 purposes before the actual document is obtained. Two commenters said the 21-day rule should be modified to provide a reasonable period of time for the issuance of replacement documentation. They suggested that the regulations be modified so that employers can accept a receipt for approved documentation subject to a good faith requirement that the employee attest under penalty of perjury at 60-day intervals that an application for a replacement document remains pending.

The Service notes that the current regulation pertains to 21 business days, not merely 21 days. The purpose of the clarifying language was simply to make it clear that this section relates to the submission of an application for a replacement document and not to an application for a grant of work authorization. In other words, this provision pertains solely to a situation where the individual is already work authorized and is merely requesting an initial or replacement document evidencing this authorization. An employer will be able to distinguish this situation since the employee will have to indicate the source of his or her work authorization (and expiration date, if any) in order to complete section 1 of the Form I–9. It should be noted that this rationale is not applicable to identity documents.

Another commenter stated that since INS has 60 days to respond to a request for employment authorization pursuant to § 274a.13(d) or to a request for a replacement document, the period of time that an alien has to obtain a replacement document should be amended from 21 days to at least 60 days. § 274a.13(d) is amended to afford the Service 90 days to adjudicate an application for employment authorization. Although no specified time limit exists in which the Service must issue a replacement document to an alien, the Service accepts the underlying rationale and the period of time for which a receipt for a replacement document is valid is changed from 21 business days to 90 calendar days.

18. Reverification

Section 274a.2 paragraph (b)(1)(vii) was revised in the interim final rule by adding a requirement that the employer complete and maintain a new Form I–9 when the employment authorization document expires.

A number of commenters objected to the requirement of completing a new Form I–9 when an individual's employment authorization expires or when the employer is advised by the Service that a document presented by the employee is insufficient to establish employment eligibility. The objection to this provision was based largely on the view that completing a new Form I–9 within 3 business days would be a burden on the employer, especially when the employer has a large workforce. The commenters expressed their belief that reverifying on the original Form I–9 would be more cost efficient and cost effective than completing a new Form I–9 every time a worker obtains an extension of employment authorization. The Service accepts the comment and employers will be allowed to reverify on the Form I–9, in lieu of completing a new Form I–9, when the employee's work authorization expires. Reverification must occur not later than the date that work authorization expires. If an employee has temporary work authorization, then he or she should apply for a new grant of work authorization at least 90 days before the expiration date. Pursuant to § 274a.13(d), if the Service fails to adjudicate the application for employment authorization within 90 days, the employee is automatically authorized for employment for a period not to exceed 240 days.

Several other comments were received. Some commenters stated that there should be further clarification concerning the provision that expiration of a Form I–551 does not necessarily mean employment authorization has expired. The Service accepts this comment and § 274a.12 paragraph (a)(1) is amended accordingly. One commenter thought any revision to the Form I–9 should include space for reverification. The Service will take this comment into consideration when the Form I–9 is revised. Until then, the employee and employer should line through any superseded information and initial and date the updated information. One commenter thought the Service should clarify the scope of the rule, i.e., whether the rule is intended to have prospective effect. This rule applies to any and all Forms I–9 completed after the effective date of this final rule.

Finally, section 535 of the Immigration Act of 1990 amends section 274B(a) of the Act so that requiring more or different documents or refusing to accept certain documents may be an unfair immigration-related employment practice. The Service believes that this provision of law should be afforded maximum opportunity to operate in its intended fashion and unencumbered by pre-existing regulations. Therefore, the Service is, at the present time, retreating from the requirement that an employer complete and maintain a new Form I–9 when the employer is advised in writing by the Service that a document presented is insufficient to establish employment eligibility. This final rule reflects this change.

19. Employment Situations Not Deemed to Constitute a New Hire

Section 274a.2 paragraph (b)(1)(viii) was reorganized and revised in the interim final rule by adding nine (9) factors which are to be considered in determining whether an individual has a reasonable expectation of employment. The "reasonable expectation of employment at all times" language was initially added to the rule to address the Service's concern that continuing employment after a temporary interruption could become a loophole in the Act, especially in industries such as agriculture where employment is typically short-term and there may be no firm expectation of recall. The interim final rule made it clear that absent such an expectation, employers cannot evade the employer sanctions requirements simply because they are in a seasonal industry or because some individuals happen to be rehired.

Two commenters stated that the amended language regarding continuing employment only creates further confusion rather than clarification. They questioned whether an employer must demonstrate that an individual satisfies not only the factors under paragraph (b)(1)(viii)(A) but also the situations described in paragraph (b)(1)(viii)(B). Another commenter agreed, stating that the factors listed in subparagraph (A) only make sense if they are understood

to be applicable in situations not already described in subparagraph (B). The commenter notes that to do otherwise would create internal conflicts between these subparagraphs.

As a preliminary matter, paragraph (b)(1)(viii)(A) of the interim final rule, which sets forth factors evidencing a reasonable expectation of employment, has been amended and redesignated as paragraph (b)(1)(viii)(B). Similarly, paragraph (b)(1)(viii)(B) of the interim final rule, which sets forth situations of continuing employment, has been amended and redesignated as paragraph (b)(1)(viii)(A). The analysis to be used to determine if the employer must complete a new Form I–9 or update a previously executed Form I–9 involves a determination of whether employment is continuing (the situations described in paragraph (b)(1)(viii)(A) are the sole types of employment that are considered to be "continuing") and, if the employment is continuing, whether the individual has a reasonable expectation of employment at all times (representative factors to assist in this second determination are located at paragraph (b)(1)(viii)(B)). The paragraph references in this supplementary information section relate to the paragraphs as they have been renumbered in this final rule.

If an individual is continuing in his or her employment and has a reasonable expectation of employment at all times, the continued employment of that individual under one of the situations described in paragraph (b)(1)(viii)(A) will not constitute a new hire. The situations described in paragraph (b)(1)(viii)(A) define when employment is continuing. The factors listed in paragraph (b)(1)(viii)(B) assist in determining whether the individual has a reasonable expectation of employment at all times. The list of situations in paragraph (A) is exclusive, but the list of factors in paragraph (B) is illustrative only. Only if the individual is involved in a continuing employment situation is the determination relating to the reasonable expectation of employment made. If the individual is not continuing in his or her employment, then re-employment of that individual will constitute a new hire requiring the employer to complete a new Form I–9 or to update a previously executed Form I–9 as appropriate.

In order to eliminate any confusion about the relationship between paragraphs (b)(1)(viii)(A) and (b)(1)(viii)(B), the comments regarding clarification of these sections will be accepted. To that end, the paragraphs are reorganized and new language is inserted to distinguish between the (b)(1)(viii)(A) situations when an individual is continuing in his or her employment and the (b)(1)(viii)(B) factors that can be used in determining if the individual has a reasonable expectation of employment at all times.

20. Employment Situations Not Deemed To Constitute a New Hire—Reasonable Expectations

Section 274a.2 paragraph (b)(1)(viii)(B) [formerly (b)(1)(viii)(A)] received one comment. The commenter suggested that employers in states which have employment-at-will statutes are reluctant to give employees a reasonable expectation of continued employment for fear such guarantees will negatively affect the employer's position in a wrongful discharge suit. The commenter stated that the revised definition, which mandates that the employer prove at all times that the individual expected to resume employment and that the individual's expectation is reasonable, may be contrary to the employer's stated hiring policies.

The language in this section will be retained. The requirement that an employer prove at all times that the individual expected to resume employment and that the individual's expectation is reasonable was always a part of this section and applies only when an employer is claiming that the re-employment of an individual does not constitute a new hire. Thus, if employment authorization has not expired, the employer is not obligated to comply with the employment verification requirements. If the employer concludes that meeting this requirement is contrary to the business' hiring policies or may negatively affect the employer's position in a wrongful discharge suit, such a conclusion will only affect the employer's ability to prove that an individual has a reasonable expectation of employment at all times. An employer's responsibility is to comply with the employment verification requirements in those situations which constitute a new hire.

Section 274a.2 paragraph (b)(1)(viii)(B)(*1*) [formerly (b)(1)(viii)(A)(*1*)] was commented on by two commenters who stated that it was confusing and irrelevant to introduce the concept of "sporadic, irregular, or intermittent" employment in this paragraph since that same language is used to describe casual laborers in § 274a.1(h). They noted that the interim final rule on continuing employment only applies to employees, and that casual laborers are not bound by the identity and employment eligibility verification requirements of IRCA.

One commenter suggested that although agricultural employment is sporadic, irregular and intermittent, this does not mean that these employees have been terminated or that there is no longer a continuing employment relationship.

The commenters' statement about casual labor is inaccurate. Section 274a.1(h) is limited to domestic service in a private home that is sporadic, irregular or intermittent. However, to avoid confusion, the comments concerning the use of the language "sporadic, irregular, or intermittent" will be accepted and this clause will be deleted from this paragraph. Whether an individual worked on a regular and substantial basis is certainly a factor in determining whether the individual has a reasonable expectation of employment at all times.

The comment concerning agricultural workers is addressed in the supplementary information relating to § 274a.2 (b)(1)(viii)(A)(*3*).

Section 274a.2 paragraph (b)(1)(viii)(B)(*4*) [formerly (b)(1)(viii)(A)(*4*)] was commented on by two commenters who objected to the use of the term "replacement worker" as a factor regarding the reasonable expectation of employment at all times. This factor states that an individual might have a reasonable expectation of employment at all times if the former position held by the individual in question has not been taken by a replacement worker. The commenters stated that the term "replacement worker" is a term of art in labor law; it applies to a worker hired by an employer to take the place of a striking employee. They maintained that this provision is incompatible with existing law which holds that striking workers whose positions have been taken by replacement workers retain their status as employees. The commenters noted that for a striking employee to lose his classification as continuing in his or her employment when his or her position has been taken by a replacement worker is inconsistent with the rights of those workers to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. They also stated that this provision conflicts with § 274a.2(b)(1)(viii)(A)(*4*) [formerly § 274a.2(b)(1)(viii)(B)(*4*)] which describes one who is on strike or who is involved in a labor dispute as an individual who is continuing in his or her employment.

These commenters also argued that even in contexts other than strikes and labor disputes, considering the hiring of a replacement worker as a factor showing that an individual is not a continuing employee is questionable and misleading. They gave the example of a worker who takes maternity leave for 6 months upon the birth or adoption of a child and who may be replaced by a worker so that operations can continue in her absence.

These comments will be accepted. The provision will be changed to read: "The former position held by the employee in question has not been taken permanently by another worker." This change will eliminate the use of the term "replacement worker," thereby avoiding any conflict with existing case law and any confusion with § 274a.2(b)(1)(viii)(A)(4).

Section 274a.2 paragraph formerly designated as (b)(1)(viii)(A)(5) in the interim rule [and now deleted] related to an individual who had not sought or obtained regular and substantial employment with another employer. That paragraph received comments by two commenters who suggested that this factor is irrelevant to the issue of whether an individual has a reasonable expectation of employment at all times and should be deleted. Three other commenters suggested that this factor conflicts with existing law as well as with the provisions of the interim final rule relating to reinstatement. That paragraph, (viii)(A)(5) [formerly (viii)(B)(5)], states that continuing employment can include a situation in which an individual is reinstated after disciplinary suspension for wrongful termination, found unjustified by any court, arbitrator, or administrative body, reinstatement or settlement. The commenters pointed out that under Federal labor law, an individual who is unlawfully discharged is legally obliged to seek employment to mitigate his damages. *Phelps Dodge Corp.* v. *NLRB*, 313 U.S. 197 (1941).

Implementation of this regulation was not intended to bar wrongfully terminated employees from establishing that they are continuing in their employment if they have sought or obtained regular employment in the interim. However, if an individual has taken another job with a new employer with no intention of returning to the prior employer, such action establishes that he or she does not have a reasonable expectation of employment at all times with the prior employer. Nevertheless, in order to avoid potential conflict or confusion, this factor will be deleted and the remaining factors will be renumbered accordingly.

Section 274a.2 paragraph (b)(1)(viii)(B)(5) [formerly (b)(1)(viii)(A)(6)] relates to benefits sought or obtained by the individual. Two commenters suggested that this factor is irrelevant to the issue of whether an individual has a reasonable expectation of employment at all times. Three commenters described the language in this section as vague and in need of clarification. The commenters suggested that specific examples of the types of benefits to which the rule is referring would eliminate any potential confusion.

The comments concerning clarification of the rule will be accepted and the following language will be added at the end of this paragraph: "Such benefits include, but are not limited to, severance and retirement benefits."

The comments concerning irrelevancy will be rejected. The fact that an individual has accepted benefits inconsistent with an expectation of resuming employment, such as benefits associated with retirement or severance of his or her position, is significant to the issue of whether the individual has a reasonable expectation of employment at all times.

Section 274a.2 paragraph (b)(1)(viii)(B)(6) [formerly (b)(1)(viii)(A)(7)] relates to the financial condition of the employer. One commenter believed that this factor is irrelevant to the issue of whether an individual has a reasonable expectation of employment at all times. Two commenters expressed concern over the use of the word "claimant" and questioned whether this word referred to the employer or the employee. They suggested that if it refers to the employee, the interim final rule was objectionable as an unwarranted and unauthorized invasion of privacy. If it refers to the employer, then the commenters stated that the section should use the word "employer" instead of "claimant."

Three commenters objected to the use of the word "likelihood" in the interim final rule. They noted that the use of this term suggests that a different, and perhaps more stringent, standard applies than that found in § 274a.2(b)(1)(viii)(B) [formerly § 274a.2(b)(1)(viii)(A)] which uses the term "reasonable expectation." One commenter stated that even employers operating as debtors-in-possession under Chapter 11 of the Bankruptcy Code may continue to conduct their affairs and carry on the normal course of their business operations without interruption, including reinstating workers after a temporary break in their employment, for any of the reasons specified in subparagraph (A) of this section. The commenter stated that requiring proof of a "likelihood" of an employee's resumption of employment is unreasonable and will lead to an unduly burdensome inquiry into the precise financial circumstances of the employer.

The comments concerning irrelevancy will be rejected. The financial condition of an employer bears greatly on the "reasonable expectation" of employment for the individual, e.g., if employers are anticipating having to close their businesses or layoff employees.

The term "claimant" was used to reflect that in the absence of establishing that the individual is continuing in his or her employment and that the individual has a reasonable expectation of employment at all times, no employer-employee relationship exists. Therefore, the Service felt that use of the term "employer" was inappropriate. However, although this rationale is still valid, the Service will utilize the term "employer" in lieu of the term "claimant" to avoid introducing another definition that may result in confusion.

The comments concerning the use of the word "likelihood" will be accepted. In order to avoid any confusion in using the terms "reasonable expectation" of employment and "likelihood" that the employee will resume employment, the word "likelihood" will be deleted and the word "ability" will be inserted.

Section 274a.2 paragraph (b)(1)(viii)(B)(7) [formerly (b)(1)(viii)(A)(8)] relates to communications between the individual in question and the prior employer. One commenter interpreted this section as placing an obligation on the employer to document in writing his or her intent as it relates to the factors listed in paragraph (b)(1)(viii)(B) [formerly paragraph (b)(1)(viii)(A)]. The commenter stated that such a requirement only increases the administrative burden on employers.

The comment will be rejected since this interpretation is inaccurate. The factors listed in paragraph (b)(1)(viii)(B) [formerly paragraph (b)(1)(viii)(A)] are factors which evidence that the individual in question has a reasonable expectation of employment. None of these factors are required *per se* to meet this burden. Therefore, the employer is not unduly burdened to any degree by this factor. Any oral and/or written communication between the employer,

his or her supervisory employees and the individual can be used to show that the individual in question would resume employment in the near future, and therefore, demonstrate a reasonable expectation of employment at all times.

Use of the term "likelihood" was not meant to create a new standard. This language is changed to reflect that if there is an oral or written communication as described herein, and this communication indicates that it is reasonably likely that the individual will resume employment, then that factor is relevant to determine if the individual has a reasonable expectation of employment at all times.

Section 274a.2 paragraph formerly designated as (b)(1)(viii)(A)(9) in the interim final rule [and now deleted] related to employment that is seasonal in nature. Four commenters suggested that this factor be deleted in its entirety. One of these commenters stated that seasonal workers are specifically targeted even though they may meet many of the qualifications set forth in section (viii)(B) [formerly (viii)(A)]. One commenter stated that this factor has generated much confusion, since many industries that are considered seasonal in fact employ workers for substantial portions of the year. Two commenters suggested that this factor be deleted since the factor listed in (B)(1) [formerly (A)(1)], requiring that an employee be employed on a regular and substantial basis, adequately covers this concept. Deleting this factor would eliminate any confusion that could be engendered by various interpretations of the word "seasonal." One of the two commenters stated that temporary interruptions or reductions in business, after which all or most workers previously employed resume employment on a routine basis, are the norm in many industries.

In light of other amendments to this section, and since an individual in a continuing employment situation must also have a reasonable expectation of employment at all times, the Service accepts the comments and the paragraph formerly designated as (b)(1)(viii)(A)(9) in the interim final rule is deleted. In addition, to make it absolutely clear that seasonal employment is a situation in which an individual is continuing in his or her employment, new paragraph (b)(1)(viii)(A)(8) is added. However, as with each enumerated situation in which an individual is continuing in his or her employment, the employer must also establish that the individual has a reasonable expectation of employment at all times. The Service reiterates that this provision, paragraph (b)(1)(viii)(A)(8), does not create a new class of grandfathered employees within the meaning of 8 CFR 274a.7. The legislative history of section 274A of the Act evidences that Congress did not intend that the grandfather provision be interpreted broadly. Therefore, although the Service can properly apply the legislative intent of the employer sanctions provisions to decrease the requirements on employers in these industries in complying with the employment verification requirements, it cannot, consistent with the statute, apply that same intent to expand the applicability of the grandfather provision. Section 274a.7 is amended to reflect this change.

21. Employment Situations Not Deemed To Constitute a New Hire—Continuing Employment

Section 274a.2 paragraph (b)(1)(viii)(A) [formerly (b)(1)(viii)(B)] received some comments. Two commenters pointed out the inconsistency between the provision in this paragraph and the language in paragraph (b)(1)(viii)(B)(4) [formerly (b)(1)(viii)(A)(4)] which provides that an individual would have a reasonable expectation of employment if his or her position has not been taken by a replacement worker. This comment is remedied by a language change to § 274a.2(b)(1)(viii)(B)(4) as previously discussed.

Section 274a.2 paragraph (b)(1)(viii)(A)(7)(ii) [formerly (b)(1)(viii)(B)(7)(ii)] received one comment. The commenter believed that this section is constructed too broadly and provides employers with a loophole by claiming that discrepant Forms I–9 were the work of the former employer. The commenter suggested that this section be amended so that the newly formed entity bears full responsibility for Forms I–9 relating to individuals who are continuing in their employment with that entity. The Service accepts this commenter's rationale but rejects the need to place such a limitation in the regulations. Pursuant to this section, the Service always considers that the newly formed entity accepts full responsibility and liability for any and all Forms I–9 completed by the previous employer.

22. Multi-Employer Associations

Section 274a.2 paragraph (b)(1)(viii)(G)(3) was deleted from the regulations by the interim final rule because it was being misinterpreted. Section 274a.2(b)(1) provided employers with the ability to delegate verification responsibilities through contractual business arrangements. Therefore, paragraph (b)(1)(viii)(G)(3) seemed superfluous. Approximately fourteen comments were received, most of which were from national organizations representing hundreds of employers, expressing significant concerns regarding the deletion of this provision. All commenters stated that the former subparagraph (G)(3) reflected workplace realities in multi-employer bargaining units and urged that if there was difficulty with the interpretation of this subparagraph, then the language should be clarified rather than deleted.

INS carefully scrutinized the public comments relating to this issue and has adopted the commenters' suggestions to replace and clarify the former subparagraph (G)(3). The final rule adds paragraph (b)(1)(viii)(7)(iii) addressing an employer's verification responsibilities in multi-employer situations. It provides that when an employer continues to employ an employee of another employer's workforce where both employers belong to the same multi-employer association and the employee continues to work in the same bargaining unit under the same collective bargaining agreement, the agent/multi-employer association must track the employee's hire and termination dates each time the employee is hired or terminated by an employer in the multi-employer association. The recordation of this information is important in order for an employer in the multi-employer association to comply with the verification requirements and for the Service to know at the time of any inspection what employees are or have been working for a particular employer. It is also important to note that the employee must continue to work in the same bargaining unit under the same collective bargaining agreement. If the employee leaves the bargaining unit or works under a different collective bargaining agreement, then his or her return to the original bargaining unit or employment under the original collective bargaining agreement would constitute a new hire, triggering the appropriate verification procedures.

23. Subpoena Power

Section 274a.2 paragraph (b)(2)(ii) was commented on by approximately five organizations. Four commenters stated that both the old regulations as well as the interim final rule exceed the statutory authority granted by IRCA. They contended that administrative law judges (ALJs) have exclusive subpoena power under IRCA, and that INS officers are not authorized to issue subpoenas in employer sanctions investigations. The Service rejects these comments for the

following reasons. First, the commenters overlooked the fact that authority for Service officers to issue and serve administrative subpoenas to aid in its enforcement of the Act is specifically set forth in section 235(a) of the Act. That section states that the Service has the power to issue subpoenas "in any matter which is material and relevant to the enforcement of the Act." Thirty-four years after enactment of section 235(a) of the Act, Congress enacted IRCA. Since IRCA was made a part of the Act, the INS continued to have, post-IRCA, the authority to issue administrative subpoenas to enforce any provision of the Act, including employer sanctions. Second, the commenters asserted that if Congress intended to grant to the Service the authority to issue subpoenas in section 274A proceedings, it would have specifically stated so in that section of the Act. However, Congress did not need to grant subpoena authority to the Service in section 274A of the Act since it had already granted that authority to the Service under section 235(a) of the Act. In contrast, ALJs had no role in the long history of the Act prior to IRCA. Therefore, with the addition of section 274A of the Act, ALJs needed an express grant of authority in order to fulfill their newly-created duties. In addition, there is simply no support, under either section 235(a) or section 274A of the Act, for the position that Congress intended to remove the Service's subpoena authority under section 235(a) of the Act when it enacted the employer sanctions provisions of section 274A.

One commenter stated that the Service should have considered *In re Ramirez*, Misc. No. TY-89-00023 (E.D. Tex., Mar. 23, 1989), *rev'd and rem'd*, 905 F.2d 97 (5th Cir. 1990), and *United States v. Moore*, Civil Action No. 89-89-A (E.D. Va., Feb. 10, 1989), *vacated*, Civil Action No. 89-89-A (E.D. Va., March 10, 1989). The commenter stated that both of these cases stand for the proposition that ALJs have exclusive subpoena power in the employer sanctions area. The Service considered both of these cases in addition to several other court cases on this issue. First, the *Ramirez* case cited by the commenter was reversed and remanded by the Fifth Circuit. The district court's order in that case was an *ex parte* order entered without the Government being represented. Second, the commenter appears to be unaware that not only was the initial order in the *Moore* case vacated, but also that the court enforced the subpoena under section 235(a) of the Act with respect to required records. The order specifically required the employer to produce Forms I-9, W-4 forms, FICA reports, unemployment compensation records and labor certificates. Further, it should be noted that on September 5, 1990, the Eleventh Circuit specifically upheld INS' subpoena authority under section 235(a) of the Act in its enforcement of section 274A of the Act. *United States* v. *DeBooth*, Case No. 90-5097 (11th Cir., Sept. 5, 1990).

Two commenters narrowly interpreted the reference to INS subpoena power in this subparagraph to mean that it only applies to the procurement of Forms I-9 and can only be utilized after an inspection and an employer's failure to make Forms I-9 available. This interpretation is simply incorrect. The reference to the subpoena authority in this paragraph makes it clear that appropriate Service officers, as set forth in 8 CFR 287.4, can compel an employer to make Forms I-9 available by issuing an administrative subpoena under section 235(a) of the Act. This section in no way limits the Service's authority under section 235(a) of the Act to obtain any other relevant documents, such as business records, in its inspection and/or investigation of a particular employer. In order to clarify this point, the final rule will provide that immigration officers defined in 8 CFR 287.4 may, in addition to being able to compel production of Forms I-9, compel production of any other relevant evidence. This paragraph now states that nothing in the regulation is intended to limit the Service's subpoena power under section 235(a) of the Act.

Section 538 of the Immigration Act of 1990 granted access to Forms I-9 to the Special Counsel for Immigration-Related Unfair Employment Practices. A clause is added to this paragraph to mirror the statute. The same addition is made to paragraphs (b)(2)(ii) and (b)(2)(iii).

24. Photocopying Verification Documents Not Required

Section 274a.2 paragraph (b)(3) was revised in the interim final rule by adding clarifying language to make it absolutely clear that the photocopying of documents by an employer, recruiter or referrer for a fee does not relieve them from the requirement to fully complete section 2 of the Form I-9, nor is it an acceptable substitute for proper completion of the Form I-9 in general. The Service received one comment on this provision. The commenter stated that requiring employers to write the document identification numbers and expiration dates on the Form I-9, when that information is available on photocopies of documents attached to the Form I-9, is arbitrary and capricious and duplicates the burden on employers. The language of this section will be retained. 8 CFR 274a.2(b)(3) provides in pertinent part for the permissive photocopying of documentation. It states an employer "*may, but is not required to*, copy a document presented by an individual solely for the purpose of complying with the verification requirements of this section (emphasis added)." A recent case addressing this issue held that "the language of this regulation is clearly *permissive and supplemental* to the *mandatory* completion of the Form I-9 Employment Eligibility Verification Process (emphasis in original), and *is not intended to serve as an alternate mode of complying with the law* (emphasis added)." *United States* v. *Manos and Assocs., Inc., d.b.a. Bread Basket Restaurant*, OCAHO Case No. 89100130, Feb. 8, 1990, (Order Granting in Part Complainant's Motion for Summary Decision); *see also United States* v. *J.J.L.C. Inc., T/A Richfield Caterers and/or Richfield Regency*, OCAHO Case No. 89100187, Apr. 13, 1990. Thus, this process is not arbitrary or capricious and does not duplicate the burden on employers since their only obligation is to properly complete the Form I-9.

Further, in order to ensure that employers, recruiters and referrers for a fee not violate the antidiscrimination provisions of the Act, cautionary language has been added that states that an employer, recruiter or referrer for a fee should not photocopy the documents only of individuals of certain national origins or citizenship statuses. To do so may violate section 274B of the Act.

25. Rehires

Section 274a.2 paragraphs (c)(1)(i) and (ii), dealing with updating and reverifying the Form I-9 for an employee hired within 3 years of the initial execution of the Form I-9, was commented on by seven commenters. Several commenters complained that requiring a new Form I-9 when the employer determines that the individual's employment authorization has expired, or the Service informs the employer that the employment eligibility document presented is insufficient to establish employment authorization, is unduly burdensome. The Service accepts these arguments.

One commenter suggested that paragraph (c)(1)(ii) requires the employer to see an INS-issued employment authorization document in order to update the Form I-9. A second commenter stated that such a requirement would be reasonable. The Service agrees that such a requirement

is reasonable, but feels constrained by the statutory language that any document or combination of documents that establish identity and current work authorization is sufficient for completing a Form I–9. Section 274A(b)(1)(A) of the Act. This is especially true since section 535 of the Immigration Act of 1990 now makes it a violation of section 274B of the Act to require certain documents or to refuse to accept certain documents. However, the Service further notes that the employer cannot deliberately ignore knowledge, acquired from other sources such as the original Form I–9, that an individual's work authorization has expired. This knowledge may be used to support a charge of knowingly hiring or knowingly continuing to employ an unauthorized alien.

Three commenters stated that paragraph (c)(1)(i) is inconsistent with paragraph (b)(1)(vii). To remedy any confusion, paragraph (c)(1)(i) will reflect that when an employer is seeking to rehire an individual within 3 years of the initial execution of the Form I–9 and the individual's employment authorization has expired, the employer may reverify on the Form I–9 in accordance with paragraph (b)(1)(vii). If review of the Form I–9 reveals that the individual is still eligible to work on the same basis or by the same grant of work authorization as when the Form I–9 was originally completed, until the Form I–9 is revised, the employer should line through the date in the certification block at the bottom of section 2 of the Form I–9, put in the date of the rehire, and initial the change (update).

One commenter suggested that since the current Form I–9 does not contain appropriate space to reverify or update, the reverification and updating procedures should be deleted until the Form I–9 is revised. As previously stated, the current Form I–9 is undergoing revision and will provide appropriate space to reverify and update in its revised form.

Finally, as previously stated, section 535 of the Immigration Act of 1990 amends section 274B(a) of the Act so that requiring more or different documents or refusing to accept certain documents may be an unfair immigration-related employment practice. The Service believes that this provision of law should be afforded maximum opportunity to operate in its intended fashion and unencumbered by pre-existing regulations. Therefore, the Service is, at the present time, retreating from the requirement that an employer complete and maintain a new Form I–9 when the employer is advised in writing by the Service that a document presented is insufficient to establish employment eligibility. This final rule reflects this change.

26. Use of Contract To Obtain the Labor or Services of an Alien

Section 274a.5 was revised in the interim final rule by deleting the word "knowingly" in the first sentence after the word "who" and substituting the exact language of section 274A(a)(4) of the Act in order to clearly state that the prohibited conduct under this provision is the use of a contract to obtain the labor or services of an alien knowing that the alien is unauthorized to work in the United States. One comment was received on this paragraph, and it was supportive of the change implemented by the interim final rule. This final rule mirrors the interim final rule.

27. Pre-enactment (Grandfather) Status

Section 274a.7 paragraph (b) was revised in the interim final rule by adding an additional ground upon which an individual will lose pre-enactment status. That revision set forth that pre-enactment status will be lost when an employee is no longer continuing in his or her employment or does not have a reasonable expectation of employment at all times. One comment suggested that this section be amended to reflect that "continuing employment" is defined in § 274a.2(b)(1)(viii) (A) through (G) (1) and (2). The commenter thought this change would identify the exclusive applicability of § 274a.2(b)(1)(viii)(G)(3) for Form I–9 purposes and would eliminate the potential loophole whereby employers can hire a "grandfathered employee" without incurring an employer sanctions violation. The Service accepts this rationale in part and, with the exception of individuals engaged in seasonal employment and those in multi-employer associations, individuals who were hired prior to November 7, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times are grandfathered employees pursuant to § 274a.7.

Two comments encouraged the inclusion of seasonal workers in § 274a.2(b)(1)(viii) as continuing employees, thereby entitling them to the "grandfathered employee" status referred to in § 274a.7. The Service does not accept the suggestion that seasonal workers are grandfathered employees. The grandfather provision of IRCA is specific, and although the Service can lessen the paperwork requirements applicable to employers, it cannot, consistent with the statute, expand the scope of the grandfather provision through regulation to extend to seasonal work, which is, in actuality, a series of transactional hires.

28. Notice of Intent To Fine

Section 274a.9 paragraph (a) was revised in the interim final rule by deleting superfluous language. No comments were received on this section, and it is reproduced in this final rule without modification.

Section 274a.9 paragraph (c)(1) was revised in the interim final rule by deleting the word "citation" from the caption, and by removing the language in the first sentence "a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of law" and substituting in its place language which indicates that "fact pleading" is not necessary and "notice pleading" is all that the INS is required to provide in order to comply with applicable law and procedure in issuing a Notice of Intent to Fine (NIF). Two commenters stated that the INS should be required to describe in detail in the NIF the nature of the violation so that the employer may have adequate notice and an opportunity to prepare a defense.

Two commenters stated that the Administrative Procedures Act (APA), and not the Federal Rules of Civil Procedure (FRCP), is the governing procedural statute for employer sanctions cases under IRCA. Section 274A(e)(3)(B) of the Act. Under the FRCP, only notice pleading is required. Under the APA, persons entitled to notice of an agency hearing must be informed of "the matters of fact and law asserted." 5 U.S.C. 554(b)(3). One commenter cited to *Mester Mfg. Co., Inc.* v. *INS*, 879 F.2d 561 (9th Cir. 1989) for the premise that the NIF is the pleading which initiates the adjudicatory process, and, therefore, it must apprise the individual or entity of the issues involved.

Section 554(a) of Title 5 of the United States Code pertains to adjudications under the Administrative Procedure Act. It states, in pertinent part:

> This section applies * * * in every case of adjudication required by statute to be determined on the record *after* an opportunity for an agency hearing (emphasis added).

Subsection (b) continues:

> Persons entitled to notice of an agency hearing shall be timely informed of * * * the matters of fact and law asserted.

The Service accepts the position that the NIF should inform the respondent of the facts and law asserted as mandated by the APA. The format of the current

NIF satisfies this standard and this paragraph is amended to conform to this view. Finally, in clarifying this paragraph, the term "citation" is once again removed from the heading and from § 274a.9 paragraph (b) as obsolete, and the reference to "District Counsel or his or her designee or Sector Counsel" in the last sentence of paragraph (c) is replaced with the words "Service Attorney" since there are no longer Service attorneys with the designation of "Sector Counsel."

29. Request for hearing before an ALJ

Section 274a.9 paragraph (d) was revised and reorganized in the interim final rule by removing from this section the procedure for a respondent's failure to request a hearing. This section was also amended to require that a request for a hearing submitted in a foreign language be accompanied by an English translation. The only comment received regarding this section suggested that the last sentence in this section be deleted. The commenter thought that this provision, which permits, but does not require, the respondent to file an answer to the allegations with the INS, was "confusing and prejudicial to the respondent." The commenter believed that this provision implies that the requirement to file an answer to a complaint within 30 days as set forth at 28 CFR 68.8(c) is satisfied by filing a response to the NIF with the INS pursuant to this section.

This provision is included in the section entitled "Request for Hearing Before an Administrative Law Judge" and is not intended to conflict with, or be a substitute for, the regulations in 28 CFR part 68, which outline the procedures and requirements within the Office of the Chief Administrative hearing officer (OCAHO).

However, the reasoning underlying the comment is accepted. This section is amended to reflect that all that is required to initiate the hearing process is a request for hearing by the respondent. That filing may, but is not required to, include a response to the allegations in the NIF. The allegations in response to the NIF are not a substitute for an answer to a complaint served on the respondent by OCAHO pursuant to 28 CFR 68.3. The last sentence will be amended to read: "In the request for a hearing, the respondent may, but is not required to, respond to each allegation listed in the Notice of Intent to Fine." Finally, to avoid confusion between ordinary mail and certified mail, which is defined at 8 CFR 103.5a(a)(2)(iv) as personal service, a reference is added to this paragraph to make it clear that 5 days are added for mailing only if the NIF is served by ordinary mail.

30. Criminal Penalties

Section 274a.10 paragraph (a) relates to pattern or practice violations. The only comment received regarding this section suggested that this entire section be deleted since the penalties for violating IRCA are explicitly set forth in section 274A(f) of the Act.

The comment will be rejected. This section as revised by the interim final rule mirrors the language in section 274A(f)(1) of the Act. Its inclusion in the regulations makes for a complete and concise review of the criminal penalties for violations of paragraph (a)(1)(A) or (a)(2) of the Act in the section of regulations which pertains to all penalties, both criminal and civil, which can be imposed for employer sanctions violations.

31. Civil Penalties

Section 274a.10 paragraph (b) was revised in the interim final rule by adding clarifying language in the third sentence by changing the words "single violation" to "single offense" and adding the word "alien" after the word "unauthorized" in the last sentence of this section. In addition, § 274a.10 paragraphs (b)(1)(ii)(A), (B) and (C) were revised in the interim final rule by substituting "offense" for the word "violation." The only comment received regarding this section suggested that this entire section be deleted since the penalties for violating IRCA are explicitly set forth in section 274A(e)(4) of the Act.

The comment will be rejected. The changes to this section make it clear that several violations may constitute a single offense for the purpose of determining the level of the penalties that will be imposed. The inclusion of this section in the regulations makes for a complete and concise review of the civil penalties in the section of regulations which pertains to all penalties, both criminal and civil, which can be imposed for employer sanctions violations.

32. Special Rule

Section 274a.11 was removed by the interim final rule, since the purpose for enactment of this special rule no longer exists. This section was promulgated as a result of the provisions of IRCA that allowed certain qualified aliens who had resided illegally in the United States to legalize their status. These aliens could have applied under the Legalization, Special Agricultural Worker (SAW) or Cuban/Haitian entrant programs. This regulation allowed employers to hire applicants or prospective applicants for legalization, SAW, or Cuban/Haitian entrant status, Until September 1, 1987, without reviewing an employment authorization document, if they stated they were applying for one of these programs. All other verification requirements had to be met. However, as of September 1, 1987, these aliens were required to produce an employment authorization document, and the employer must have completed section 2 of the Form I–9 and certified that the aliens were authorized to work in the United States. Since a person or entity could no longer rely on this provision after September 1, 1987, as a basis for not fully complying with the verification requirements, this provision was removed as being obsolete.

Both of the comments regarding this regulation suggest that this section be reinstated. The commenters stated that the removal of this section is premature because it is still relevant to current determinations of whether an individual was authorized to engage in employment during the period that the special rule was in effect, namely, from November 6, 1986, to September 1, 1987. One example given by the commenters describes the situation in which an individual may only be able to obtain unemployment insurance benefits if he or she can prove authorized employment during that period of time.

These comments will be rejected. Since the purpose of enacting this provision no longer exists, it will remain deleted. However, the removal of this section in no way diminishes its validity prior to the effective date of its removal. Individuals who need to prove authorized employment during the period of November 6, 1986 to September 1,1987, may still do so by relying on the previous regulation which was in effect and controlling during that time period.

33. Work Authorization Inherent in Alien's Status

Section 274a.12 paragraph (a) was amended in the interim final rule to specify that certain aliens in this paragraph [(a)(3)-(11)], although employment authorization is inherent in their status, must apply for evidence of this inherent employment authorization by completing an application for employment authorization (Form I–765) in order to be issued an employment authorization document. The interim final rule also noted that the expiration date on a Form I-551 does not necessarily mean that an individual's employment authorization has expired.

Two commenters suggested that this amendment to the regulations exceeds INS' statutory authority. These commenters stated that aliens covered by this regulation have an absolute right to work in the United States by virtue of their status. The commenters stated that the interim final rule denies such individuals the right to work unless they receive an employment authorization document from the INS, and that the inability of the INS to issue these documents within a reasonable period of time furthers this denial of the right to work. The commenters stated that these aliens would be deprived of opportunities to accept or change employment while awaiting the issuance of an INS employment authorization document. They suggested that if the INS wants to provide a standard employment authorization document for these classes of aliens, it should issue such documentation automatically upon the grant of status or admission of such aliens.

One commenter believed that this regulation imposes new burdens on these authorized workers.

Another commenter suggested that if these authorized aliens must now obtain employment authorization documents in order to work, the INS must respond to such requests promptly. It was suggested that section 274a.2(b)(1)(vi) be amended to allow receipts for applications for employment authorization documents to satisfy the verification requirements for at least 60 days instead of 21 business days.

One commenter suggested that the regulation should clarify that an applicant for an employment authorization document under this section need not demonstrate economic necessity since employment authorization is inherent in one's status.

As previously stated in the Supplemental Information to the interim final rule, published in the Federal Register on June 25, 1990, the filing of the Form I–765 by these classes of aliens will not result in an adjudication of whether employment authorization should be granted because employment authorization is inherent in their status. The application will be used to acquire a document evidencing employment eligibility. Despite the fact that these aliens' right to work is inherent in their status, such a right does not exempt them from having to prove their eligibility to work by presenting documents recognized as sufficient to complete a Form I–9. These classes of aliens have no greater burden imposed upon them than any other alien, or even a United States citizen, in providing proof of employment eligibility. The Service is making every effort to promptly issue employment authorization documents, and is confident that issuance of these documents will be done within a reasonable period of time since no substantive adjudication is required. The Service notes that certain aliens who are eligible for employment authorization at the time of entry (e.g., K-nonimmigrants, N-nonimmigrants, Pacific Islanders, etc.) will be issued Form I–688B at the Port of Entry. The INS has equipped major Ports of Entry with the necessary equipment to issue Form I–688B.

The comment related to the extension of the 21 business day rule is accepted and the change is reflected in § 274a.2 paragraph (b)(1)(vi). The Service will make every effort to ensure that employment authorization documents are issued so as not to interrupt an alien's employment. A receipt for having applied for a replacement work authorization document is acceptable for these aliens for 90 days. The employer, recruiter or referrer for a fee must ensure that section 1 of the Form I–9 is completed by the employee. Section 1 will evidence that the alien is work authorized by the inclusion of the A-number or admission number. Once the actual document is obtained, the employer can fully complete section 2 of the Form I–9 and ensure that the alien updates section 1 to note any expiration date on the work authorization document.

The Service has also added language to paragraph (a) to clarify that the expiration date on Form I–551 reflects only that the card must be renewed, not that the individual's work authorization has expired.

34. Aliens Granted Suspension of Deportation

Section 274a.12 paragraph (a)(9) was amended in the interim final rule to clarify that a person who has received a final determination as to his or her entitlement to suspension of deportation immediately obtains permanent residence status. Section 244 of the Act was amended by IRCA and by § 2(q)(1)(B) of the Immigration Technical Corrections Amendments of 1988 (Pub. L. No. 100–525, 102 Stat. 2614) to eliminate the requirement that grants of suspension be submitted to the Congress for two sessions prior to a final grant of suspension. Therefore, work authorization for aliens granted suspension of deportation is incident to their status as lawful permanent residents under paragraph (a)(1), thereby obviating the need for paragraph (a)(9). The interim final rule is adopted herein without modification.

35. Nonimmigrants: Crewmen

Section 274a.12 paragraph (b)(4) was deleted by the interim final rule to eliminate the ambiguity between § 214.2(d) and this paragraph, so as to clearly reflect that crewmen are not authorized to work in the United States incident to their status. A crewman's labor, required for normal operation and service on board a vessel or aircraft, is not considered to be employment in the United States for purposes of section 274A of the Act. See section 101(a)(15)(D) of the Act. The only comment regarding this section suggested that the language in this section be moved to 8 CFR 214.2(d) instead of being deleted altogether from the regulations. It is the position of the Service that alien crewmen are not authorized to be employed in the United States. Therefore, the provision was properly deleted. However, the Service agrees that the remaining portion of that former section should be moved to 8 CFR 214.2(d).

36. Nonimmigrants: A–3, E, G–5, H, I, J–1, L–1, and FTA

Section 274a.12 paragraph (b)(15) was amended in the interim final rule to include, as paragraph (b)(16), those nonimmigrants admitted to the United States as a result of the United States-Canada Free-Trade Agreement (FTA). One commenter was supportive of the addition to this section.

Two commenters suggested that the 120-day limitation on work authorization during the pendency of an alien's extension application be eliminated. The commenters stated that by eliminating this limitation, aliens whose extension applications have not been adjudicated by the Service within 120 days would be authorized to continue to work throughout the pendency of the extension application.

One commenter stated that since an employer is not notified if an alien's application for extension of stay is denied, and such a denial automatically terminates the alien's work authorization, the employer will be denied due process.

To offer an unlimited period of work authorization to these classes of aliens would be contrary to the overall goal of the regulations. That goal is to ensure that only current work authorization documents issued to nonimmigrants, which specify a fixed date when employment authorization begins and ends, are presented by these workers. No rational reason exists to exempt

these classes of aliens from having to present current work authorization documents to an employer. The Service intends to make every effort to adjudicate applications for extensions of stay in a timely manner so that an alien's employment will not be interrupted. To that end, this final rule extends the 120-day period to 240 days to ensure that work authorization documents are issued to these aliens without causing a gap in their employment authorization.

By retaining a specified time period in this regulation, the employer will be able to determine, within a time certain, whether or not an employee has been granted an extension of his or her stay, and is, therefore, eligible to continue working. Since the employee, and not the employer, is provided notice of the Service's decision on the extension application, applying a time certain limitation will assist the employer in his or her responsibility to employ only those aliens authorized to work and will minimize the possibility that an employer is continuing to employ an unauthorized alien, e.g., an alien whose extension of stay has been denied. Giving an alien an unlimited period of work authorization would provide little incentive for an alien, whose extension application has been denied, to inform his or her employer of the denial.

37. Nonimmigrants: A–1 and A–2

Section 274a.12 paragraph (c)(1) was amended by the interim final rule by removing the designation "dependent son or daughter" so that this paragraph would be conformity with the interim regulations published on November 21, 1988. This paragraph also reflects the systemic change that now requires a foreign government official to present an executed Form I–566, including the proper endorsement, in an application for employment authorization. One commenter stated that the term "son or daughter" should not be removed from this section. The commenter stated that, in accordance with international agreements, 8 CFR 214.2(a)(2) and 8 CFR 214.2(g)(2) allow children and certain unmarried, dependent sons and daughters over the age of 21 to be employed in the United States. The elimination of the term "son or daughter" creates a discrepancy between 8 CFR 214 and 274a.

The comment will be accepted and the language "son or daughter" will be reinserted. The same change is made to § 274a.12 paragraph (c)(4).

38. Nonimmigrants: Students

Section 274a.12 paragraph (c)(3) relates to work authorization for nonimmigrant students. Comments related to this section will be addressed in a final rule that amends both this section, § 274a.12 paragraph (b), and 8 CFR 214.2(f).

39. Nonimmigrants: Asylees, Adjustment Applicants, Suspension Applicants, and Parolees

Section 274a.12 paragraphs (c)(8), (c)(9), (c)(10), and (c)(11) were amended in the interim final rule by making stylistic changes in removing the word "Any" at the beginning of each sentence and replacing it with the word "An." One commenter suggested that third and sixth preference adjustment of status applicants, who are given employment authorization pursuant to this section during the pendency of the adjustment application, should automatically be able to use the employment authorization document as an advance parole document for business travel without being required to make a separate advance parole application.

This comment will be rejected. The standardized employment authorization document is designed to verify an alien's eligibility to work in the United States. The purpose of the document is not to verify one's immigration status, nor is it to enable an adjustment of status applicant to travel abroad. The suggested change, therefore, is not warranted.

40. Suspension Applicants, Aliens in Exclusion and Deportation Proceedings, and Aliens Granted Deferred Action Status

Section 274a.12 paragraphs (c)(10), (13) and (14), although not modified by the interim final rule on the issue of "economic necessity," were commented on. Two commenters stated that no rationale has ever been provided for requiring that applicants for suspension of deportation, aliens in exclusion or deportation proceedings, and aliens granted deferred action status demonstrate "economic necessity" for employment authorization under 8 CFR 274a.12(c)(10), (13) and (14), respectively. The commenters gave an example in which an applicant for suspension of deportation whose savings exceed the so-called "poverty guidelines" may be required to exhaust such savings while applying for relief, while a destitute suspension applicant will be immediately authorized to work. The commenters questioned why these three categories of aliens have been singled out for the applicability of the "economic necessity" test while other categories of aliens are not required to demonstrate "economic necessity" to work.

The Service, after thoroughly reviewing the comments, has deemed it appropriate to retain "economic necessity" for those categories of aliens who are subject to exclusion or deportation proceedings or whose deportation has been delayed. To be consistent with this reasoning, applicants for suspension of deportation will no longer have to prove economic necessity to obtain work authorization under § 274a.12(c)(10). The Service believes that they are similarly situated, for purposes of applying for work authorization, to adjustment or asylum applicants who do not have to establish economic necessity. However, there is no valid basis to distinguish deportable aliens granted voluntary departure from the other categories of aliens who must establish economic necessity. Therefore, any deportable alien granted voluntary departure who applies for work authorization pursuant to § 274a.12(c)(12) must now establish an economic need to work. Furthermore, it is important to point out that the question here is not why economic necessity is needed for these groups, but rather whether economic necessity is a relevant factor in determining whether an alien is entitled to work authorization in the United States. Clearly, the requirement of demonstrating economic need is a relevant factor in this determination for aliens whose exclusion or deportation has been temporarily delayed.

41. Nonimmigrants: A–3, E, G–5, H, I, J–1, L–1, and FTAs Whose Application for Extension of Stay Has Not Been Adjudicated Within 180 Days

Section 274a.12 paragraph (c)(15) was removed and reserved by the interim final rule. Three commenters stated that they thought this section should be reinstated. They stated that by removing this section, an alien whose application for an extension of stay has not yet been adjudicated by the Service within 120 days will be forced to stop working, pending a decision by the Service. The commenters viewed this as a penalty imposed upon both the alien and the employer.

The Service disagrees that paragraph (c)(15) was removed to impose a penalty on employers and employees. The Service notes that § 274a.12(b)(15) extends the 120-day period to 240 days for certain aliens who have filed a timely application for extension of stay. This change coupled with the Service's efforts to timely adjudicate all applications should resolve the commenters' concerns.

42. Registry Applicants

Section 274a.12 paragraph (c)(16) was added by the interim final rule to include registry applicants to the list of aliens eligible to apply for work authorization. The Service received no comments on this paragraph. Thus, it will be retained in this final rule.

43. Nonimmigrants: B–1

Section 274a.12 paragraph (c) was amended in the interim final rule by adding a new paragraph (c)(17), to reflect the current practice of allowing nonimmigrant visitors for business (B–1) to request permission to work in the United States under certain limited circumstances. The interim final rule incorporated the requirements and limitations currently set forth in the State Department Foreign Affairs Manual (FAM 41.31) and the Service Operation Instructions (O.I. 214.2(b)). Two commenters suggested that visiting ministers of religion in the B–1 category also be included in this section. They noted that these nonimmigrants, who are engaged in evangelical tours and are supported by offerings contributed at each evangelical meeting, are authorized to obtain "work authorized" social security cards and to receive such compensation in the United States. See Foreign Affairs Manual, 41.31, n. 14.

One commenter stated that he did not believe that employment authorization was applicable to B–1 ministers or missionaries. The commenter stated that the nonimmigrant category of ministers or missionaries is not considered an employment-related category such as the H or L nonimmigrant visas, even though ministers and missionaries may be compensated for expenses incidental to their stay in the United States.

The Service will actively investigate this issue. The Service notes that pursuant to Matter of Hall, 18 I. & N. Dec. 203 (BIA 1982), evangelical ministers on tour are considered to be engaged in employment in the United States. While this decision is admittedly pre-IRCA, the concept that such an individual is not an unpaid volunteer of the church requires further exploration. Further, section 209 of the Immigration Act of 1990 adds a new nonimmigrant classification for religious organizations as section 101(a)(15)(R) of the Act. The Service will address these comments at a future date.

44. Aliens Released on an Order of Supervision

One commenter stated that aliens released on an order of supervision should be able to apply for work authorization. The comment is accepted and a new paragraph (c)(18) is added.

45. Application for Employment Authorization/Interim Employment Authorization

Section 274a.13 paragraphs (a), (b) and (d) were amended in the interim final rule to add clarifying language to conform this section to the systemic changes made with respect to employment authorization, to wit: Form I–765. Three commenters suggested that the INS be required to adjudicate applications for employment authorization within 3 business days instead of the 60 days as reflected in the interim final rule. The commenters stated that since a job applicant has only 3 business days to present evidence of employment authorization to an employer, the INS should only be given the same number of days to process applications for work authorization. They concluded that if the INS needs 60 days to adjudicate applications, then a similar time period should be allowed for aliens to present evidence of employment authorization when hired for a job. One commenter suggested that under these circumstances, if the INS fails to adjudicate an application for employment authorization within the 3 business days, the alien should then be given automatic employment authorization pending a final decision by the INS.

The Service rejects these comment. Section 274a.13 paragraph (d) is revised to change the time period during which the Service will adjudicate applications for employment authorization from 60 to 90 days. The Service has experienced a large increase in the number of applications filed for benefits, and anticipates further increases based upon passage of the Immigration Act of 1990, particularly that portion that authorizes or allows the Attorney General to designated temporary protected status for aliens of certain nationalities. Every effect will be made to adjudicate applications for employment authorization as quickly as possible after receipt of the application. However, workload projections and staffing level projections indicate an increase to 90 days for adjudication is more in line with what can be accomplished. In accordance with the change made in paragraph (d), the INS expects to be able to adjudicate applications for work authorization within the 90–day period. However, if for some reason such an adjudication has not been completed within the 90-day period, the alien is automatically granted employed authorization for a period not to exceed 240 days. This provision does not require that the Service actually grant employment authorization for 240 days. A period of less than 240 days may be granted by the Service in its discretion.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. The information collection requirements contained in this regulation have been approved by the Office of management and Budget, under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies); Freedom of Information; Privacy; Reporting and recordkeeping requirements; Surety bonds.

8 CFR Part 274a

Administrative, Practice and Procedure; Aliens; Employment; Penalties; Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 103 and 274a, which was published at 55 FR 25928–25937 on June 25, 1990, is adopted as a final rule with the following changes:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 –U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.5 is amended by revising paragraph (a) to read as folows:

§ 103.5 Reopening or reconsideration.

(a) *Motions to reopen or reconsider in other than special agricultural worker and legalization cases.*—(1) *When filed by affected party.*—(i) *General.* Except where the Board has jurisdiction and as otherwise provided in part 242 of this chapter, when the affected party files a

motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision. Motions to reopen or reconsider are not applicable to proceedings described in § 274a.9 of this chapter.

(ii) *Jurisdiction.* The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction. In that instance, the new official having jurisdiction is the official over such a proceeding in the new geographical locations.

(iii) *Filing Requirements.*—A motion may be accompanied by a brief. It must be—

(A) In writing and signed by the affected party or the attorney or representative of record, if any;

(B) In triplicate if addressed to the Board, in duplicate if addressed to an immigration judge, without any copies if addressed to a Service officer;

(C) Accompanied by the fee required by § 103.7 of this part;

(D) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

(E) Addressed to the official having jurisdiction; and

(F) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

(iv) *Effect of motion or subsequent application or petition.* Unless the Service directs otherwise, the filing of a motion to reopen or reconsider or of a subsequent application or petition does not stay the execution of any decision in a case or extend a previously set departure date.

(2) *Requirements for motion to reopen.* A motion to reopen must—

(i) State the new facts to be proved at the reopened proceeding; and

(ii) Be supported by affidavits or other documentary evidence.

(3) *Requirements for motion to reconsider:* A motion to reconsider must—

(i) State the reasons for reconsideration; and

(ii) Be supported by any pertinent precedent decisions.

(4) *Deficient motion in Service case.*—

(i) *Motion to reopen.* A Service officer considering a motion to reopen shall reject a motion as deficient and not refund any filing fee the Service has accepted when the motion does not state new facts to be proved or when it is not supported by affidavits or other documentary evidence.

(ii) *Motion to reconsider.* A Service officer considering a motion to reconsider shall reject a motion as deficient and not refund any filing fee the Service has accepted when the motion does not state the reasons for reconsideration.

(iii) *Correction of deficient motion.* If the affected party corrects the deficiency within 60 days of rejection of a motion, the Service officer having jurisdiction shall act upon the original motion and make a decision on the merits of the case. There is no fee for correction of a deficient motion within 60 days of its rejection as long as the filing fee has already been paid and accepted by the Service.

(5) *Motion by Service officer.*—

(i) *Service motion with decision favorable to affected party.* When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision in order to make a new decision favorable to the affected party, the Service officer shall combine the motion and the favorable decision in one action.

(ii) *Service motion with decision that may be unfavorable to affected party.* When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision, and the new decision may be unfavorable to the affected party, the officer shall give the affected party 30 days after service of the motion to submit a brief. The officer may extend the time period for good cause shown. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

(iii) *Proceeding before Board or immigration judge.* When a Service officer is the moving party in a proceeding before the Board or an immigration judge, a copy of the motion must be served on the affected party. The motion and proof of service must be filed with the official having jurisdiction. The affected party has 10 days from the date of service to submit a brief. This time period may be extended as provided in §§ 3.8(c) and 3.22(b) of this chapter.

(6) *Appeal to AAU from Service decision made as a result of a motion.* A field office decision made as a result of a motion may be applied to the AAU only if the original decision was appealable to the AAU.

(7) *Other applicable provisions.* The provisions of § 103.3(a)(2)(x) of this part also apply to decisions on motions. The provisions of § 103.3(b) of this part also apply to requests for oral argument regarding motions considered by the AAU.

* * * * *

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, and 8 CFR part 2.

4. Section 274a.1 is amended by revising paragraphs (c), (j), (k) and (l) to read as follows:

§ 274a.1 Definitions.

* * * * *

(c) The term *hire* means the actual commencement of employment of an employee for wages or other remuneration. For purposes of section 274A(a)(4) of the Act and § 274a.5 of this part, a hire occurs when a person or entity uses a contract, subcontract or exchange entered into, renegotiated or extended after November 6, 1986, to obtain the labor of an alien in the United States, knowing that the alien is an unauthorized alien;

* * * * *

(j) The term *independent contractor* includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, will be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity: supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; has an opportunity for profit or loss as a result of labor or services provided; invests in the facilities for work; directs the order or sequence in which the work is to be done and determines the hours during which the work is to be done. The use of labor or services of an independent contractor are subject to the restrictions in section 274A(a)(4) of the Act and § 274a.5 of this part;

(k) The term *pattern* or *practice* means regular, repeated, and intentional activities, but does not include isolated, sporadic, or accidental acts;

(l)(1) The term *knowing* includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition. Constructive knowledge may include, but is not

limited to, situations where an employer:

(i) Fails to complete or improperly completes the Employment Eligibility Verification Form, I–9;

(ii) Has information available to it that would indicate that the alien is not authorized to work, such as Labor Certification and/or an Application for Prospective Employer; or

(iii) Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf.

(2) Knowledge that an employee is unauthorized may *not* be inferred from an employee's foreign appearance or accent. Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section 274(b) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

5. Section 274a.2, paragraph (a), introductory text, is amended by:

a. Removing the first sentence and by adding in its place two new sentences; and

b. Adding in the third sentence from the end of the paragraph, before the phrase "after May 31, 1987", the phrase "and hired" to read as follows:

§ 274a.2 Verification of employment eligibility.

(a) *General.* This section states the requirements and procedures persons or entities must comply with when hiring, or when recruiting or referring for a fee, or when continuing to employ individuals in the United States. For purposes of complying with section 274A(b) of the Act and this section, all references to recruiters and referrers for a fee are limited to a person or entity who is either an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802).

* * *

* * * * * *

6. Section 274a.2 paragraph (b)(1)(i)(A) is amended by removing the term "hiring" and replacing it with the term "hire".

7. Section 274a.2 is amended by:

a. Revising in paragraph (b)(1)(v) introductory text, the second sentence;

b. Removing in paragraph (b)(1)(v)(A)(*1*) in the term "Unexpired" the capital "U" and replacing it with a lower case "u";

c. Removing in paragraph (b)(1)(v)(B)(*1*)(*i*) in the second sentence the word "drivers' " and replacing it with the word "driver's" and by removing, in the second sentence, the word "should" and replacing it with the word "shall";

d. Redesignating existing paragraphs (b)(1)(v)(B)(*1*)(*iii*) through (b)(1)(v)(B)(*1*)(*viii*) as new paragraphs (b)(1)(v)(B)(*1*)(*iv*) through (b)(1)(v)(B)(*1*)(*ix*);

e. Adding a new paragraph (b)(1)(v)(B)(*1*)(*iii*); and

f. Adding in paragraph (b)(1)(v)(B)(*1*)(*v*) a sentence to the end of the paragraph to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(V) * * * The identification number and expiration date (if any) of all documents must be noted in the appropriate space provided on the Form I–9.

* * * * *

(b) * * *

(*1*) * * *

(*iii*) Voter's registration card;

* * * * *

(*v*) * * * If the identification card does not contain a photograph, identifying information shall be included such as: name, date of birth, sex, height, color of eyes, and address;

* * * * *

8. Section 274a.2 is amended by:

a. Removing in paragraph (b)(1)(v)(C)(*3*) in the term "certification" the lower case "c" and replacing it with an upper case "C";

b. Revising paragraph (b)(1)(v)(C)(*4*);

c. Revising paragraph (b)(1)(v)(C)(*8*); and

d. Revising paragraph (b)(1) (vi) through (viii) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(C) * * *

(*4*) An original or certified copy of a birth certificate issued by a State, county, municipal authority or outlying possession of the United States bearing an official seal;

* * * * *

(*8*) An unexpired employment authorization document issued by the Immigration and Naturalization Service.

(vi) If an individual is unable to provide the required document or documents within the time periods specified in paragraphs (b)(1) (ii) and (iv) of this section, the individual must present a receipt for the application of the replacement document or documents within three business days of the hire and present the required document or documents within 90 days of the hire. This section is not applicable to an alien who indicates that he or she does not have work authorization at the time of hire.

(vii) If an individual's employment authorization expires, the employer, recruiter or referrer for a fee must reverify on the Form I–9 to reflect that the individual is still authorized to work in the United States; otherwise the individual may no longer be employed, recruited, or referred. Reverification on the Form I–9 must occur not later than the date work authorization expires. In order to reverify on the Form I–9, the employee or referred individual must present a document that either shows continuing employment eligibility or is a new grant of work authorization. The employer or the recruiter or referrer for a fee must review this document, and if it appears to be genuine and to relate to the individual, reverify by noting the document's identification number and expiration date on the Form I–9.

(viii) An employer will not be deemed to have hired an individual for employment if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times.

(A) An individual is continuing in his or her employment in one of the following situations:

(*1*) An individual takes approved paid or unpaid leave on account of study, illness or disability of a family member, illness or pregnancy, maternity or paternity leave, vacation, union business, or other temporary leave approved by the employer;

(*2*) An individual is promoted, demoted, or gets a pay raise;

(*3*) An individual is temporarily laid off for lack of work;

(*4*) An individual is on strike or in a labor dispute;

(*5*) An individual is reinstated after disciplinary suspension for wrongful termination, found unjustified by any court, arbitrator, or administrative body, or otherwise resolved through reinstatement or settlement;

(*6*) An individual transfers from one distinct unit of an employer to another distinct unit of the same employer; the employer may transfer the individual's Form I–9 to the receiving unit;

(*7*) An individual continues his or her employment with a related, successor, or reorganized employer, provided that the employer obtains and maintains from the previous employer records and

Forms I–9 where applicable. For this purpose, a related, successor, or reorganized employer includes:

(*i*) The same employer at another location;

(*ii*) An employer who continues to employ some or all of a previous employer's workforce in cases involving a corporate reorganization, merger, or sale of stock or assets;

(*iii*) An employer who continues to employ any employee of another employer's workforce where both employers belong to the same multi-employer association and the employee continues to work in the same bargaining unit under the same collective bargaining agreement. For purposes of this subsection, any agent designated to complete and maintain the Form I–9 must record the employee's date of hire and/or termination each time the employee is hired and/or terminated by an employer of the multi-employer association; or

(*8*) An individual is engaged in seasonal employment. (B) The employer who is claiming that an individual is continuing in his or her employment must also establish that the individual expected to resume employment at all times and that the individual's expectation is reasonable. Whether an individual's expectation is reasonable will be determined on a case-by-case basis taking into consideration several factors. Factors which would indicate that an individual has a reasonable expectation of employment include, but are not limited to, the following:

(*1*) The individual in question was employed by the employer on a regular and substantial basis. A determination of a regular and substantial basis is established by a comparison of other workers who are similarly employed by the employer;

(*2*) The individual in question complied with the employer's established and published policy regarding his or her absence;

(*3*) The employer's past history of recalling absent employees for employment indicates a likelihood that the individual in question will resume employment with the employer within a reasonable time in the future;

(*4*) The former position held by the individual in question has not been taken permanently by another worker;

(*5*) The individual in question has not sought or obtained benefits during his or her absence from employment with the employer that are inconsistent with an expectation of resuming employment with the employer within a reasonable time in the future. Such benefits include, but are not limited to, severance and retirement benefits;

(*6*) The financial condition of the employer indicates the ability of the employer to permit the individual in question to resume employment within a reasonable time in the future; or

(*7*) The oral and/or written communication between employer, the employer's supervisory employees and the individual in question indicates that it is reasonably likely that the individual in question will resume employment with the employer within a reasonable time in the future.

* * * * *

9. Section 274a.2 is amended by revising paragraphs (b)(2)(ii) and (iii) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(2) * * *

(ii) Any person or entity required to retain Forms I–9 in accordance with this section shall be provided with at least three days notice prior to an inspection of the Forms I–9 by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Departmet of Labor. At the time of inspection, Forms I–9 must be made available in their original form or on microfilm or microfiche at the location where the request for production was made. If Forms I–9 are kept at another location, the person or entity must inform the officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor of the location where the forms are kept and make arrangements for the inspection. Inspections may be performed at an INS office. A recruiter or referrer for a fee who has designated an employer to complete the employment verification procedures may present a photocopy of the Form I–9 in lieu of presenting the Form I–9 in its original form or on microfilm or microfiche, as set forth in paragraph (b)(1)(iv) of this section. Any refusal or delay in presentation of the Forms I–9 for inspection is a violation of the retention requirements as set forth in section 274A(b)(3) of the Act. No Subpoena or warrant shall be required for such inspection, but the use of such enforcement tools is not precluded. In addition, if the person or entity has not complied with a request to present the Forms I–9, any Service officer listed in § 287.4 of this chapter may compel production of the Forms I–9 and any other relevant documents by issuing a subpoena. Nothing in this section is intended to limit the Service's subpoena power under section 235(a) of the Act.

(iii) The following standards shall apply to Forms I–9 presented on microfilm or microfiche submitted to an officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor: Microfilm when displayed on a microfilm reader (viewer) or reproduced on paper must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral which enables the observer to positively and quickly identify it to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or whole numbers. A detailed index of all microfilmed data shall be maintained and arranged in such a manner as to permit the immediate location of any particular record. It is the responsibility of the employer, recruiter or referrer for a fee:

(A) To provide for the processing, storage and maintenace of all microfilm, and

(B) To be able to make the contents thereof available as required by law. The person or entity presenting the microfilm will make available a reader-printer at the examination site for the ready reading, location and reproduction of any record or records being maintained on microfilm. Reader-printers made available to an officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor shall provide safety features and be in clean condition, properly maintained and in good working order. The reader-printers must have the capacity to display and print a complete page of information. A person or entity who is determined to have failed to comply with the criteria established by this regulation for the presentation of microfilm or microfiche to the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor, and at the time of the inspection does not present a properly completed Form I–9 for the employee, is in violation of section 274A(a)(1)(B) of the Act and § 274a.2(b)(2).

* * * * *

10. Section 274a.2 paragraph (b)(3) is amended by:

a. Adding in the second sentence after the phrase "If such" the word "a"; and

b. Removing the last sentence and adding new text to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(3) * * * The copying of any such document and retention of the copy does not relieve the employer from the requirement to fully complete section 2 of the Form I–9. An employer, recruiter or referrer for a fee should not, however, copy the documents only of individuals of certain national origins or citizenship statuses. To do so may violate section 274B of the Act.

* * * * *

11. Section 274a.2 is amended by revising paragraph (c)(1) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(c) * * *

(1) * * *

(i) If upon inspection of the Form I–9, the employer determines that the Form I–9 relates to the individual and that the individual is still eligible to work, that previously executed Form I–9 is sufficient for purposes of section 274A(b) of the Act if the individual is hired within three years of the date of the initial execution of the Form I–9 and the employer updates the Form I–9 to reflect the date of rehire; or

(ii) If upon inspection of the Form I–9, the employer determines that the individual's employment authorization has expired, the employer must reverify on the Form I–9 in accordance with paragraph (b)(1)(vii); otherwise the individual may no longer be employed.

* * * * *

12. Section 274a.2 paragraph (d) is amended by:

a. Removing in paragraph (d)(1) introductory text the phrase ", and the recruiter or referrer has completed the Form I–9";

b. Revising paragraphs (d)(1)(i) and (d)(1)(ii);

c. Removing at the end of paragraph (d)(2) the phrase "commencing from the date of the initial execution of the Form I–9." and adding in its place the phrase "from the date of the rehire." to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(d) * * *

(1) * * *

(i) If upon inspection of the Form I–9, the recruiter or referrer for a fee determines that the Form I–9 relates to the individual and that the individual is still eligible to work, that previously executed Form I–9 is sufficient for purposes of section 274A(b) of the Act if the individual is referred within three years of the date of the initial execution of the Form I–9 and the recruiter or referrer for a fee updates the Form I–9 to reflect the date of rehire; or

(ii) If upon inspection of the Form I–9, the recruiter or referrer determines that the individual's employment authorization has expired, the recruiter or referrer for a fee must reverify on the Form I–9 in accordance with paragraph (b)(1)(vii) of this section; otherwise the individual may no longer be recruited or referred.

* * * * *

13. Section 274a.7 is amended by revising paragraph (a) to read as follows:

§ 274a.7 Pre-enactment provisions for employees hired prior to November 7, 1986.

(a) The penalty provisions set forth in section 274A (e) and (f) of the Act for violations of sections 274A(a)(1)(B) and 274A(a)(2) of the Act shall not apply to employees who were hired prior to November 7, 1986, and who are continuing in their employment and have a reasonable expectation of employment at all times (as set forth in § 274a.2(b)(1)(viii)), except those individuals described in section 274a.2 (b)(1)(viii)(A)(*7*)(*iii*) and (b)(1)(viii)(A)(*8*).

* * * * *

14. Section 274a.9 paragraph (b) is amended by:

a. Removing in the second sentence the term "which" and adding in its place the term "that";

b. Removing in the third sentence the term "shall" and adding in its place the term "may" and also removing the phrase "a citation or" which precedes the phrase "a Notice of Intent to Fine."

15. Section 274a.9 is amended by:

a. Revising paragraphs (c) introductory text and (c)(1)(i);

b. Adding in paragraph (d) second sentence after the term "hearing" the term "submitted";

c. Adding in paragraph (d) fifth sentence after the phrase "If the Notice of Intent to Fine was served by" the term "ordinary";

d. Revising in paragraph (d) the last sentence;

e. Adding in paragraph (e) before the term "mail)," the term "ordinary" to read as follows:

§ 274a.9 Enforcement procedures.

(c) *Notice of Intent to Fine.* The proceeding to assess administrative penalties under section 274A of the Act is commenced when the Service issues a Notice of Intent to Fine on Form I–763. Service of this Notice shall be accomplished pursuant to Part 103 of this chapter. The person or entity identified in the Notice of Intent to Fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in § 242.1 of this chapter with concurrence of a Service attorney.

(1) *Contents of the Notice of Intent to Fine.*

(i) The Notice of Intent to Fine will contain the basis for the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the penalty that will be imposed.

* * * * *

(d) *Request for Hearing Before an Administrative Law Judge.* * * * In the request for a hearing, the respondent may, but is not required to, respond to each allegation listed in the Notice of Intent to Fine.

* * * * *

16. Section 274a.10 paragraph (b) is amended by:

a. Removing in paragraph (b) wherever it appears the phrase "Administrative Law Judge" and replacing it with the phrase "administrative law judge";

b. Removing in the first sentence of introductory text the phrase "An employer or a recruiter or referrer for a fee" and adding in its place the phrase "A person or entity";

c. Removing in the fourth sentence of introductory text the term "violation" following the phrase "However, a single" and adding in its place the term "offense";

d. Adding in paragraph (b)(1), introductory text, immediately before the phrase ", shall be subject to the following order:" the phrase "in the United States"; and

e. Removing in paragraph (b)(3) the phrase "does its own hiring, or its" and adding in its place the phrase "do their own hiring, or their".

17. Section 274a.12 paragraph (a) is amended by:

a. Revising in paragraph (a), introductory text, the last sentence;

b. Removing at the end of paragraph (a)(1) the "semicolon" and adding a "period"; and

c. Adding at the end of paragraph (a)(1) a new sentence to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) *Aliens authorized employment incident to status.* * * * Any alien within a class of aliens described in paragraphs (a)(3) through (a)(8), and (a)(10) through (a)(12) of this section, who seeks to be employed in the United

States must apply to the Service for a document evidencing such employment authorization.

(1) * * * An expiration date on the Form I–551 reflects only that the card must be renewed, not that the individual's work authorization has expired;

* * * * *

18. Section 274a.12 paragraph (b)(15) is amended by:

a. Removing each reference to "120" and adding in its place "240";

b. Removing in the first sentence after the phrase "for an extension of such" the word "status" and adding in its place the world "stay"; and

c. Removing in the fourth sentence the term "regional" where it precedes the phrase "service center director", and removing the word "status" and adding in its place the term "stay".

19. Section 274a.12 paragraph (c) is amended by:

a. Removing in the second sentence, introductory text, the term "indicated" and adding in its place the term "stated";

b. Adding in paragraphs (c)(1) and (c)(4) following the phrase "unmarried dependent child" the phrase "; son or daughter";

c. Removing in paragraph (c)(10), at the end of the first sentence and before the period, the phrase "; if the alien establishes an economic need to work";

d. Adding in paragraph (c)(12), introductory text, at the end of the first sentence and before the period the phrase "; if the alien establishes an economic need to work";

e. Removing in paragraph (c)(12), introductory text, second sentence, the term "[granting]";

f. Removing in paragraph (c)(13), introductory text, first sentence, the term "temporary";

g. Removing, in paragraph (c)(17)(i), first sentence, the letter "1" where it appears in the reference "101(a)(15)(B)" and replacing it with the number "1";

h. Removing, in paragraph (c)(17)(i), first sentence, the phrase "Immigration and Nationality" where it appears before the term "Act"; and

i. Adding a new paragraph (c)(18) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(18) An alien against whom a final order of deportation exists and who is released on an order of supervision under the authority contained in section 242(d) of the Act may be granted employment authorization if the district director determines that employment authorization is appropriate. Factors which may be considered by the district director in adjudicating the application for employment authorization include, but are not limited to, the following:

(i) The existence of economic necessity to be employed;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support; and

(iii) The anticipated length of time before the alien can be removed from the United States.

* * * * *

20. Section 274a.13 is amended by:

a. Revising paragraph (a);

b. Removing in paragraph (d) the references to the number "60" and adding in their place the number "90"; and

c. Removing, in paragraph (d), the reference to the number "120" and adding in its place the number "240", to read as follows:

§ 274a.13 Application for employment authorization.

(a) *General.* An application for employment authorization (Form I–765) by an alien under § 274a.12(a) (3) through (8) and (10)–(11) and under § 274a.12(c) of this part shall be filed in accordance with the instructions on Form I–765 with the district director having jurisdiction over the applicant's residence or the district director having jurisdiction over the port of entry at which the alien applies. The approval of an application for employment authorization shall be within the discretion of the district director. Where economic necessity had been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses in accordance with the instructions on the Form I–765.

* * * * *

Dated: August 15, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–19964 Filed 8–22–91; 8:45 am]

BILLING CODE 4410–10–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice to waive the "Nonmanufacturer Rule" for various metal plates, sheets and strips.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the "Nonmanufacturer Rule" for the products listed within Product and Service Code 9535. These classes of products are being granted waivers because no small business manufacturers or processors are available to participate in the Federal procurement market. The effect of a waiver is to allow an otherwise qualified small business regular dealer to supply the product of any domestic manufacturer on a Federal contract set aside for small business or awarded through the SBA 8(a) program.

PSC	Product lines granted waivers
9535	Plate *, sheet and strip; Titanium, Nickel-Copper, Nickel-Copper-Aluminum, Copper-Nickel, and Copper.

* Aluminum plate is excluded.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: James Fairbairn, Industrial Specialist, phone (202) 205–6465.

SUPPLEMENTARY INFORMATION: After an initial survey of a wide variety of product lines, SBA notified the public by notice in the **Federal Register** on December 18, 1990 (Vol. 55, No. 243 p. 51913), of its proposed intention to grant waivers of the so-called Nonmanufacturer Rule. After a thirty day comment period, small business sources were found for only two of the many products. A final waiver for most of the products was subsequently published in the **Federal Register** on May 15, 1991 (Vol. 56, No. 94, p. 22306). Due to administrative error, products listed in Product Service Code 9535 in the proposed notice of intent of December 18, 1990 were inadvertently omitted from the final waiver list of May 15, 1991. A government agency has since provided SBA with a small business manufacturing source for one of the omitted products, aluminum plate. That class of product is thus not included in this final waiver list. The basis for a waiver is that no small business manufacturer or processor is available to participate in the Federal procurement market for these specific classes of products. On November 15, 1988, Public Law 100–656 incorporated into the Small Business Act the existing SBA policy that recipients of contracts set aside for small business or the SBA 8(a) Program shall provide the products of small business manufacturers or processors. This requirement is commonly known as the

"Nonmanufacturer Rule". The SBA regulations imposing this requirement are found in 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of that law also provided for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. Section 210 of Public Law 101–574 subsequently modified the language to allow that waivers may be granted for a class of products if there are no small business manufacturers or processors available to participate in the Federal procurement market.

A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line within a PSC. To be considered available to participate in the Federal procurement market, a small business must have been awarded a contract, either directly or through a dealer, to supply that particular class of products within the twelve months prior to the solication. SBA has been requested to issue a waiver for each of the products listed above because of an apparent lack of any small business manufacturers or processors available to participate in the Federal market. SBA searched its Procurement Automated Source System (PASS) for small business manufacturers or processors for class of products. When no small business manufacturers or processors were identified by the PASS search, we published a notice to the public in the **Federal Register** stating our proposed intention to grant waivers for these classes of products unless sources were found. The notice described the legal provisions for a waiver, how SBA defines the market, and requested sources of small businesses manufacturers or processors.

The products listed in this waiver were inadvertently omitted from the final waiver list of products waived by notice in the **Federal Register** on May 15, 1991. The Defense Logistics Agency has since notified SBA of a small business manufacturer or processor of aluminum plate, so that product is not included in this final waiver. These waivers are being granted pursuant to statutory authority under section 210 of Public Law 101–574. A waiver for a class products is for an indefinite period, but is subject to an annual review or upon receipt of information indicating that the conditions required for a waiver no longer exist. If SBA determines that the conditions required for a waiver no longer exist, the waiver will be terminated. That termination will be published in the **Federal Register**.

Dated: August 19, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–20177 Filed 8–22–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 422

RIN 0960–AC67

Social Security Number Required for Receipt of Social Security Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: In these final regulations, we are adding a new regulation (§ 404.469) to reflect the requirement that in order to receive Social Security benefits, a person who becomes entitled to such benefits on or after June 1, 1989, must either furnish satisfactory proof that he or she has a Social Security number or, if no number has been assigned, properly apply for one. This is a requirement of section 205(c)(2)(E) of the Social Security Act (the Act), which was added to the Act by section 8009 of the Technical and Miscellaneous Revenue Act of 1988. Public Law 100–647. In addition, we are amending § 422.104 to provide that in some cases we will assign a Social Security number to an alien if the alien needs a number in order to receive a federally-funded benefit, or for a Federal tax reporting purpose for which the Social Security Administration (SSA) and the Internal Revenue Service agree that a number is needed.

EFFECTIVE DATE: These rules are effective August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–8471.

SUPPLEMENTARY INFORMATION: Under section 205(c)(2)(E) of the Act, the Secretary of Health and Human Services must require, as a condition for receipt of Social Security benefits, that an individual either furnish satisfactory proof of a Social Security number assigned to that individual, or properly apply for a number if one has not been assigned to him or her. This provision was added to the Act by section 8009 of the Technical and Miscellaneous Revenue Act of 1988 and is effective for people who become entitled to Social Security benefits on or after June 1, 1989.

The primary purpose of section 205(c)(2)(E) is to enable SSA to use the individual's Social Security number to detect more readily any duplicate benefit payments, unreported or miscredited earnings, and entitlement to other benefits. See H.R. Rep. No. 1104, 100th Cong., 2d Sess. Vol. II, 260 (1988). Prior to the enactment of this provision, we merely requested dependents and survivors of an insured worker to state their Social Security numbers voluntarily when they applied for benefits on the worker's record. Now, a dependent or survivor whose entitlement begins on or after June 1, 1989, must either furnish satisfactory proof of his or her Social Security number or, if no number has been assigned, properly apply for one.

We are adding a new regulation, § 404.469, which explains that we will not pay Social Security benefits to anyone whose entitlement began on or after June 1, 1989, and who either does not furnish satisfactory proof of his or her Social Security number or, if a number has not been assigned, does not properly apply for a number. As satisfactory proof, we require that the individual furnish his or her Social Security number and other adequate identifying information, such as date and place of birth, mother's maiden name, and father's name, which we will use to verify through our records that the number furnished is the Social Security number which we assigned to the individual, or determine whether we assigned another number. If the individual cannot furnish a Social Security number, we will use the other identifying information to search our records for any Social Security number we assigned to him or her. If a Social Security number has not been assigned to the individual, we will ask him or her to apply for one.

We are revising § 422.104 to provide that an alien who does not have the evidence of alien status described in § 422.107(e) may nevertheless apply for and be assigned a Social Security number so that he or she will satisfy the requirement of the new § 404.469 and similar requirements of other federally-funded benefit programs. Thus, an alien, either inside or outside the United States, who needs a Social Security number to receive Social Security benefits, may be assigned a number even though the evidence of alien status described in § 422.107(e) does not exist, if he or she otherwise meets the evidence requirements of § 422.107 for establishing age and identity. The

revision of § 422.104 will also provide that we will assign a Social Security number to an alien outside the United States who needs the number for a Federal tax reporting purpose for which SSA and the Internal Revenue Service agree that an individual needs a number.

In addition, we are amending § 404.401(d) to provide that the failure to furnish satisfactory proof of a Social Security number, or if no number has been assigned, failure to properly apply for one, if a nonpayment condition. Also, we are amending §§ 404.402 and 404.902 to include appropriate reference to § 404.469.

Comments: On August 20, 1990, proposed rules were published in the **Federal Register** at 55 FR 33920 with a 60-day comment period. We received comments from one individual who focused on the congressionally imposed requirement that a claimant must furnish satisfactory proof of his or her Social Security number or apply for a number to receive benefits. Specifically, the commenter believes that these regulations impose an unnecessary burden on people applying for Social Security benefits because they provide that satisfactory proof of a Social Security number may include information from the claimant regarding his or her date and place of birth, mother's maiden name, and father's name. We do not believe that furnishing this information will be unduly burdensome to claimants. The only additional information we request from a claimant that we did not routinely request before is the claimant's father's name and the mother's maiden name. If a claimant does not know all the identifying information we request, we will nevertheless search our records for any Social Security number that we have assigned to him or her. These regulations reflect a provision of the Act added by the Technical and Miscellaneous Revenue Act of 1988. The Secretary has no authority under the statutory provision to ignore the requirement that satisfactory proof of a Social Security number be furnished. Accordingly, for all these reasons, we are publishing these final rules substantively unchanged from the proposed rules.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will result in negligible administrative costs or savings. It has no effect on the amount of benefit payments or existing operating procedures. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These final rules impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.807 Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability Insurance.

20 CFR Part 422

Administrative practice and procedure; Freedom of Information; Organization and Functions (Government agencies); Social Security.

Dated: May 15, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: July 17, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subparts E and J of part 404 of 20 CFR chapter III and subpart B of part 422 of 20 CFR chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950–)

Subpart E—Deductions; Reductions; and Nonpayments of Benefits

1. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424, 427, and 1302.

2. Section 404.401 is amended by revising paragraph (d) to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

* * * * *

(d) *Nonpayments.* Nonpayment of monthly benefits may be required because:

(1) The individual is an alien who has been outside the United States for more than 6 months (see § 404.460);

(2) The individual on whose earnings record entitlement is based has been deported (see § 404.464);

(3) The individual is engaged in substantial gainful activity while entitled to disability insurance benefits based on "statutory blindness" (see § 404.467); or

(4) The individual has not provided satisfactory proof that he or she has a Social Security number or has not properly applied for a Social Security number (see § 404.469).

* * * * *

3. Section 404.402(d)(1) is revised to read as follows:

§ 404.402 Interrelationship of deductions, reductions, adjustments, and nonpayment of benefits.

* * * * *

(d) * * *

(1) Current nonpayments under §§ 404.460, 404.464, 404.465, 404.467, and 404.469;

* * * * *

4. A new section 404.469 is added to read as follows:

§ 404.469 Nonpayment of benefits where individual has not furnished or applied for a Social Security number.

No monthly benefits will be paid to an entitled individual unless he or she either furnishes to the Social Security Administration (SSA) satisfactory proof of his or her Social Security number, or, if the individual has not been assigned a number, he or she makes a proper application for a number (see § 422.103). An individual submits satisfactory proof of his or her Social Security number by furnishing to SSA the number and sufficient additional information that can be used to determine whether that Social Security number or another number has been assigned to the individual. Sufficient additional information may include the entitled individual's date and place of birth, mother's maiden name, and father's name. If the individual does not know his or her Social Security number, SSA will use this additional information to determine the Social Security number, if any, that it assigned to the individual. This rule applies to individuals who

become entitled to benefits beginning on or after June 1, 1989.

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

5. The authority citation for subpart J is revised to read as follows:

Authority: Secs. 201(j), 205(a), (b), and (d)-(h), 221(d), and 1102 of the Social Security Act; 42 U.S.C. 401(j), 405(a), (b), and (d)-(h), 421(d), 1302, and 1383.

6. Section 404.902 is amended by revising paragraphs (s) and (t) and by adding paragraph (u) to read as follows:

§ 404.902 Administrative actions that are initial determinations.

* * * * *

(s) Nonpayment of your benefits under § 404.468 because of your confinement in a jail, prison, or other penal institution or correctional facility for conviction of a felony;

(t) Whether or not you have a disabling impairment(s) as defined in § 404.1511; and

(u) Nonpayment of your benefits under § 404.469 because you have not furnished us satisfactory proof of your Social Security number, or, if a Social Security number has not been assigned to you, you have not filed a proper application for one.

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—General Procedures

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

Authority: Secs. 205 and 1102 of the Social Security Act; 42 U.S.C. 405 and 1302.

2. Section 422.104 is revised to read as follows:

§ 422.104 To whom Social Security numbers are assigned.

(a) *Persons with evidence of age, identity, and U.S. citizenship or alien status.* A Social Security number may be assigned to an applicant who meets the evidence requirements in § 422.107, if the applicant is:

(1) A U.S. citizen;

(2) An alien lawfully admitted to the United States for permanent residence or under other authority of law permitting him or her to work in the United States (see § 422.105 regarding presumption of authority of nonimmigrant alien to work); or

(3) An alien who is legally in the United States but not under authority of law permitting him or her to engage in employment, but only for a nonwork purpose (see § 422.107(e)(1) and (2)).

(b) *Persons with other evidence of alien status.* A Social Security number may be assigned for a nonwork purpose to an alien who cannot provide the evidence of alien status required by § 422.107(e), if the evidence described in that section does not exist, if other evidence is provided, and if:

(1) The alien resides either in or outside the United States and a Social Security number is required by law as a condition of the alien's receiving a federally-funded benefit to which the alien has established entitlement; or

(2) The alien resides outside the United States and needs a Social Security number for a Federal tax reporting purpose for which SSA and the Internal Revenue Service have agreed that an individual needs a number.

(c) *Annotation for a nonwork purpose.* If SSA has assigned a Social Security number for a nonwork purpose under the provision of paragraph (b)(1) or (b)(2) of this section, SSA will annotate its record to show that the number has been assigned for a nonwork purpose. Additionally, the Social Security number card will be marked with a nonwork legend. If earnings are reported to SSA on a nonwork Social Security number which was assigned under a provision of this section, SSA will inform the Immigration and Naturalization Service of the reported earnings.

[FR Doc. 91-20022 Filed 8-22-91; 8:45 am]
BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-91-1556; FR-3086-F-01]

Multifamily Participation Review Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule updates the composition of the Department's Multifamily Participation Review Committee.

EFFECTIVE DATE: September 23, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Weichman, Office of Lender Activities and Land Registration, room 9151, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-0582. A telecommunications device for deaf persons (TDD) is available at (202) 708-1455. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The Multifamily Participation Review Committee acts on behalf of both the Assistant Secretary for Housing—Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing in determining the acceptability of individuals and firms applying to participation in the Department's multifamily housing programs.

The revisions in this rule are necessary to update the current regulations involving the composition of the Committee. Changes recognized in the rule include the recent realignment of the Previous Participation and Compliance Division from the Office of Management to the Office of Lender Activities and Land Sales Registration, and the creation of the Office of Multifamily Preservation and Property Disposition. The proposed changes also reflect the creation of the Office of Construction, Rehabilitation and Maintenance under the Assistant Secretary for Public and Indian Housing.

The Department has determined that public comment on this rule is unnecessary because the subject matter is limited to internal agency procedure. Accordingly, the rule is being published for effect.

The Department's revision of its Multifamily Participation Review Committee constitutes an internal administrative procedure that 24 CFR 50.20 excludes from the requirements of 24 CFR part 50—the HUD rules implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have 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.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a

significant economic impact on a substantial number of small entities because it is only a procedural rule revising the makeup of the Department's Multifamily Participation Review Committee.

This rule was not listed in the Department's Semiannual Agenda of Regulation published on April 22, 1991 (56 FR 17360) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have federalism implications and, thus, are not subject to review under the Order.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potentially significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule has no relationship to family-related issues.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

Accordingly, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION

1. The authority citation for part 200 continues to read as follows:

Authority: Titles I and II of the National Housing Act (12 U.S.C. 1701 through 1715a–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 200.93(a) is revised to read as follows:

§ 200.93 Multifamily participation review committee.

(a) *Members.* (1) The Director, Office of Lender Activities and Land Sales Registration serves as Chairman and does not vote. The Committee is composed of the following voting members of their designees representing the Assistant Secretary for Housing—Federal Housing Commissioner: the Director of the Office of Insured Multifamily Housing Development; the Director of the Office of the Elderly and Assisted Housing; the Director of the Office of Multifamily Housing Management; the Director of the Office of Multifamily Preservation and Property Disposition; the Director of the Previous Participation and Compliance Division; and a designee of the Director of the Office of Lender Activities and Land Sales Registration. The following voting members of their designees shall represent the Assistant Secretary for Public and Indian Housing: the Director of the Office of Construction, Rehabilitation and Maintenance; and the Director of the Office of Indian Housing.

(2) The Committee also includes, as non-voting members, the General Counsel or his or her designee, who provides legal counsel, and the Participation Control Officer in the Office of Lender Activities and Land Sales Registration. The Participation Control Officer is the Executive Secretary to the Committee and is empowered to issue and sign all notices, orders, letters and directives on behalf of the committee, to keep minutes, and to perform other duties assigned by the Chairman or directed by the Committee.

* * * * *

Dated: July 31, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–20225 Filed 8–22–91; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R–91–1561; FR–3126–F–01]

Mortgage Insurance—Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Director, Financial Services Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–4325. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA Section 235 insurance programs has been reduced from 9.5 percent to 9.0 percent.

Until recently, HUD regulated interest rates not only for the Section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the Section 235 Program. The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56266 (1982), amending 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in a paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2)

cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have 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. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small adjustment in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 24, 1990, (53 FR 41974) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance Program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low- and moderate-income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department amends 24 CFR part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.0 percent per annum with respect to mortgages insured on or after August 12, 1991.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 9.0 percent per annum with respect to mortgages insured after August 12, 1991.

* * * * *

Dated: August 12, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–20226 Filed 8–22–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8353]

RIN 1545–A009

Information With Respect to Certain Foreign-Owned Corporations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8353), which were published Wednesday, June 19, 1991, (56 FR 28056). The regulations relate to information that must be reported and records that must be maintained under section 6038A of the Internal Revenue Code.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after July 10, 1989, except as follows:

§ 1.6038A–1 (a), (b), (e)(2), (g) through (n)—December 10, 1990
§ 1.6038A–3—March 20, 1990
§ 1.6038A–6—November 5, 1990
§ 1.6038A–7—December 10, 1990

FOR FURTHER INFORMATION CONTACT: Carol P. Tello (202–377–9493) or Grace Perez-Navarro (202–287–4851), (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are necessary to provide appropriate guidance for affected reporting corporations and related parties. The regulations affect any reporting corporation (that is, certain domestic corporations and foreign corporations) as well as certain related parties of the reporting corporation.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8353), which were the subject of FR Doc. 91–14459, is corrected as follows:

Par. 1. On page 28057, column two, fifth full paragraph, second line from bottom of that paragraph, the phrase "§ § 1.6038A–3 and 1.6038–5 has been" is corrected to read "§ § 1.6038A–3 and 1.6038A–5 has been".

Par. 2. On page 28058, column one, under the heading "Record Maintenance", paragraph three, line seven, the abbreviation "U.S." is corrected to read "U.S.".

Par. 3. On page 28061, column three, in § 1.6038A–1, paragraph (c)(4), line seven, the following sentences are added after the word "corporation.":

An examination may be reopened if the statute of limitations period for that taxable year has not expired. A taxable year may not be reopened under section 6038A for examination purposes if the taxable year is open under section 6511 only for purposes of the carryback of net operating losses or net capital losses.

Par. 4. On page 28066, column two, in § 1.6038A–3, paragraph (a)(3), *Example 3,* line 19, the phrase "are not subject to the maintenance" is corrected to read "are not subject to the record maintenance".

Par. 5. On page 28069, column three, in § 1.6038A–3, paragraph (c)(7)(i), line one, the phrase "*U.S. connected products or*" is corrected to read "*U.S.-connected products or*".

Par. 6. On page 28071, column one, in § 1.6038A–3, paragraph (e)(2)(iii), *Example,* line seven, the phrase "paragraph 3(c)(5) of this section, Segment 1" is corrected to read "paragraph (c)(5) of this section, Segment 1".

Par. 7. On page 28074, column one, in § 1.6038A–5, paragraph (b)(1), under the heading "**AUTHORIZATION OF AGENT**", under the first mention of the word "(Date)", line two, the phrase "fiduciary on behalf of foreign related party: I", is corrected to read "fiduciary on behalf of a foreign related party: I".

Dale D. Goode,

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

[FR Doc. 91–20170 Filed 8–22–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

RIN 1218-AA57

[Docket No. S-207]

Safety Standards for Stairways and Ladders Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; technical amendments.

SUMMARY: This rule amends the Standard for Stairways and Ladders Used in the Construction Industry, which was recently revised and published in the **Federal Register** on November 14, 1990 (55 FR 47660). These changes clarify some inadvertent errors in the requirements for stairrails and handrails and in the requirements for spacing ladder rungs.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Office of Information and Public Affairs, room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: This document contains amendments to correct the revised standard for stairways and ladders used in the construction industry, which was published on November 14, 1990 (55 FR 47660). Two errors were introduced into the final rule during the process of editing the document for publication. In the first instance, in § 1926.1052(c)(1), OSHA inadvertently blurred the distinction between the stairrail and handrail requirements, leaving out the requirement for at least one handrail for stairways which had been contained in the proposal. (The proposal was published on November 25, 1986 at 51 FR 42750.) In the second instance, in § 1926.1053(a)(3), a method of measuring the rung spacing for individual rung ladders was inadvertently omitted from the final rule when OSHA consolidated two measuring methods contained in the proposal into one paragraph in the final rule.

Amendment to 29 CFR 1926.1052(c)(1)

Proposed § 1926.1052(c)(1) required employers with stairways having four or more risers to equip those stairways with at least one handrail (paragraph (c)(1)(i)). The proposal also required one stairrail system along each unprotected stairway side or edge (paragraph (c)(1)(ii)). Proposed paragraph (c)(1) also contained a note that stated stairrails which satisfied proposed § 1926.1052(c)(7) could also serve as handrails. No commenters objected to the provisions of proposed paragraph (c)(1).

Based on input from the Advisory Committee on Construction Safety and Health and on the Agency's field experience, OSHA decided to revise proposed paragraph (c)(1) in the final rule, so that the stairrail and handrail requirements would apply when stairways have four or more risers or rise more than 30 inches, whichever is less. The Agency made some other revisions to the proposed paragraph that were intended to be editorial in nature. In particular, OSHA consolidated the requirements of proposed paragraphs (c)(1)(i) and (c)(1)(ii) into a single sentence and incorporated the note from the proposal as the second sentence of the provision.

As revised, paragraph (c)(1) read as follows: "Stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, shall be equipped with at least one handrail and one stairrail system along each unprotected side or edge. However, when the top edge of a stairrail system also serves as a handrail, paragraph (c)(7) of this paragraph applies." On November 14, 1990, OSHA promulgated revised paragraph (c)(1) as part of the final rule for the subpart X rulemaking.

The Agency has determined that paragraph (c)(1) of the final rule does not accurately reflect the requirements OSHA both proposed and intended to promulgate as a final rule for stairrails and handrails. The final rule incorrectly indicates that employers are required to provide handrails on stairways only where there is an unprotected side or edge. Handrails are used to protect employees from slipping while climbing stairways, rather than to protect them from falling off the edge or side of a stairway. Therefore, at least one handrail is needed on each stairway covered by paragraph (c)(1), whether or not it has an unprotected side or edge. On the other hand, the Agency has consistently considered the presence of an unprotected side or edge to be the basis for requiring a stairrail system, because a stairrail system is used to protect employees from falling off the side or edge of a stairway. OSHA inadvertently blurred the distinction between the stairrail and handrail requirements when the Agency combined the proposed requirements in a single provision of the final rule. The error does not appear in the preamble to the final rule, which states (55 FR at 47667) that "* * * stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, * * * (shall) * * * be equipped with one stairrail system along each unprotected side or edge, and with at least one handrail."

To correct the error, OSHA is returning to the language of the proposed rule, setting out the handrail and stairrail requirements separately. In this way, the Agency will clearly state that all stairways regulated under § 1926.1052(c)(1) must have at least one handrail.

In addition, OSHA is redesignating the sentence of paragraph (c)(1) of the final rule which covers stairrail systems that also serve as handrail systems to be a note to paragraph (c)(1).

Amendment to 29 CFR 1926.1053(a)(3)

Proposed § 1926.1053(a)(3) set rung, cleat and step spacing requirements for ladders. Proposed paragraph (a)(3)(i) required that rungs, cleats and steps of portable and fixed ladders be spaced not less than six inches apart, nor more than 12 inches apart, as measured along the ladder siderails. Proposed paragraph (a)(3)(ii) required that rungs, cleats and steps of individual step or rung ladders be spaced not less than six inches apart, nor more than sixteen and a half inches apart, as measured between centerlines of the rungs, cleats and steps.

OSHA decided, based on the record developed in the subpart X rulemaking, including comments received and the pertinent consensus standards, to revise the proposed rung, cleat and step spacing requirements. In particular, the Agency decided to delete proposed paragraph (a)(3)(ii) and to require that rungs, cleats and steps on all fixed ladders (including individual step or rung ladders) be spaced not less than 10 inches apart, nor more than 14 inches apart. OSHA consolidated the requirements for fixed ladders in paragraph (a)(3)(i). In addition, the Agency decided that it was appropriate to revise proposed paragraph (a)(3) by adding separate spacing requirements for step stools (paragraph (a)(3)(ii)) and extension trestle ladders (paragraph (a)(3)(iii)).

As published on November 14, 1990, paragraph (a)(3) reads as follows:

(i) Rungs, cleats, and steps of portable ladders (except as provided below) and fixed ladders shall be spaced not less than 10 inches (25 cm) apart, nor more than 14 inches

(36 cm) apart, as measured along the ladder's side rails.

(ii) Rungs, cleats, and steps of step stools shall not be not less than 8 inches (20 cm) apart, nor more than 12 inches (31 cm) apart, as measured between center lines of the rungs, cleats, and steps.

(iii) Rungs, cleats, and steps of the base section of extension trestle ladders shall not be less than 8 inches (20 cm) nor more than 18 inches (46 cm) apart, as measured between center lines of the rungs, cleats, and steps. The rung spacing on the extension section of the extension trestle ladder shall be not less than 6 inches (15 cm) nor more than 12 inches (31 cm).

OSHA has determined that paragraph (a)(3)(i) does not accurately reflect the requirements that the Agency both proposed and intended to promulgate for "individual-rung/step ladders" (as defined in § 1926.1050 of the final rule). In particular, the final rule was intended to require that the spacing for all fixed ladders, including individual-rung/step ladders, be measured in the same way (along the side rails), even though individual-rung/step ladders do not have side rails. The Agency notes that proposed paragraph (a)(3)(ii) took this circumstance into account appropriately, by requiring that the spacing be measured between the center lines of the rungs, cleats, and steps.

To correct the error, OSHA is revising paragraph (a)(3)(i) of the final rule to require that the spacing for all fixed ladders be measured between the center lines of the rungs, cleats, and steps. In this way, the Agency will provide proper guidance to employers who use individual-rung/step ladders, without substantively changing the requirements for other fixed ladders. In addition, OSHA is adding language to paragraph (a)(3)(i) of the final rule to indicate clearly that individual-rung/step ladders are covered by that provision.

As set out above, paragraph (a)(3)(iii) of the final rule indicates how the spacing of rungs, cleats, and steps of the base section of extension trestle ladders is to be measured, but does not indicate how the spacing of the extension section is to be measured. OSHA had intended that the required spacing in the extension section, like that in the base section, be measured between the center lines of the rungs, cleats, and steps. To correct this oversight, the Agency is adding language to paragraph (a)(3)(iii) of the final rule that requires spacing to be measured accordingly.

List of Subjects in 29 CFR Part 1926

Construction safety; Construction industry; Ladders and scaffolds; Occupational safety and health; Protective equipment; Safety.

Authority: This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1911, subpart X of 29 CFR part 1026 is amended as set forth below.

Signed at Washington, DC, this 17th day of July, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

1. The authority citation for subpart X of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR part 1911.

2. Subpart X is amended as follows:

§ 1926.1052 [AMENDED]

The text of paragraph (c)(1) of § 1926.1052 is revised to read as follows:

* * * * *

(c)(1) Stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, shall be equipped with:

(i) At least one handrail; and

(ii) One stairrail system along each unprotected side or edge.

Note: When the top edge of a stairrail system also serves as a handrail, paragraph (c)(7) of this section applies.

* * * * *

§ 1926.1053 [AMENDED]

The text of paragraph (a)(3) of § 1926.1053 is revised to read as follows:

(a) * * *

(3)(i) Rungs, cleats, and steps of portable ladders (except as provided below) and fixed ladders (including individual-rung/step ladders) shall be spaced not less than 10 inches (25 cm) apart, nor more than 14 inches (36 cm) apart, as measured between center lines of the rungs, cleats, and steps.

(ii) Rungs, cleats, and steps of step stools shall be not less than 8 inches (20 cm) apart, nor more than 12 inches (31 cm) apart, as measured between center lines of the rungs, cleats, and steps.

(iii) Rungs, cleats, and steps of the base section of extension trestle ladders shall not be less than 8 inches (20 cm) nor more than 18 inches (46 cm) apart, as measured between center lines of the rungs, cleats, and steps. The rung spacing on the extension section of the extension trestle ladder shall be not less than 6 inches (15 cm) nor more than 12 inches (31 cm), as measured between center lines of the rungs, cleats, and steps.

* * * * *

[FR Doc. 91–17460 Filed 8–22–91; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

30 CFR Part 901

Alabama Regulatory Program; Regulatory Reform; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; correction.

SUMMARY: OSM is correcting two errors in the final rule notice approving Alabama Program Amendment Number AL–005B published on Wednesday, July 3, 1991 (56 FR 30502). Alabama's proposed revision at section 880–X–9C–.03(7) of the Alabama Surface Mining Commission Rules (ASMCR) is approved. The required amendment to include certain definitions relating to terms and conditions of bonds is removed as these definitions are addressed at section 880–X–2A–.06 of the ASMCR. Alabama's proposed revision at section 880–X–10D–.17 of the ASMCR is approved. The required amendment to address the treatment of point-source discharge of water is removed as this provision is addressed at section 880–X–10D–.13(1)(a) of the ASMCR.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Director, Birmingham Field Office, 135 Gemini Circle, suite 215, Birmingham, Alabama 35209; Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION: On page 30507, second column, § 901.16, paragraphs (l) and (m) are removed.

Dated: August 15, 1991.

Jeffrey Jarrett,

Acting Assistant Director; Eastern Support Center.

[FR Doc. 91–20231 Filed 8–22–91; 8:45 am]

BILLING CODE 4310–05–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, and defer decision on various parts of a proposed amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to Utah's rules relating to definitions, termination of jurisdiction, administrative procedures for permitting, permit application requirements, vegetation information guidelines, revegetation success standards, land use, air quality, engineering, hydrology, areas unsuitable for coal mining and reclamation operations, blaster certification, coal exploration, variance from backfilling to approximate original contour for steep-slope mining, permit renewals, cessation orders, and individual civil penalties. The amendment revises the Utah rules to be consistent with the corresponding Federal regulations, improves operational efficiency, and incorporates the additional flexibility afforded by the revised Federal regulations.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Utah Program

On January 21, 1981, The Secretary of the Interior conditionally approved the Utah program. Information regarding the general background for the Utah program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions taken subsequent to the approval of the Utah program are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Amendment

By letter dated July 3, 1990 (administrative record No. UT-570), Utah submitted a proposed amendment to its program pursuant to SMCRA. Utah submitted the proposed amendment in response to (1) the May 11 and November 27, 1989, letters (administrative record Nos. UT-507 and UT-542) that OSM sent to Utah in accordance with 30 CFR 732.17(c), (2) the November 9, 1989, issue letter (administrative record No. UT-538) that OSM sent to Utah, and (3) the required program amendments at 30 CFR 944.16 that OSM placed on the Utah program in the April 12, 1990, final rule **Federal Register** notice (55 FR 13773). The provisions of Utah's Coal Mining Rules that Utah proposes to amend are:

R614-100-200 Definition of "Fragile Lands," "Owned or Controlled," "Road," "Unwarranted Failure to Comply," and "Valid Existing Rights"
R614-100-415 Coal Exploration
R614-100-450 through 452 Termination of Jurisdiction
R614-103-220, 221, and 222 Areas Unsuitable for Coal Mining and Reclamation Operations
R614-105-443 Blaster Certification
R614-201-400 through 434 Coal Exploration—Requirements for Commercial Sale
R614-300-112 Administrative Procedures—Permitting
R614-300-132 Review of Compliance
R614-300-148 Permit Conditions
R614-300-160 through 170 Improvidently Issued Permits
R614-301-111 through 113 Permit Application Requirements—General Contents
R614-301-356 and 357 Revegetation—Performance Standards
R614-301-356 Vegetation Information Guidelines
R614-301-411 Premining Land Use Information
R614-301-424 Air Quality
R614-301-521 Engineering—Operation Plan
R614-301-525 Subsidence
R614-301-526 Mine Facilities—Plans and Drawings
R614-301-527 Transportation Facilities
R614-301-528 Engineering—Coal Mine Waste
R614-301-533 Engineering—Impoundments
R614-301-534 Engineering—Roads
R614-301-542 Narratives, Maps and Plans for Reclamation Plan
R614-301-553 Backfilling and Grading
R614-301-731 Hydrology—General Requirements
R614-301-733 Hydrology—Operation Plan
R614-301-742 Hydrology—Sediment Control Measures
R614-301-743 Hydrology—Impoundments General Requirements
R614-301-746 Coal Mine Waste—Impounding Structures
R614-302-271 Variances From Backfilling to Approximate Original Contour
R614-303-232 Permit Renewals
R614-400-319 Cessation Orders
R614-402-120 Inspection and Enforcement—Individual Civil Penalties
R614-402-210 and 220 Assessment of Individual Civil Penalties
R614-402-310 and 320 Amount of Individual Civil Penalties
R614-402-410 Procedures for Assessment of Individual Civil Penalties

OSM announced receipt of the proposed amendment in the July 23, 1990, **Federal Register** (55 FR 29861) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment (administrative record No. UT-574). The public comment period closed on August 22, 1990. The public hearing, scheduled for August 17, 1990, was not held because no one requested an opportunity to testify.

On November 26, 1990, Utah withdrew proposed rules R614-301-731.212 and R614-301-731.223, which concern the monitoring of surface and ground water (administrative record No. UT-601).

III. Director's Findings

After a thorough review, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that, with certain exceptions, the proposed amendment, as submitted by Utah on July 3, 1990, and revised by it on November 26, 1990, meets the requirements of SMCRA and 30 CFR chapter VII as discussed below.

1. Substantive Revisions to Utah's Rules That Are Substantively Identical to the Corresponding Federal Regulations

Utah proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the corresponding Federal regulations (listed in parentheses):

R614–100–200 (30 CFR 773.5), definitions of "owned or controlled" and "owns or controls" and (30 CFR 762.5) "fragile lands;"

R614–201–400 through 432, 432.100 through .300, 433, and 434 (30 CFR 772.14 (a) and (b)), coal exploration;

R614–300–112.500 (30 CFR 773.11(a)) administrative procedures for permitting;

R614–300–132.100, .120, .200, and 300 (30 CFR 773.15(b)(1)), review of compliance;

R614–300–148, 148.100, and .200 (30 CFR 773.17(i)), permit conditions;

R614–300–164, 164.100 through .300, and 170 (30 CFR 773.21), improvidently issued permits;

R614–301–112.200 through .420 (30 CFR 778.13(b)), permit application requirements, identification of interests;

R614–301–112.900 (30 CFR 778.13(i)), permit application requirements, updating ownership and control interests;

R614–301–113.300 through .310, and .400 (30 CFR 778.14 (c) and (d)), violation information;

R614–301–356.232 and R614–301–357.300 (30 CFR 816.116(b)(3)(ii) and 816.116(c)(4)), revegetation;

R614–301–521.170 and .180 (30 CFR 780.37, 784.24, 780.38, and 784.30), roads and support facilities;

R614–301–526.220 (30 CFR 780.38), support facilities;

R614–301–527.200, .230, and .240 (30 CFR 780.37, 816.150(e), and 817.150(e)), roads and support facilities;

R614–301–533.100 (30 CFR 816.49(a)(3) and 817.49(a)(3)), impoundments;

R614–301–534.130 through .150 (30 CFR 780.37(a)(6), 816.150(b), 817.150(b), 816.151(b), and 817.151(b)), roads;

R614–301–542.620 and .640 (30 CFR 816.150(f) (2) and (3) and 817.150(f) (2) and (3)), roads and support facilities;

R614–301–733.210 (30 CFR 780.25(c) and 784.16(c)), permanent and temporary impoundments;

R614–301–742.222, .223, and .225 (30 CFR 816.46(c)(2) and 817.46(c)(2)). siltation structures;

R614–301–742.412 and .423 (30 CFR 816.150(d), 817.150(d), 816.151(d), and 817.151(d)), roads and support facilities;

R614–301–743.130, .131, .132, and .200 (30 CFR 816.49(a) and 817.49(a)), impoundments;

R614–301–746.312 (30 CFR 816.84(b)(2) and 817.84(b)(2)), coal mine waste impounding structures;

R614–303–232.500 (30 CFR 773.11(a)), renewal of permits for reclamation;

R614–400–319 (30 CFR 843.11(g)), state enforcement provisions; and

R614–402–120, 210, 220, 310, 320, and 410 (30 CFR 846), Individual Civil Penalties.

Because the proposed revisions to these Utah rules are substantively identical to the corresponding Federal regulations, the Director (1) finds that these Utah rules are no less effective than the corresponding Federal regulations and (2) is approving these rules.

2. Revisions to Utah's Rules That Were Previously Not Approved

The Director previously did not approve certain provisions of Utah's proposed rules (55 FR 13773, 13775, April 12, 1990). Specifically, the Director did not approve the first definition of "fragile lands" at R614–100–200 (finding No. 2(a), 55 FR 13773, 13774); the phrase "which removes less than 250 tons" at R614–100–415 (finding No. 3, 55 FR 13773, 13776); the rule R614–301–411.145 "[t]he exceptions set forth in R614–103–235 will apply to all of the limitations on adversely affecting certain lands as described in R614–301–411.140" (finding No. 10, 55 FR 13773, 13778); and the phrase "[t]o the extent required under Utah Law" at R614–301–525.160 and R614–301–525.232 (finding No. 12, 55 FR 13773, 13779).

Although not required in the April 12, 1990, **Federal Register** notice, Utah has in this proposed amendment deleted the provisions discussed above. Removal of the provisions will avoid confusion on the part of the public that may not be aware of the April 12, 1990, **Federal Register** notice.

3. R614–100–200, Definitions

(a) *Road.* With one exception, Utah proposes a definition for "road" at R614–100–200 that is substantively identical to the corresponding Federal definition for "road" at 30 CFR 701.5. The exception is that Utah's proposed definition indicates that the term "road" "may not include public roads as determined on a site specific basis."

Subsequent to the submission of this amendment, Utah, on March 1, 1991, submitted (1) proposed rules at R614–100–200 for the definitions of "road" (the same as identified above) and "public road" and (2) a policy statement detailing how Utah would determine which access and haul roads for coal mining and reclamation operations are subject to permitting (administrative record No. UT–610).

The Director is deferring decision on Utah's July 3, 1990, proposed definition of "road" at R614–100–200 until such time as he makes a decision of Utah's March 1, 1991, proposed amendment. These decisions are forthcoming.

(b) *Valid existing rights (VER).* The Director previously deferred decision on subsections (a) and (d)(ii) of Utah's proposed definition of VER at R614–100–200 to allow Utah the opportunity to submit information that demonstrated (1) that the proposed provisions would be as effective as the "good faith all permits" test in meeting the requirements of SMCRA and (2) the appropriateness and necessity of a "takings" test under Utah law. The Director also at 30 CFR 944.16(a) required that Utah amend its definition of VER at R614–100–200 to limit claims for VER under the "needed for and adjacent to" test to those lands for which the applicant had obtained the requisite property rights as of August 3, 1977. For a detailed discussion of these decisions, see finding No. 2(d) of the April 12, 1990 **Federal Register** notice (55 FR 13773, 13775–13776).

Utah in this proposed amendment (1) did not take the opportunity to submit information that demonstrated that the proposed definition would be as effective as the "good faith all permits test" and (2) proposes at subsections (a) and (d)(ii) of the definition of VER to delete the "takings" test.

The Director finds that Utah's proposed deletion of the "takings" test at subsections (a) and (d)(ii) of the definition of VER is consistent with the suspension of the "takings" test provisions (November 20, 1986, 51 FR 4106) of the September 14, 1983, Federal regulations (48 FR 41312) at 30 CFR 761.5(a) and (d)(2). OSM suspended these provisions in response to PSMRL, Round II. The Director also finds that Utah's proposed deletion is consistent with OSM's reinstated March 13, 1979, regulation at 30 CFR 761.5(a) (51 FR 41952, 41954, November 20, 1986).

Utah also proposes to recodify subsection (d) of the definition of VER as subsection (c) and in recodified subsection (c) to limit claims for VER under the "needed for and adjacent to" test to those lands for which the applicant obtained the requisite property rights to the coal prior to August 3, 1977. The Director finds that Utah's proposed revision for subsection (c) satisfies the Director's required amendment at 30 CFR 944.16(a).

Based upon the above discussions, the Director finds, with one exception which is discussed below, that Utah's proposed definition of VER at R614–100–200 is no less effective than the corresponding Federal definition of VER at 30 CFR 761.5. Therefore, the Director is approving, with one exception, Utah's proposed definition of VER at R614–100–200 and removing the required program amendment at 30 CFR 944.16(a).

The exception concerns recodified subsection (c)(ii) of the definition of VER. In deleting this takings test from the definition, Utah proposes to retain the incomplete sentence "the prohibition caused by 40–10–24 of the Act." In the context of the definition, this phrase makes no sense. Therefore, the Director is not approving the phrase "the prohibition caused by 40–10–24 of the Act" in the proposed definition of VER at R614–100–200 and is requiring Utah to remove this phrase.

(c) *Unwarranted failure to comply.* The Director previously required at 30

CFR 944.16(b) that Utah amend its definition of "unwarranted failure to comply" at R614–100–200 to include the situation where a permittee fails to abate a violation (finding No. 2(e); 55 FR 13773, 13776; April 12, 1990).

At R614–100–200 , Utah proposes in this amendment to define "unwarranted failure to comply" to mean "the failure of the permittee to prevent the occurrence of any violation of the State Program or any permit condition due to indifference, lack of diligence, or lack of reasonable care or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care." This proposed definition is substantively identical to the Federal definition of "unwarranted failure to comply" at 30 CFR 843.5. Therefore, the Director finds that the proposed definition of "unwarranted failure to comply" at R614–100–200 is no less effective than the corresponding Federal definition of "unwarranted failure to comply" at 30 CFR 843.5. The Director is approving the proposed definition of "unwarranted failure to comply" at R614–100–200 and is removing the required amendment at 30 CFR 944.16(b).

4. R614–100–450 through R614–100–452, Termination of Jurisdiction

Utah's proposed rules at R614–100–450 through R614–100–452 concerning termination of jurisdiction that are substantively identical to the Federal regulations at 30 CFR 700.11(d). However, in National Wildlife Fed'n, the court held that the Federal regulations were in conflict with SMCRA. More specifically, the court held that 30 CFR 700.11(d) is inconsistent with sections 521 (a)(1) and (a)(2) of SMCRA which require the Secretary to correct violations of the Act without limitation. Accordingly, the court remanded "this rule to the Secretary to be withdrawn or revised" (*Id.*, mem. op. at 86).

On June 3, 1991, (56 FR 25036, 25037) OSM suspended the above Federal regulation. OSM may not, because of the court's remand, use the regulation at 30 CFR 700.11(d) in evaluating the sufficiency of Utah's proposed rule. Accordingly, OSM evaluated the proposed amendments based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based upon (1) the courts' finding that 30 CFR 700.11(d) is contrary to the provisions of SMCRA, (2) the court's specific instruction to the Secretary to withdraw or revise 30 CFR 700.11(d), and (3) because the Utah rules have the same deficiencies as the court identified for OSM's regulation, the Director finds that Utah's proposed rules at R614–100–450 through 452 include requirements that are less stringent than sections 521 (a)(1) and (a)(2) of SMCRA. Therefore, the Director is not approving Utah's proposed rules at R614–100–450 through 452 concerning termination of jurisdiction. The Director will, pursuant to 30 CFR 732.17(c), notify Utah of any needed changes resulting from the court's decision.

5. R614–103–220, 221, and 222, Areas Unsuitable for Coal Mining and Reclamation Operations

Utah proposes a rule at R614–103–220 that the authority to make determinations of unsuitability on Federal lands is reserved to the Secretary "pursuant to Section 552(a) of the Federal Act" (SMCRA). The correct citation is section 523(a) of SMCRA. With the exception of the incorrect citation, the Director finds that Utah's proposed rule at R614–103–220 is consistent with section 523(a) of SMCRA, which specifies that the Secretary is responsible for designating Federal lands as unsuitable for mining. The Director is approving Utah's proposed rule at R614–103–220 but is requiring Utah to amend its rule to cite section 523(a) of SMCRA.

Utah proposes rules at R614–103–221 and R614–103–222 addressing determinations as to whether operators have VER for mining operations respectively on Federal and non-Federal lands. These proposed rules reference the VER determination sections of the approved State-Federal cooperative agreement for Federal lands at 30 CFR 944.30. As proposed, rule R614–103–221 states that VER determinations on Federal lands "will be performed in a manner consistent with the terms of a cooperative agreement between the Secretary and Utah pursuant to section 523(c) of the Federal Act" (SMCRA). Rule R16–103–222 states that VER determinations on non-Federal lands which affect adjacent Federal lands "will be performed in a manner consistent with the terms of the cooperative agreement referenced in R614–103–221." Utah's proposed rules add clarity to the State program, and they are not inconsistent with the corresponding Federal regulations at 30 CFR 740. Therefore, the Director is approving Utah's proposed rules at R614–103–221 and R614–103–222.

6. R614–105–443, Administrative Procedures for Blaster Training, Examination, and Certification

The Director previously required at 30 CFR 944.16(d) that Utah further amend R614–105–440.441 to require that, upon notice of revocation of a blaster certificate, a certified blaster immediately surrender to Utah the revoked certificate (finding No. 8; 55 FR 13773, 13778; April 12, 1990). Utah proposes in this amendment a rule at R614–105–443 that is substantively identical to the corresponding Federal regulation at 30 CFR 850.15(b)(3). Therefore, the Director finds that Utah's proposed rule at R614–105–443 is no less effective than the corresponding Federal regulation at 30 CFR 850.15(b)(3). The Director is approving the proposed rule and is removing the required amendment at 30 CFR 944.16(d).

7. R614–300–160 through 163.400, Improvidently Issued Permits

Utah proposes rules at R614–300–160 through 163.400, concerning improvidently issued permits, that are substantively identical to the corresponding Federal regulations at 30 CFR 773.20. These Federal regulations are written in general terms, but the preamble for them states that the State regulatory program must include specific violations review criteria governing the specific unabated violations, delinquent penalties, and fees and ownership and control relationships which will be used in determining whether an improvidently issued permit exists (54 FR 18438, 18840–18441, April 28, 1989). Utah proposes rules at R614–300–160 through R614–300–163.400 that do not include such violations review criteria. Therefore, the Director finds that Utah's proposed rules at R614–300–160 through R614–300–163.400 are less effective than the corresponding Federal regulations at 30 CFR 773.20. The Director is approving Utah's proposed rules at R614–300–160 through R614–300–163.400 but is requiring Utah to amend these rules, or to otherwise amend its program, to include State-specific counterparts to the Federal violations review criteria listed in the April 28, 1989 **Federal Register** (54 FR 18438, 18440–18441).

8. R614–301–111.400, Identification of Interests and Compliance Information

Utah proposes a rule at R614–301–111.400 requiring mine permit applicants to submit the information concerning identification of interest and compliance information "in a format prescribed by the state program."

The corresponding Federal regulation at 30 CFR 778.13(j) requires, in part, that the applicant submit such information "in any prescribed OSM format that is issued." The preamble to the Federal regulation states that the purpose for this requirement is to increase efficiency of data entry and processing in the

Applicant/Violator System (AVS), and that use of an issued standard form "will be required regardless of whether the permit application is filed with OSM or a State regulatory authority" (54 FR 8982, 8985, March 2, 1989).

As proposed, Utah's rule does not require the applicant to submit the information in the OSM-prescribed format. Therefore, the Director finds that Utah's proposed rule at R614–301–111.400 is less effective than the corresponding Federal regulation at 30 CFR 778.13(j). The Director is approving Utah's proposed rule at R614–301–111.400 but is requiring Utah to amend R614–301–111.400, or otherwise amend its program, to require permit applicants to submit AVS information in the OSM-prescribed format.

9. R614–301–356.231, Stocking and Planting Arrangements for Trees and Shrubs

Utah proposes a rule at R614–301–356.231 requiring that, for areas to be developed for fish and wildlife habitat, recreation, shelterbelts, or forest products, the Division of Oil, Gas and Mining (Division) specify the minimum stocking and planting arrangements for trees and shrubs. Utah proposes that these stocking and planting arrangements be based on local and regional conditions after consultation with and approval by State agencies responsible for the administration of forestry and wildlife programs. Utah further proposes that consultation and approval may occur on either a programwide or a permit-specific basis.

The language of Utah's proposed rule is substantively identical to the language of the corresponding Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i). However, Utah has neither in this proposed rule nor in its Vegetation Information Guidelines specified (1) the minimum stocking and planting arrangements for woody plants and (2) whether consultation with Utah forestry and wildlife agencies would be done on a programwide or permit-specific basis.

Because Utah has not made specific proposals corresponding to these Federal requirements, the Director finds that Utah's proposed rule at R614–301–356.231 is less effective than the corresponding Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i). The Director is approving Utah's proposed rule at R614–301–356.231 but is requiring Utah to amend R614–301–356.231, or otherwise amend its program, to specify the minimum tree and shrub stocking and planting arrangements for areas to be developed for fish and wildlife habitat, recreation, shelterbelts, or forest products. The Director is also requiring that Utah amend R614–301–356.231, or otherwise amend its program, to specify whether it will consult the Utah forestry and wildlife agencies on a programwide or permit-specific basis. If Utah elects to conduct the consultation on a programwide basis, it must submit to OSM proposed tree and shrub stocking and planting arrangements and letters from the Utah forestry and wildlife agencies concurring with those stocking and planting arrangements. If Utah elects to conduct the consultation on a permit-specific basis, it must submit to OSM a description of the procedures it will use to notify and obtain the concurrence of Utah forestry and wildlife agencies of the tree and shrub stocking and planting arrangements proposed by permit applicants.

10. R614–301–356.110, Vegetation Success Standards and Sampling Techniques

The Director previously required at 30 CFR 944.16(c) that Utah amend its program to include standards for revegetation success and statistically valid sampling techniques for measuring vegetation ground cover, production, and stocking (finding No. 6; 55 FR 13773, 13777; April 12, 1990). At R614–301–356.110, Utah references the vegetation success standards and sampling techniques of the Division's "Vegetation Information Guidelines, Appendix A" Utah submitted the Vegetation Information Guidelines in this amendment.

Because Utah proposes success standards and sampling techniques in its Vegetation Information Guidelines, the Director is removing the required program amendment at 30 CFR 944.16(c). However, the Director is, as discussed below, requiring Utah to further amend its program. With the exceptions discussed below, the Director finds Utah's proposed rule at R614–301–356.110 and the Vegetation Information Guidelines to be no less effective than the corresponding Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

(a) *Alternative sampling and analysis procedures.* The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring ground cover, production, and stocking be selected by the regulatory authority and be included in the approved regulatory program. As required by 30 CFR 816.116(a)(1) and 817.116(a)(1), Utah in its Vegetation Information Guidelines specifies the procedures to be used for sampling, measuring, and analyzing vegetation. However, the guidelines allow he use of alternative sampling and analysis procedures, provided that prior approval is obtained from the Division. The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques be included in the approved regulatory program (i.e., be approved via the program amendment process and be subject to public review and comment). Therefore, before Utah can allow the use of alternative sampling and analysis procedures, these procedures must be submitted to OSM for review as a State program amendment.

(b) *Methods.* Utah in part 2 of the "Methods" section of the Vegetation Information Guidelines discusses the use of "range sites" for determining revegetation success. In subpart b, Utah indicates that range sites will be sampled, but it omits any discussion as to the required size of the range sites to be used for establishing revegetation success standards. Utah states that range sites will be described in accordance with the Soil Conservation Service's (SCS's) National Range Handbook. However, the handbook (section 304.1, "Delineation of Range Sites") states only that range sites can be delineated singly or included with other range sites, and the intensity of delineation depends on the use (which is this case is a revegetation success standard). Because the referenced SCS handbook does not specify the minimum size of range sites to be used for establishing revegetation success, the Director is requiring Utah to amend its guidelines to include this information.

Appendix A of the Vegetation Information Guidelines provides general and detailed guidance on sampling concepts and data analysis, but it does not identify the specific methodology to be used. Therefore, the Director is requiring Utah to either reference in the Vegetation Information Guidelines documents which describe in detail the procedures for each proposed sampling methodology, or actually include in the Vegetation Information Guidelines the detailed description of the procedures for each proposed sampling methodology.

In the "Sample Adequacy" section of appendix A of the Vegetation Information Guidelines, Utah establishes a maximum sample size of 40 for all sampling methods. Utah did not submit any information demonstrating that this maximum sample size is adequate. Setting a limit on the maximum number of samples to be taken contradicts the purpose of

using a sample-adequacy formula. Therefore, the Director is not approving the maximum sample size of 40 in appendix A of the Vegetation Information Guidelines, and is requiring Utah to remove it from appendix A of the Vegetation Information Guidelines.

11. R614–301–420 and 424, Air Quality

The Director previously required at 30 CFR 944.16(e) that Utah amend R614–301–420 to specify that a permit application contain a plan for fugitive dust control practices when the surface mining activities produce less than 1 million tons of coal per year (finding No. 11; 55 FR 13773, 13778; April 12, 1990). Utah has complied with this requirement in this amendment. Therefore, the Director is removing the required amendment at 30 CFR 944.16(e).

However, proposed rule R614–301–420 does not include the requirement at 30 CFR 780.15(b) that an application include an air quality monitoring program if such a program is required by the regulatory authority. On this basis, the Director finds that Utah's proposed rule at R614–301–420 is less effective than the corresponding Federal regulation at 30 CFR 780.15(b). The Director is approving the proposed rule but is requiring Utah to amend rule R614–301–420, or otherwise amend its program, to include the requirement that an application include an air quality monitoring program, if such a program is required by the regulatory authority. The Director is also requiring Utah to change an incorrect cross-reference in rule R614–301–424 from "R614–244.300" to "R614–301–224.300."

12. R614–301–528.320, Engineering and Hydrology Permit Application Requirements for Coal Mine Waste Disposal Areas

The Director previously required at 30 CFR 944.16(f) that Utah amend R614–301–528.320 to prohibit end or side dumping of coal mine waste in coal mine waste disposal areas (finding No. 13; 55 FR 13773, 13779; April 12, 1990). Because Utah proposes, in this amendment, a rule at R614–301–528.320 to prohibit end or side dumping of coal mine waste in coal mine waste disposal areas, the Director is removing the required amendment at 30 CFR 944.16(f). However, the Director is, as discussed below, requiring Utah to further amend this rule.

Utah proposes a rule at R614–301–528.320 that (1) all coal-mine waste be placed in new or existing disposal areas within a permit area that are approved by the Division for this purpose, (2) coal-mine waste disposal areas meet the design criteria of R614–301–536, and (3) placement of coal-mine waste by "end dumping" or "side dumping," as defined in the U.S. Bureau of Mines' "A Dictionary of Mining, Mineral, and Related Terms" (Washington, DC: U.S. Government Printing Office, 1968) is prohibited. In this publication, the U.S. Bureau of Mines defines "end dumping" to mean "the process in which earth is pushed over the edge of a deep fill and allowed to roll down the slope," but it does not, as Utah indicates in its proposed rule, define "side dumping."

With the exception of the reference to the U.S. Bureau of Mines' definition, the wording of Utah's proposed rule is substantively identical to the wording of the Federal regulations at 30 CFR 816.81(a) and 817.81(a) as modified by PSMRL II, Round II (620 F. Supp 1534–1535). In accordance with PSMRL II, Round II, OSM suspended the Federal regulations at 30 CFR 816.81(a) and 817.81(a) insofar as they allowed end dumping or side dumping of coal-mine waste in coal-mine waste disposal areas (51 FR 41952, 41959, November 20, 1986).

Under the referenced Bureau of Mines' definition for "end dumping," Utah could allow other forms of end or side dumping other than the "pushing" of coal mine waste over the edge of a fill (e.g., direct dumping from a truck or front end loader over the edge of a fill). Also, in effect Utah does not define "side dumping" because it references a nonexistent U.S. Bureau of Mines' definition for "side dumping." Because Utah's proposed coal-mine waste provisions do not prohibit all forms of end dumping or side dumping of coal mine waste, the Director finds that Utah's proposed rule at R614–301–528.320 is less effective than the corresponding Federal regulations at 30 CFR 816.81(a) and 817.81(a) as modified by the court. Specifically, the Director (1) is not approving the phrase "as defined in 'A Dictionary of Mining, Mineral, and Related Terms' 1968, U.S. Bureau of Mines," and (2) is requiring Utah to remove this phrase.

13. R614–301–553, Backfilling and Grading

The Director previously did not approve Utah's proposed backfilling and grading rule at R614–301–352 because it did not include specific reclamation schedules (i.e. time and distance standards) for contemporaneous reclamation (finding No. 9; 55 FR 13773, 13778; April 12, 1990).

Utah reproposes R614–301–352 and at R614–301–553 proposes, for the purposes of surface coal mining and reclamation activities, that rough backfilling and grading follow coal removal by not more than 60 days or 1500 linear feet.

OSM's contemporaneous reclamation regulation at 30 CFR 816.100 (48 FR 24638, June 1, 1983) was remanded by PSMRL II, Round II, to the extent that it did not specify both time and distance factors defining contemporaneous reclamation.

Due to the court's remand, OSM did not use the 1983 regulation in evaluating the sufficiency of Utah's proposed rule, despite the fact that the remanded regulation was not actually suspended by OSM. OSM evaluated the proposed amendment based upon its consistency with the court's decision.

The OSM regulation that existed prior to the 1983 regulation included time and distance standards for contour surface mining and area surface mining (44 FR 14902, 15411, March 13, 1979). Utah proposes at R614–301–553 a specific time and distance standard for rough backfilling and grading (60 days or 1500 linear feet) for all "surface coal mining and reclamation activities" (which includes contour surface mining and area surface mining) that is the same as the OSM 1979 standard for just contour surface mining. (OSM's 1979 standard for area surface mining was 180 days or four spoil ridges.)

The Director finds that Utah's proposed time and distance standard at R614–301–553 of 60 days or 1500 linear feet for all "surface coal mining and reclamation activities" is no less effective than the Federal regulation as modified by the court's decision. The Director is approving Utah's proposed rules at R614–301–352 and R614–301–553.

14. R614–301–553.700 and R614–301–553.800, Backfilling and Grading of Thin and Thick Overburden Surface Mines

The Director previously did not approve Utah's proposed thin and thick overburden surface mine rules at R614–310–553.700 and R614–310–553.800 (finding No. 14; 55 FR 13773, 13779; April 12, 1990) because they did not provide formulae for defining thin and thick overburden that were consistent with PSMRL II, Round II.

At R614–301–553.700 and R614–301–553.800, Utah proposes in this amendment that the thin overburden surface mine provisions apply where the final thickness would be less than 0.8 of the initial thickness, and the thick overburden provisions apply where the final thickness would be greater than 1.2 of the initial thickness. Utah's proposed rules are substantively identical to the corresponding Federal regulations at 30 CFR 816.104(a) and 816.105(a) (44 FR 15412, March 13, 1979).

PSMRL II, Round II (21 ERC at 1746) remanded the Federal thin and thick

overburden regulations because the Secretary's rationale for removing the objective formulae for defining thin and thick overburden from the previous 1979 regulations (44 FR 15312, 15412, March 13, 1979) was not justified.

Because the proposed Utah rules are substantively identical to the 1979 Federal regulations and provide formulae for defining thin and thick overburden that are consistent with the court's decision, the Director finds that Utah's proposed rule at R614–310–553.700 is consistent with the court's decision and is no less effective than the Federal regulations. Therefore, the Director approves Utah's proposed rule at R614–301–553.700.

Utah appears to have inadvertently included the words "mine plan" in the phrase "permit mine plan area" in the third sentence of proposed rule R614–301–553.800, which addresses thick overburden mines. "Mine plan" is not defined in the Utah program, and the phrase "permit mine plan area" is not consistent with the analogous phrase "permit area" in Utah's thin overburden rules at R614–301–553.700. The Director is not approving the words "mine plan" in Utah's proposed thick overburden rule at R614–301–553.800 and is requiring Utah to remove these words from this rule.

15. R614–301–728, Probable Hydrologic Consequences (PHC) Determinations Policy Statement

The Federal regulations regarding PHC determinations at 30 CFR 780.21(f) and 784.14(e) were challenged in PSMRL II, Round III on the grounds that they were wrongly limited to activities occurring during the "life of the permit" as opposed to the "life of the mine." Rather than ruling on the substance of this argument, the court instead remanded the rules on procedural grounds. As a result of the court decision, OSM suspended the PHC regulations (51 FR 41952, 41957, November 20, 1986). OSM reexamined the regulations and promulgated new regulations at 30 CFR 780.21(f) and 784.14(e) identical to those that had been previously suspended (53 FR 36394, 36400, September 19, 1988).

However, in the preamble to the new regulations, OSM clarified how its interpretation to limit the PHC determination to the permit and adjacent areas ("life of the permit") was appropriate. OSM interprets the PHC determination to apply to all activities authorized under the permit for the permit and adjacent areas. The PHC determination need not consider those activities that may occur during the life of the mine that would be authorized under future permitting activities. A new PHC determination would be required for any additional surface mining activity that could impact the hydrologic regime authorized during the initial permit term or in future permitting actions. A renewal of the initial permit with no changes would not necessitate a new PHC determination. Therefore, OSM considers the PHC determination to be "spatial" rather than "temporal" in nature (53 FR 36394, 36396–36399, September 19, 1988). A "temporal" PHC determination would apply to all known mining activities associated with the initial permit area and those which may occur during the life of the mine.

In this proposed amendment, Utah submitted a policy statement (appendix I, page 2, issue No. 22) specifying that it interprets its PHC rules to require both "temporal and spatial" considerations when performing PHC determinations (administrative record No. UT–570). On this basis, the Director finds that Utah's proposed rule at R614–301–728, as augmented by the revised policy statement, is no less effective than the corresponding Federal regulations at 30 CFR 780.21(f) and 784.14(e). The Director is approving the rule and policy statement as part of the approved Utah program.

16. R614–301–742.224, R614–301–512.140, and R614–301–731.750, Certification of Maps and Plans

(a) *R614–301–742.224.* Utah proposes at rule R614–301–742.224 that the design of sedimentation ponds, which rely primarily on storage to control runoff of a design event, be certified by a qualified, registered, professional engineer or qualified, registered, professional land surveyor in accordance with R614–301–512.100.

The corresponding Federal regulations at 30 CFR 816.49(c)(2) and 817.49(c)(2) require that the design of such sedimentation ponds be certified by a qualified, registered, professional engineer or land surveyor, in any State authorizing a land surveyor to do so.

OSM obtained a copy of chapter 22 of the Utah Professional Engineers and Land Surveyors Licensing Act (UPELSLA) and reviewed it to determine whether it authorizes land surveyors to do such certifications. Chapter 22, section 58–22–2(8)(a) of UPELSLA, authorizes land surveyors in Utah to perform work relating to "the monumenting of property boundaries, and for the platting and layout of lands and subdivisions, including the topography, alignment, and grades of streets and the preparation and perpetuation of maps, record plats, field notes records, and property descriptions that represent these surveys." However, nothing in UPELSLA authorizes registered professional land surveyors to prepare and/or certify engineering designs as proposed at R614–301–742.224.

In addition, Utah's proposed rule at R614–310–742.224 is not consistent with Utah's rule at R614–301–512.200. Utah proposes at R614–301–742.224 that a qualified, registered, professional land surveyor may certify, in accordance with R614–301–512.100, the design of a sedimentation pond relying primarily on storage to control runoff. This proposed requirement contradicts Utah's rule at R614–301–512.200, which requires that plans and engineering designs for impoundments be certified by a qualified registered professional engineer.

As discussed above, the Director finds that Utah's proposed rule at R614–301–742.224, which allows qualified, registered, professional land surveyors to certify sedimentation pond designs in accordance with R614–301–512.100, is in contradiction of UPELSLA and R614–301–742.224. Because (1) the Federal regulations at 30 CFR 816.49(c)(2) and 817.49(c)(2) allow land surveyors to certify the designs of the discussed sedimentation ponds only in those States authorizing a land surveyor to do so, and (2) UPELSLA provides no such authorization, the Director finds that Utah's proposed rule at R614–301–742.224 is less effective than the corresponding Federal regulations at 30 CFR 816.49(c)(2) and 817.49(c)(2). For these reasons, the Director is not approving (1) Utah's proposed rule at R614–301–742.224 and (2) the phrases "or qualified professional land surveyor" and "in accordance with R614–301–512.100" there. The Director is requiring Utah to amend the proposed rule by removing the phrase "or qualified professional land surveyor" and referencing "R614–301–512.200" rather than "R614–301–512.100."

(b) *R614–301–512.140 and R614–301–731.750.* As discussed in finding No. 16(a), Utah's proposed rule at R614–301–742.224 references rule R614–301–512.100. At referenced rule R614–301–512.100 (specifically at R614–301–512.140), Utah authorizes qualified, registered, professional land surveyors to certify the cross sections addressed at R614–301–731.700. Referenced rule R614–301–731.700 (specifically at R614–301–731.750) requires that cross sections for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam or embankment, be certified according to R614–301–512.100. Therefore, in

combination, referenced rules R614–301–512.140 and R614–301–731.750 allow qualified, registered, professional land surveyors to certify the cross section of proposed sedimentation ponds, water impoundments, and coal processing waste banks, dams, and embankments.

The corresponding Federal regulations at 30 CFR 780.25(a)(1)(i) and (a)(3)(i) and 784.16(a)(1)(i) and (a)(3)(i) require a general plan, and a detailed plan for each structure that does not meet the size or other criteria of 30 CFR 77.216(a), for each proposed sedimentation pond, water impoundment, and coal processing waste dam or embankment within the proposed permit area to be certified by a qualified registered, professional engineer or land surveyor, in any State which authorizes land surveyors to prepare and certify such plans, except that detailed plans for all coal processing waste dams and embankments not meeting the size or other criteria of 30 CFR 77.216(a) must be certified by a qualified, registered, professional engineer.

As discussed in finding No. 16(a), nothing in UPELSLA authorizes registered professional land surveyors to prepare and/or certify engineering designs. Therefore, rules R614–301–512.140 and R614–301–731.750, which allow qualified, registered, professional land surveyors to prepare and certify designs, are in contradiction of UPELSLA.

Utah's rules at R614–301–512.140 and R614–301–731.750 also are not consistent with Utah's rule at R614–301–512.200. Utah at rules R614–301–512.140 and R614–301–731.750 allows qualified, registered, professional land surveyors to certify the cross sections of proposed sedimentation ponds, water impoundments, and coal processing waste banks, dams, and embankments. This contradicts Utah's rule at R614–301–512.200, which requires that plans and engineering designs for impoundments and coal mine waste structures be certified by a qualified, registered, professional engineer.

Also, Utah's rules at R614–301–512.140 and R614–301–731.750, which allows qualified, registered, professional land surveyors to certify coal processing waste banks, dams, and embankments, are not consistent with the corresponding Federal regulations at 30 CFR 780.25(a)(3)(i) and 784.16(a)(3)(i), which explicitly state that qualified, registered, professional land surveyors are not authorized to certify such coal processing waste structures.

Based upon the discussions above, the Director finds that Utah's proposed rules at R614–301–512.140 and R614–301–731.750, which allow qualified, registered, professional land surveyors to certify cross sections of proposed sedimentation ponds, water impoundments, and coal processing waste banks, dams, and embankments, are in contradiction of UPELSLA and R614–301–512.200. Because (1) the Federal regulations at 30 CFR 780.25 (a)(1)(i) and (a)(3)(i) and 784.16 (a)(1)(i) and (a)(3)(i) allow qualified, registered, professional land surveyors to certify sedimentation ponds and water impoundments only in those States authorizing a land surveyor to do so, and (2) UPELSLA provides no such authorization, the Director finds that Utah's proposed rules at R614–301–512.140 and R614–301–731.750 are less effective than the corresponding Federal regulations at 30 CFR 780.25 (a)(1)(i) and (a)(3)(i) and 784.16 (a)(1)(i) and (a)(3)(i). The Director also finds that Utah's proposed rules at R614–301–512.140 and R614–301–731.750 are less effective than the corresponding Federal regulations at 30 CFR 780.25(a)(3)(i) and 784.16(a)(3)(i) to the extent that they allow qualified, registered, professional land surveyors to certify coal processing waste banks, dams, and embankments. The Director is requiring Utah to amend (1) rule R614–301–512.140 to reference "R614–301–731.700 through R614–301–731.740" rather than "R614–301–731.700," and (2) rule R614–301–731.750 to reference "R614–301–512.200" rather than "R614–301–512.100."

17. R614–301–746.340, Coal Mine Waste Impounding Structures

Utah proposes a rule at R614–301–746.340 which requires that impounding structures constructed of or impounding coal mine waste be designed and operated so that at least 90 percent of the water stored during the design precipitation event will be removed within a 10-day period following the event. The corresponding Federal regulations at 30 CFR 816.84 (e) and (f) and 817.84 (e) and (f) require that (1) impounding structures constructed of or impounding coal mine waste be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period and (2) at least 90 percent of such stored water actually be removed within the 10-day period following the design precipitation event.

At rule R614–301–746.340, Utah proposes to combine into one rule the design and operation requirements that are addressed in more than one Federal regulation. The Director (1) finds that Utah's proposed rule at R614–301–746.340 is no less effective than the corresponding Federal regulations at 30 CFR 816.84 (e) and (f) and 817.84 (e) and (f); and (2) is approving this rule.

18. R614–302–271, Variances from Approximate Original Contour (AOC) Restoration Requirements

The Director previously required at 30 CFR 944.16(g) that Utah further amend R614–302–271 to specify that variances from AOC for backfilling and grading operations be only allowed for operations in steep-slope mining areas (finding No. 15; 55 FR 13773, 13780; April 12, 1990). Utah proposes at R614–302–271 that "the Division may issue approval or, if applicable, a permit for nonmountaintop removal mining in steep slope areas which includes a variance from the requirements * * * to restore the disturbed areas to their approximate original contour."

PSMRL II, Round II (620 F.Supp. at 1574–1578) remanded the Federal regulations at 30 CFR 785.16, 816.33(d), and 817.133(d) to the extent that the regulations permitted variances from AOC for surface coal mining operations in areas that do not have steep slopes. OSM thereafter suspended these regulations (51 FR 41952, 41957, November 20, 1986).

Due to the court's remand and OSM's subsequent suspension of 30 CFR 785.16, 816.133(d), and 817.133(d), OSM did not use the suspended portions of these Federal regulations in evaluating the sufficiency of the proposed Utah rules. OSM evaluated the proposed rule based upon its consistency with the court's decision.

The proposed Utah rule limits the allowance of variance from AOC to steep-slope mining operations. Therefore, the Director (1) finds that Utah's proposed rule at R614–302–271 is consistent with the court's decision, (2) is approving Utah's this rule and (3) is removing the required amendment at 30 CFR 944.16(g).

IV. Summary and Disposition of Comments

1. Public Comments

OSM solicited public comments and provided opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and the heads of various

other Federal agencies with an actual or potential interest in the Utah program.

The U.S. Bureau of Mines and U.S. Forest Service acknowledged receipt of the proposed amendment but did not comment on it (administrative record Nos. UT–579 and UT–586).

As discussed below, the National Park Service (NPS) and the Mine Safety and Health Administration (MSHA) commented on several provisions of the proposed amendment (administrative record Nos. UT 581 and UT–588).

(a) *NPS.* NPS commented that Utah's proposed rule at R614–100–200(c)(ii), definition of VER, contains an incomplete sentence "the prohibition cause by 40–10–24 of the Act." The Director is not approving this phrase and is requiring Utah to remove it from its rule. See finding No. 3(c).

NPS commented that Utah's proposed air quality rule at R614–301–424 does not require that permit applications include an air quality monitoring program should the regulatory authority decide to require such a program. The Director is requiring Utah to amend its program to include such a requirement. See finding No. 11.

NPS commented that Utah's proposed rule at R614–103–220, which concerns designations of Federal lands as unsuitable for mining, contains an incorrect reference to SMCRA. Utah cites section 522(a) of SMCRA; the correct citation is section 523(a). The Director is requiring Utah to amend its program to cite the correct section of SMCRA. See finding No. 5.

(b) *MSHA.* MSHA commented that, in general, the proposed Utah rules are acceptable and they do not conflict with current MSHA regulations. MSHA also had some specific comments (administrative record No. UT–588).

MSHA commented on Utah's proposed rule at R614–301–533.100. The proposed rule states that: "An impoundment meeting the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage will have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2. Impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except for coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage will have a minimum static safety factor of 1.3 for normal pool with steady state seepage saturation conditions or meet the requirements of R614–301–733.210." MSHA commented that Utah should clarify in proposed rule R614–301–533.100 that the required static safety factor applies to impoundment embankments. The Director is not requiring Utah to amend proposed rule R614–301–533.100 because the wording of Utah's proposed rule is substantively identical to the corresponding Federal regulations at 30 CFR 816.49(a)(3) and 817.49(a)(3). See finding No. 1.

MSHA also commented on Utah's proposed rule at R614–301–743.200. It stated that the design precipitation for impoundments event is a 100-year, 6-hour event, or such larger event as demonstrated to be needed by the Division, while MSHA's criteria for high hazard dams is the Probable Maximum Flood (PMF). The Director is not requiring Utah to amend proposed rule R614–301–533.200 because the wording of the proposed rule is substantively identical to the corresponding Federal regulations at 30 CFR 816.49(a)(8)(ii)(A) and 817.49(a)(8)(ii)(A). See finding No. 1.

3. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), OSM is required to provide the proposed amendment, which included provisions that may have an effect on historic properties, to the SHPO and ACHP for comment.

SHPO acknowledged receipt of the proposed amendment and responded that it had no comments on it (administrative record No. UT–584).

ACHP did not comment on the proposed amendment.

4. EPA Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) EPA gave its written concurrence on the proposed amendment on August 30, 1990 (administrative record No. UT–587).

EPA commented that Utah's proposed rules must be implemented consistent with the requirements of the Clean Water Act and cannot allow instream treatment of point source discharges.

EPA noted certain situations related to instream treatment which could result in conditions that would not assure compliance with applicable State water quality standards required by the Clean Water Act. By instream treatment, EPA referred to two activities. The first activity is one in which mine wastes are discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. These impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water as well as solids settling.

EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or sediment ponds in waters of the United States does not itself remove those waters from the definition of "waters of the United States" under the Clean Water Act. The Clean Water Act requires that all discharges of pollutants from point sources into waters of the United States occur by permit as appropriate under either section 402 of 404 of the Clean Water Act.

With specific reference to Utah, EPA noted that Utah's proposed rule at R614–301–742.221 would allow placement of sediment ponds in perennial streams if approved by the Division, and that proposed rule R614–301–733.222 could allow the creation of impoundments in the waters of the United States.

The Director acknowledges EPA's concerns. Utah has been notified of these concerns by their inclusion in the administrative record. The Director emphasizes that section 702(a)(3) of SMCRA provides that nothing in the SMCRA shall be construed as superseding, amending, modifying or repealing the Clean Water Act, as amended, State laws enacted pursuant thereto, or other Federal laws relating to the preservation of water quality. Utah's general hydrologic balance rule at R614–301–751 is consistent with the corresponding Federal regulations at 30 CFR 816.45(a) in that it requires operators to comply with Federal and State water quality statutes, regulations standards and effluent limitations. Therefore, Utah permit applicants and mine operators are aware of their responsibilities under the Clean Water Act, and the Director is not requiring any further action on the part of Utah at this time.

V. Director's Decision

Based on the above findings, the Director is approving in part, not approving in part, and deferring decision in part on the proposed amendment as submitted by Utah on July 3, 1990, and as revised by it on November 26, 1990. In conjunction with the Director's decision

to approve and not approve parts of the proposed amendment, the Director is requiring Utah to amend its program. The Director is also removing the previously required amendments at 30 CFR 944.16.

With the following exceptions the Director is approving the provisions of Utah's proposed amendment. As discussed respectively in finding Nos. 3(b), 4, 10(b), 12, 14, and 16(a), the Director is not approving proposed (1) R614–100–200, the phrase "the prohibition caused by 40–10–24 of the Act" in subsection (c)(ii) of the definition of VER; (2) R614–100–450 through 452, termination of jurisdiction; (3) Appendix A of the Vegetation Information Guidelines, references to the maximum sample size of 40; (4) R614–301–528.320, the phrase "as defined in 'A Dictionary of Mining, Mineral, and Related Terms' 1968, U.S. Bureau of Mines" in the coal mine waste disposal requirements; (5) R614–301–553.800, the words "mine plan" in the backfilling and grading of thick overburden surface mine requirements; and (6) R614–301–742.224, the phrases "or qualified registered professional land surveyor" and "in accordance with R614–301–512.100" in the maps and plans certification requirements. The Director is not approving these proposed rules because they are less effective than the Federal regulations implementing SMCRA or inconsistent with the court decisions in PSMRL II, Round II; PSMRL II, Round III; or National Wildlife Fed'n.

As discussed in finding No. 3(a), the Director is deferring decision on Utah's proposed definition of "road" at R614–100–200.

As discussed respectively in findings Nos. 3(b), 5, 7, 8, 9, 10, 11, 12, 14, 16, the Director is requiring Utah to further amend (1) R614–100–200, definition of VER; (2) R614–103–220, areas unsuitable for coal mining and reclamation operations; (3) R614–300–160 through R614–300–163.400, improvidently issued permits; (4) R614–301–111.400, identification of interests and compliance information; (5) R614–301–356.231, stocking and planting arrangements for trees and shrubs; (6) Vegetation Information Guidelines; (7) R614–301–424, air quality; (8) R614–301–528.320, engineering and hydrology permit application requirements for coal mine waste disposal areas; (9) R614–301–553.600, backfilling and grading of thick overburden surface mines; and (10) R614–301–742.224, R614–301–512.140, and R614–301–731.750, certification of maps and plans. The Director is requiring further amendments of these proposed rules because they are less effective than the Federal regulations implementing SMCRA.

As discussed in finding Nos. 3(b), 3(c), 6, 10, 11, 12, and 18, the Director is removing the previously required amendments at 30 CFR 944.16 (a), (b), (d), (c), (e), (f), and (g).

Except as noted, the Director is approving the rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public. The Federal regulations at 30 CFR part 944 codifying decisions concerning the Utah program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision. Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Utah program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Utah of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exception from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding a new paragraph (q) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(q) With the exceptions of (1) R614–100–200, the phrase "the prohibition caused by 40–10–24 of the Act" in subsection (c)(ii) of the definition of "valid existing rights;" (2) R614–100–200, the phrase "and may not include public roads as determined on a site-specific basis" in the definition of "road;" (3) R614–100–450 through 452, termination of jurisdiction; (4) Appendix A of the Vegetation Information Guidelines, references to the maximum sample size of 40; (5) R614–301–528.320, the phrase "as defined in 'A Dictionary of Mining, Mineral, and Related Terms' 1968, U.S. Bureau of Mines" in the coal mine waste disposal requirements; (6) R614–301–553.800, the words "mine plan" in the backfilling and grading of thick overburden surface mine requirements; and (7) R614–301–742.224, the phrase "or qualified registered professional land surveyor" in the maps and plans certification requirements, the following revisions to the Utah permanent

regulatory program rules as submitted to OSM on July 3, 1990, and as revised on November 26, 1990, are approved effective August 23, 1991.

R614–100–200 Definitions of "Fragile Lands," "Owned or Controlled" and "Owns or Controls," "Unwarranted Failure to Comply," and "Valid Existing Rights"
R614–100–415 Applicability
R614–103–220, 221, and 222 Areas Unsuitable for Coal Mining and Reclamation Operations
R614–105–443 Administrative Procedures for Blaster Training, Examination, and Certification
R614–201–400 through 432, and 432.100, .300, 433, and 434 Coal Exploration
R614–300–112.500 Administrative Procedures—Permitting
R614–300–132.100, .120, .200, and .300 Review of Compliance
R614–300–148, 148.100, and .200 Permit Conditions
R614–300–160, 161, 162.100 through .300, 163, 163.100 through .400, 164, 164.100 through .300 and 170 Review Procedures for Improvidently Issued Permits
R614–301–112.200 through .420 Permit Application Requirements, Identification of Interests
R614–301–112.900 Permit Application Requirements, Updating Ownership and Control Interests
R614–301–113.300 through .310, and 113.400 Violation Information
R614–301–352 Contemporaneous Reclamation
R614–301–356.232 and R614–301–357.300 Revegetation
R614–301–411.145 Land Use
R614–301–521.170 and .180 Roads and Support Facilities
R614–301–525.160 and .232 Subsidence
R614–301–526.220 Support Facilities
R614–301–527.200, .230, and .240 Roads and Support Facilities
R614–301–528.320 Coal Mine Waste
R614–301–533.100 Impoundments
R614–301–534.130 through .150 Roads
R614–301–542.620 and .640 Roads and Support Facilities
R614–301–553 Backfilling and Grading
R614–301–553.700 Backfilling and Grading of Thin Overburden Surface Mines
R614–301–733.210 Permanent and Temporary Impoundments
R614–301–742.222, .223, and .225 Siltation Structures
R614–301–742.412 and .423 Roads and Support Facilities
R614–301–743.130, .131, .132, and .200 Impoundments
R614–301–746.312 and .340 Coal Mine Waste Impounding Structures
R614–302–271 Variances From Approximate Original Contour Restoration Requirements
R614–303–232.500 Renewal of Permits for Reclamation
R614–400–319 State Enforcement Provisions
R614–402–120, 220, 310, 320, and 410 Inspection and Enforcement
R614–301–728 Vegetation Information Guidelines; Probable Hydrologic Consequences (PHC) Determinations as Augmented by a Policy Statement

3. Section 944.16 paragraphs (a) through (g) are removed and new paragraphs (a) through (m) are added to read as follows:

§ 944.16 Required program amendments.

* * * * *

(a) By November 21, 1991, Utah shall submit a proposed amendment for the definition of "valid existing rights" at R614–100–200, deleting the phrase "the prohibition caused by 40–10–24 of the Act" in subsection (c)(ii) of the definition.

(b) By November 21, 1991, Utah shall propose an amendment for its areas unsuitable for coal mining and reclamation operations rule at R614–103–220, citing "Section 523(a) of the Federal Act" rather than "Section 522(a) of the Federal Act."

(c) By November 21, 1991, Utah shall propose an amendment for its improvidently issued permit rules at R614–300–160 through R614–300–163.400, or otherwise propose an amendment to its program, to include State-specific counterparts to the Federal violations review criteria listed in the April 28, 1989, **Federal Register** (54 FR 18438, 18440–18441).

(d) By November 21, 1991, Utah shall propose an amendment for its identification of interests and compliance information rule at R614–301–111.400, or otherwise propose an amendment to its program, to require permit applicants to submit information in the OSM-prescribed format.

(e) By November 21, 1991, Utah shall propose an amendment for its revegetation rule at R614–301–356.231, or otherwise propose an amendment to its program, to specify the minimum tree and shrub stocking and planting arrangements to be developed for fish and wildlife habitat, recreation, shelterbelts, or forest products, and to specify whether consultation with State agencies on these stocking and planting arrangements will be conducted on a programwide or permit-specific basis.

(f) By November 21, 1991, Utah shall propose an amendment for part 2 of the "Methods" section of the Vegetation Information Guidelines to specify the minimum size of range sites to be used for establishing revegetation success standards.

(g) By November 21, 1991, Utah shall propose an amendment for appendix A of its Vegetation Information Guidelines to either reference documents which describe in detail the procedures for each proposed sampling methodology or actually include the detailed description of the procedures for each proposed sampling methodology in the guideline.

(h) By November 21, 1991, Utah shall delete from appendix A of its Vegetation Information Guidelines the maximum sample adequacy size of 40.

(i) By November 21, 1991, Utah shall propose an amendment for its air quality rule R614–301–424, or otherwise propose amendment of its program, specifying that a mine permit application shall include an air quality monitoring program, if such a program is required by the regulatory authority, and citing "R614–301–244.300" rather than "R614–224.300."

(j) By November 21, 1991, Utah shall propose an amendment for its coal mine waste disposal rule at R614–301–528.320 removing the phrase "as defined in 'A Dictionary of Mining, Mineral, and Related Terms' 1968, U.S. Bureau of Mines."

(k) By November 21, 1991, Utah shall propose an amendment for its thick overburden rule at R614–301–553.800 removing the words "mine plan."

(l) By November 21, 1991, Utah shall propose an amendment for its maps and plans certification rule at R614–301–742.224 removing the words "or qualified professional land surveyor" and referencing "R614–301–512.200" rather than "R614–301–512.100."

(m) By November 21, 1991, Utah shall propose an amendment for its maps and plans certification rule to amend (1) rule R614–301–512.140 to reference "R614–301–731.700 through R614–301–731.740" rather than "R614–301–731.700," and (2) rule R614–301–731.750 to reference "R614–301–512.200" rather than "R614–301–512.100."

[FR Doc. 91–20278 Filed 8–22–91; 8:45 am]
BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-67; RM-7026, RM-7057]

Radio Broadcasting Services; Chester, Mechanicsville, and Ruckersville, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sinclair Telecable, Inc., licensee of Station WCDX(FM), Channel 224A, Mechanicsville, Virginia, substitutes Channel 221B1 for Channel 224A at Mechanicsville, Virginia, and modifies its license for Station WCDX(FM) to specify operation on the higher powered channel. See 55 FR 07746, March 5, 1990. Furthermore, this action grants Sinclair's request to dismiss its proposals for change of community from Mechanicsville to Bon Air, Virginia, and for new allotments to Burkeville and Grottoes, Virginia, and also grants Sinclair's motion to sever this proceeding from the petition of Keymarket of Virginia, Inc., licensee of Station WQSF(FM), Williamsburg, Virginia, proposing the reallotment of Channel 243B from Williamsburg to Mechanicsville or Fort Lee, Virginia. Channel 221B1 can be allotted to Mechanicsville, Virginia, with a site restriction 17 kilometers (10.6 miles) northwest. The coordinates for Channel 221B1 are North Latitude 37–42–50 and West Longitude 77–30–23. This action also requires the substitution of Channel 226A for Channel 221A at Chester, Virginia, and the substitution of Channel 270A for Channel 221A at Ruckersville, Virginia. The coordinates for Channel 226A at Chester are 37–22–16 and 77–25–41. Coordinates for Channel 270A at Ruckersville are 38–14–55 and 78–24–38. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 3, 1991.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–67, adopted August 8, 1991, and released August 19, 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, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR 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 Virginia, is amended by removing Channel 224A and adding Channel 221B1 at Mechanicsville, by removing Channel 221A and adding 226A at Chester, and by removing Channel 221A and adding 270A at Ruckersville.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–20281 Filed 8–22–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–549; RM–7464]

Radio Broadcasting Services; Joshua Tree, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 221A to Joshua Tree, California, as that community's first local aural transmission service, in response to a petition for rule making filed by Mel Yarmat. See 55 FR 48868, November 23, 1990. Coordinates used for Channel 221A at Joshua Tree are 34–08–45 and 116–16–04. Concurrence of the Mexican government to this allotment has been received. With this action, the proceeding is terminated.

EFFECTIVE DATES: October 4, 1991. The window period for filing applications for Channel 221A at Joshua Tree, California, will open on October 7, 1991, and close on November 6, 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. 90–549, adopted August 12, 1991, and released August 20, 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, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

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. § 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 221A, Joshua Tree.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91–20279 Filed 8–22–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–550; RM–6893, 7274]

Radio Broadcasting Services; Knob Noster, Wheeling, and Moberly, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 289C3 for Channel 288A at Knob Noster, Missouri, and modifies the license of Bick Broadcasting Company for Station KXKX(FM), Knob Noster, to specify operation on Channel 289C3 in response to a Notice of Proposed Rule Making. See 54 FR 50777, December 11, 1989. The coordinates for Channel 289C3 at Knob Noster are 38–46–28 and 93–37–34. To accommodate this upgrade, this document substitutes Channel 290A for Channel 289A at Wheeling, Missouri. The coordinates for Channel 290A at Wheeling are 39–47–12 and 93–23–07. This document also substitutes Channel 288C3 for Channel 288A at Moberly, Missouri and modifies the license of FM 105, Inc. for Station KZZT(FM) to specify operation on Channel 288C3. The coordinates for Channel 288C3 are 39–24–54 and 92–24–36. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 3, 1991.

FOR FURTHER INFORMATION CONTACT: Belford V. Lawson, III, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–550, adopted August 8, 1991, and released August 19, 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, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

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 Missouri, is amended by removing Channel 288A and adding Channel 289C3 at Knob Noster, by removing Channel 288A and adding Channel 288C3 at Moberly, and by removing Channel 289A and adding Channel 290A at Wheeling.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–20280 Filed 8–22–91; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282 Sub-No. 14]

Railroad Acquisition, Control, Merger, Consolidation Project, Trackage Rights, and Lease Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is making technical amendments to its regulations. These amendments are intended to update and to streamline the regulations, and are not intended to have any substantive effect upon any person or proceeding.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: We are making several technical amendments to part 1180 as part of our ongoing effort to update and streamline our codified regulations. These amendments are not intended to have any substantive effect.

Section 1180.4(c)(1). This section currently provides extensive filing fee information. In view of the codification of our filing fee regulations in § 1002.2, we are revising § 1180.4(c)(1) to refer prospective applicants to § 1002.2

Section 1180.4(c)(6)(iii). This section states that a party may contact the Commission's Section of Finance for assistance in certain matters. We are changing this reference to the Office of Proceedings since the Section of Finance no longer exists.

Section 1180.6(a)(7)(ii). This section requires parties to exempt trackage rights agreements and/or renewals to submit an original and one copy of the executed agreement of the renewal agreement. Because we have no need for an original, we are deleting that requirement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This action will not have a significant effect on a substantial number of small entities.

List of Subjects in 49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: August 15, 1991.

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

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10903–10906, 11341, 11343–11346; 5 U.S.C. 553 and 559; and 45 U.S.C. 904 and 915.

§ 1180.4 [Amended]

2. In § 1180.4, paragraph (c)(1) is amended by removing the first sentence and inserting in lieu thereof the following sentence: "The fees for filing applications or notices under these procedures are set forth in 49 CFR 1002.2.", the third and fourth sentences are removed; and, in paragraph (c)(6)(iii), the first sentence is amended by removing the words "Section of Finance" and inserting in lieu thereof the words "Office of Proceedings".

§ 1180.6 [Amended].

3. In § 1180.6, paragraph (a)(7)(ii), the second sentence is amended by removing the words "an original and".

[FR Doc. 91–20236 Filed 8–22–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AB30

Export of American Ginseng Harvested in 1991–93 Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. Export of animals and plants listed in Convention Appendix II may occur only if the Scientific Authority has advised the permit-issuing Management Authority that such export will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the animals or plants being exported were not obtained in violation of laws for their protection. Export of cultivated specimens of plants listed in appendix II may occur under certificates issued by the Management Authority if it is satisfied that the plants being exported were artificially propagated.

This final rule announces the U.S. Scientific Authority and Management Authority findings on export of American ginseng (*Panax quinquefolius*), listed on Convention Appendix II, from certain States for the 1991–93 harvest seasons.

The U.S. Fish and Wildlife Service (Service) began to make multi-year findings for the export of American ginseng on a State-by-State basis when it issued Scientific Authority and Management Authority findings covering the 1982–84 harvest seasons. This was followed by multi-year findings for ginseng harvested from certain States for the 1985–87 (50 FR 39691) and subsequently for the 1988–90 (53 FR 33815) harvest seasons.

The Service herein approves the export of ginseng harvested in 19 States during the 1991, 1992, and 1993 harvest seasons (a season ends with the calendar year). The Service continues to seek data and information on topics described in this rule as a basis for determining whether to initiate or to continue approval of exports from permitted States for subsequent seasons.

Monitoring State ginseng programs since 1977 has shown the Service that States from which ginseng export has been approved continue to satisfy Convention requirements. To ensure that this is so, the Service will continue annual monitoring in accordance with the procedures described herein. This monitoring will include analysis of data made available to the Service no later than May 31 every year from each State from which ginseng export is approved. These data document the most recent harvest and current status of ginseng management in that State.

The timely export of American ginseng is necessary for a successful ginseng management program. This rule is effective upon publication so that export can begin as soon as possible. This will enable all of the approved States to compete for the foreign markets needed to sell their ginseng and enable the ginseng farmers, diggers, and dealers to realize a greater monetary return for their product. Foreign markets for this species are dependent upon this final rule.

EFFECTIVE DATE: August 23, 1991.

ADDRESSES: Please send correspondence concerning this document to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, rm. 432, Arlington, Virginia 22203. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Management Authority, 4401 North Fairfax Drive, rm. 432, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Scientific Authority: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240. Express and messenger delivered mail should be addressed to the Office of Scientific Authority, 4401 North Fairfax Dr., rm. 750, Arlington, Virginia 22203, fax number (703) 358–2202, telephone (703) 358–1708, or FTS 921–1708. Management Authority: Marshall P. Jones, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., rm. 432, Arlington, Virginia 22203, fax number (703) 358–2281, telephone (703) 358–2093. Export Programs: Lawrence G. Kline, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., rm. 420, Arlington, Virginia 22203, telephone (703) 358–2095.

SUPPLEMENTARY INFORMATION: The Convention listing of this species (February 22, 1997 (42 FR 10462), and November 22, 1985 (50 FR 48212)) continues to regulate ginseng exports, including plants, whole roots, basically intact roots, and root chunks or slices. Export of Convention Appendix II listed species from the United States may only occur under Federal permit or certificate issued upon approval of both the U.S. Scientific Authority and Management Authority. These responsibilities are functions of the U.S. Fish and Wildlife Service. The U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) and the U.S. Fish and Wildlife Service are responsible for enforcing the Convention for terrestrial (nonmarine) plants (see APHIS final rule of October 24, 1984, 49 FR 42907). This is the second of two publications concerning the U.S. Scientific Authority and Management Authority findings on export of American ginseng collected in the 1991–93 harvest seasons.

Public Comment

No comment was received concerning the proposed rule published in the Federal Register on April 16, 1991 (56 FR 15318).

Scientific Authority Criteria

General criteria used by the Scientific Authority in advising the Management Authority on whether export will or will not be detrimental to the survival of species are as follows (originally described in a notice of July 11, 1977; 42 FR 35800):

1. Whether such export has occurred in the past and has or has not reduced numbers or distribution of the species, caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystems;

2. Whether such export is expected to increase, remain constant, or decrease; and

3. Whether the life history parameters of the species and the relevant structure and function of its ecosystems indicate that present or proposed levels of export will appreciably reduce the numbers or distribution of the species, or cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystems.

For ginseng, the evaluation for nondetriment by the Scientific Authority, in accordance with these general criteria, will continue to be based on the following information for each affected State, to the extent it is available in State data (with the States providing the sources and accuracy for new data, and indicating which information from previously submitted material is still valid), or from other suitable sources:

1. Historic, present, and potential distribution of wild ginseng by county using State maps with county outlines; distribution of optimal natural habitat on a regional basis in the State, and description of recent trends in loss and/or protection of habitat; and map of locations and information on approximate acreage and percentage of wild ginseng that is on statute-protected lands where collecting is permanently prohibited. (Ginseng is considered as wild if it occurs in naturally perpetuated habitat, where the species is naturally propagated or with only limited planting of seed with no subsequent tending of the species or habitat before harvest.);

2. Map of the locations of ginseng populations, approximate number or density of wild ginseng populations per county or region, and information on the total number of wild ginseng localities in the State;

3. Map of the average number of plants per population or patch, or local abundance of wild ginseng, per county or region of the State; map and information on the population trends per county or region, indicating if populations of wild ginseng are increasing, stable, decreasing, extirpated, or unknown; and discussion of any recent changes from previous years or differences from historical population sizes;

4. A description of the State's annual harvest practices and controls on wild ginseng including a regulated harvest season (States are urged not to permit harvest until seeds are mature), and harvest requirements such as minimum size or age of collected plants (3-leaf (3-prong) minimum recommended) and on planting seeds at the collection site;

5. Map of the harvest intensity by county or region, indicating if collecting is heavy, moderate, light, none, or unknown, and discussion of any changes from previous years; information on the number of ginseng collectors (diggers) in the State, and on the amount of wild ginseng plants and roots harvested in the State and the amount certified for export, in pounds (dry weight) per year;

6. Information on the average number of wild roots per pound (dry weight) harvested, preferably on a county or regional basis or, if not available, on a statewide basis; and an assessment of

any trend in number of wild roots per pound (dry weight) or root sizes over previous years;

7. A description of the State's ongoing research program on wild ginseng and its progress, including a summary of results obtained; and

8. State maps showing those counties in which ginseng is commercially cultivated; and information on the amount of cultivated ginseng plants or roots harvested in the State and the amount certified, in pounds (dry weight) per year. (Ginseng is considered cultivated when it is artificially propagated and maintained under controlled conditions, for example, in intensively or intermittently prepared or managed gardens or patches, under artificial or natural shade.)

Documents containing information that provided the basis for the findings as to whether export was not detrimental are available for public inspection at the Office of Scientific Authority at the address given above.

Management Authority Criteria

In addition to Scientific Authority advice that ginseng exports will not be detrimental to the survival of the species, the Management Authority must be satisfied that (1) the ginseng was not obtained in contravention of laws for its protection, and (2) it was of wild or of artificially propagated origin.

Criteria used by the Management Authority in determining a State program's qualifications for export are that the State has adopted and is implementing the following regulatory measures (see September 30, 1985, Federal Register (50 FR 39691)).

1. A State ginseng law and regulations mandating State licensing or regulation of persons purchasing or selling ginseng collected or grown in that State;

2. State requirements that these licensed or registered ginseng dealers maintain true and complete records of their commerce in ginseng and provide copies of such records of commerce to the State in a signed and dated statement at least every 90 days (generally within 15 days of the end of each quarter of the calendar year) and a year-end accounting of total commerce for the year;

3. Dealer records required to show date of transaction, whether plants and roots were wild or artificially propagated, if roots were dried or green (fresh) at time of transaction, weight of roots, weight or number of plants, State of origin of plants or roots, and the identification numbers of the State certificates used to ship ginseng from the State of origin. The name and address of the seller or buyer of the ginseng of record shall be maintained by the dealer on his or her own copy of commerce record forms supplied by the State(s) of licensing, and shall be made available to the State ginseng program manager(s) if requested;

4. Inspection and certification by State personnel of all ginseng harvested in the State and of the dealer's ginseng commerce records to authenticate that the ginseng was legally taken from wild or cultivated sources within the State. (Experience has shown the value of an inspection and certification program by a State official who can verify both the weight of the ginseng roots (weight or number of plants) in question and that the roots or the plants were legally taken from the wild or artificially propagated in that State);

5. Ginseng unsold by March 31 of the year after harvest must be weighed by the State and the dealer, digger, or root owner given a State weight receipt. Future State export certification of this stock is to be issued against the State weight receipt;

6. The certificate of origin forms must remain in State control until issued at certification and must contain the following information:

—State of origin,
—Serial number of certificate,
—Dealer's State registration number,
—Dealer's Shipment number for that harvest season,
—Year of harvest of ginseng being certified,
—Designation as wild or artificially propagated plants or roots,
—Designation as dried or green (fresh) roots, or live plants,
—Weight of roots and plants (or number of plants) separately expressed both numerically and in writing,
—Verified statement by State ginseng official that the ginseng was obtained in that State in accordance with State law of that harvest year,
—Name and title of State-certifying official,
—Date of certification, and
—Signatures of both dealer and State official making certification.

This certificate should be issued in triplicate, with the original designated for dealer's use in commerce, first copy for dealer records, and second copy retained by the State for reference; and

7. State regulations that (a) prohibit export of its ginseng from the State without certification by the State of origin, and (b) require uncertified ginseng supplied to State-registered dealers to be returned to the State of origin within 30 calendar days for certification. Failure to have such ginseng certified will render this root illegal for commerce under State Law.

Each State from which ginseng export is approved shall make program information, identified by harvest year, available on an annual basis to the Service's Office of Management Authority no later than May 31 (for example, the 1991 State ginseng data should be available by May 31, 1992). These data should be sufficient to satisfy the Scientific Authority criteria indicated above. The following information is needed to satisfy the Management Authority criteria:

1. Reaffirm State ginseng program and indicate modifications, if any, concerning:

(a) State ginseng laws and regulations;

(b) Season of ginseng harvest and commerce;

(c) State dealer, digger, and/or grower license or registration rules;

(d) Sample of required ginseng-related licenses, including cost of license and dates of authorized use;

(e) Fees for any ginseng-related license or registration;

(f) Dealer, digger, or grower record-maintenance and reporting requirements;

(g) Sample of current-year dealer certificates and reporting forms;

(h) Description of State certification system for wild and cultivated ginseng legally harvested within the State including controls to minimize uncertified ginseng from moving into or out of the State; and

(i) Name, address, and telephone and fax number of State official to contact concerning such information.

2. The State data should also include information on the following:

(a) Pounds dry weight of wild and of cultivated ginseng roots and weight or number of live plants (i) harvested and (ii) certified by the State, and (iii) the pounds of each bought and sold from in-State and out-of-State sources;

(b) Indicate how dealers not resident in the State obtain certification for ginseng roots harvested in that State and how this type of commerce is controlled by State law;

(c) Indicate ginseng law enforcement procedures, violations discovered, and remedies; and

(d) Sample of current-year State certificate of legal take and origin.

Documents containing information that provided the basis for the Service's findings of legal take and origin are available for inspection at the Office of Management Authority at the address given above.

Program for Artificially Propagated Cinseng

In an October 21, 1980, rule (45 FR 68944), the Service announced it would approve export of artificially propagated ginseng only from States for which export of wild-collected ginseng was approved because those States had programs that could adequately document the source of the ginseng. The Service announced in an October 4, 1982, rule (47 FR 43701) that it would approve export of artificially propagated ginseng from other States if procedures had been implemented to minimize the risk that wild-collected plants would be claimed as cultivated. The Service will continue to consider granting such approval.

Previous Export Approval

The export of wild and/or cultivated ginseng harvested from 1982 through 1984 was approved from States listed in 50 CFR 23.51(e). On September 30, 1985 (50 FR 39691), the Service approved multi-year export of 1985–1987 harvested ginseng only from States with a legally regulated ginseng program that provided for a State inspection and certification system and that otherwise satisfied all other criteria of the Scientific Authority and Management Authority. Export of ginseng harvested in those States during the 1988–90 harvest years was approved by the Service on September 1, 1988 (53 FR 33815).

Multi-year Findings

From monitoring State ginseng programs and the status of the species since 1977, the Service finds that States previously approved for the export of ginseng continue to satisfy Convention requirements and that continued ginseng export from these States will not be detrimental to the survival of the species. Therefore, States previously approved for export of ginseng for the 1988–90 harvests are now approved for the 1991–93 harvest seasons.

States wishing to initiate export programs for ginseng harvested in 1992 or thereafter should begin working with the Service as soon as possible, so that their finalized application can be submitted by March 31 of the year in which they anticipate certifying harvested ginseng for subsequent export.

Service ginseng export approval would be subject to revision prior to the 1992 and 1993 harvest seasons in any approved State if a review of information reveals that Management Authority or Scientific Authority findings in favor of export must be changed. The Service does not grant general approval for export of ginseng originating in any State not named in 50 CFR 23.51(e) because: (1) The species does not occur there, (2) no harvest of the species is allowed by the State, (3) the Service does not have adequate information needed for Management Authority or Scientific Authority findings, or (4) the State has not applied for such export approval. To ensure Service-approved States maintain successful programs and that export is not detrimental to the survival of the species, the Service plans to continue annual monitoring of State programs and of information on the status of ginseng populations. Notices will be published in the **Federal Register** in 1992 and 1993 only if new information or changed conditions show reason for revised findings or guidelines.

Export Procedures

Valid Federal Convention documents are necessary to export wild or artificially propagated ginseng plants or roots. Applications for these documents should be sent to the Office of Management Authority at the address given above.

Ginseng eligible for export may only be exported through ports with personnel and/or facilities of the U.S. Department of Agriculture ("USDA ports") and designated by the U.S. Department of Interior (see 49 FR 49238; October 25, 1984). For each export, the exporter must present to the Port Inspector of the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, proof that the exporter has a valid General Permit, available from the U.S. Department of Agriculture, and the following:

(1) Ginseng plants or roots being exported;

(2) Original State certificates of origin for the ginseng (or foreign export documents for American ginseng imported to the United States). An exporter or dealer may split an original State certificate by striking a line through the original weight, and identify by numbers and writing the lower weight of ginseng being exported. This change in certificate weight must be certified with the written words "I made these changes on (date)" followed by full legal signature of the dealer or exporter. The modified State certificate must bear this certification in original ink form;

(3) Three completed Federal Convention export documents; and

(4) One copy of executed shipper's invoice.

The APHIS Plant Protection and Quarantine port inspector may sign and validate the Convention documents only after a satisfactory inspection of the State certificate of origin, shipper's invoice, Convention export documentation, and contents of the shipment. Once the Convention documents are validated, the inspector will then forward State certificates, one Convention export document, and shipper's invoice to the Office of Management Authority for recordkeeping and reporting. The second Federal export document is for the exporter, and the remaining Convention export document authorizes the international shipment of the ginseng and will be collected by the importing country.

The Department has determined that good cause exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act for making these findings and rule effective immediately. This publication represents the final administrative step in authorizing the export of ginseng in accordance with the Convention. Good cause exists for making these findings effective as soon as possible to avoid economic injury to individual diggers, dealers, or other small entities that are directly affected by the findings. Because this final rule removes a restriction on export, it can be made effective immediately upon publication under 5 U.S.C. 553(d)(1). It should be noted that making these findings and rule effective immediately will not adversely affect the species involved in view of the findings on nondetriment contained herein.

Note: The Department has determined that this rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required. The Department determined that the findings for the 1978–90 harvest seasons were not major rules under Executive Order 12291 and did not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Because the rule treats exports on a State-by-State basis and approves export in accordance with State management programs, the rule would have little effect on small entities in and of itself. For the 1991 through 1993 harvest seasons, the Service has analyzed the impacts and again concludes that this would not be a major rule and would not have a significant economic effect on a substantial number of small entities. This rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This rule is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, as amended), and was prepared by Lawrence G. Kline, Office of Management Authority, and Dr. Bruce MacBryde, Office of Scientific Authority.

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Fish, Imports, Treaties.

Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, part 23, subpart F of chapter I, title 50, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Subpart F—Export of Certain Species

§ 23.5 [Amended]

2. In § 23.51 American ginseng (*Panax quinquefolius*) revise paragraph (e)(1) to read as follows:

(e)(1) 1982–1993 harvests (wild and cultivated roots for each year unless noted)

State	Harvest years											
	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
Alabama	—	—	—	—	—	—	X	X	X	X	X	X
Arkansas	X	X	X	X	X	X	X	X	X	X	X	X
Georgia	X	X	X	X	X	X	X	X	X	X	X	X
Illinois	X	X	X	X	X	X	X	X	X	X	X	X
Indiana	X	X	X	X	X	X	X	X	X	X	X	X
Iowa	X	X	X	X	X	X	X	X	X	X	X	X
Kentucky	X	X	X	X	X	X	X	X	X	X	X	X
Maryland	X	X	X	X	X	X	X	X	X	X	X	X
Minnesota	X	X	X	X	X	X	X	X	X	X	X	X
Missouri	X	X	X	X	X	X	X	X	X	X	X	X
New York	—	—	—	—	—	—	X	X	X	X	X	X
N. Carolina	X	X	X	X	X	X	X	X	X	X	X	X
Ohio	X	X	X	X	X	X	X	X	X	X	X	X
Pa.	—	—	—	—	—	—	X	X	X	X	X	X
Tennessee	X	X	X	X	X	X	X	X	X	X	X	X
Vermont	X	X	X	X	X	X	X	X	X	X	X	X
Virginia	X	X	X	X	X	X	X	X	X	X	X	X
W. Va.	X	X	X	X	X	X	X	X	X	X	X	X
Wisconsin	X	X	X	X	X	X	X	X	X	X	X	X

X: Export approval granted for wild and cultivated ginseng harvested in State indicated.
—: Export not requested or not granted.
a: Export approval only for artificially propagated (cultivated) ginseng harvested in State indicated.

* * * * *

Dated: July 9, 1991.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 91–20169 Filed 8–22–91; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 56, No. 164
Friday, August 23, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3987-5]

National Emission Standards for Hazardous Air Pollutants; Polonium-210 Emissions From Phosphorus Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: EPA is announcing a date and city for the public hearing which will be held in the event that EPA decides to issue a Proposed Rule to Modify subpart K of 40 CFR part 61, National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants (subpart K), and EPA receives a request for a hearing concerning the proposed rule by September 10, 1991. If such a hearing is held, it will be held at 9 a.m. on September 17, 1991, in Pocatello, Idaho at a location to be announced.

EPA has previously published notice of a proposed settlement agreement between EPA and the FMC Corporation in *FMC Corporation* v. *U.S. Environmental Protection Agency*, No. 90-1057, DC Circuit Court of Appeals. 56 FR 32572, July 17, 1991. Interested members of the public were invited to submit comments concerning the proposed settlement agreement as provided in that notice. If the proposed settlement agreement is finally approved by EPA and the Department of Justice, EPA intends to issue a Proposed Rule to Modify subpart K before the end of August, 1991.

Under the proposed rule, § 61.122 of subpart K would be amended to permit elemental phosphorus plants an alternative means of demonstrating compliance with the standard. Under the existing standard, an elemental phosphorus plant must insure that total emissions of polonium-210 from that facility do not exceed 2 curies per year. Under the proposed amendment, an elemental phosphorus plant will be in compliance if it limits polonium-210 emissions to 2 curies per year. However, in the alternative, the plant may also demonstrate compliance by: (1) Installing a John Zink Tandem Nozzle Hydrosonic Fixed Throat Venturi Scrubber System including four scrubber units, (2) operating all four scrubber units continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale, (3) scrubbing emissions from all calciners and/or nodulizing kilns at the plant, and (4) limiting total emissions of polonium-210 from the plant to no more than 4.5 curies per year.

In view of the short period of time between the projected date of publication for the proposed rule and the date by which a hearing request must be received by EPA, EPA is publishing this notice at this time in order to insure that the public receives adequate notice of the potential hearing and an adequate opportunity to request that a hearing be held.

DATES: If EPA decides to issue a Proposed Rule to Modify subpart K of 40 CFR part 61, and EPA receives an oral or written request for a hearing concerning such proposed rule by September 10, 1991, a hearing concerning the proposed rule will be held at 9 a.m. on September 17, 1991 in Pocatello, Idaho.

ADDRESSES: If EPA decides to issue a Proposed Rule to Modify subpart K of 40 CFR part 61, written requests for a hearing may be submitted to: Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington DC 20460. Because any request for a hearing must be received by EPA on or before September 10, 1991, a hearing may also be requested by transmitting a written request by fax (electronic facsimile) to Craig Conklin at (703) 308-8763, or by calling Craig Conklin at (703) 308-8755.

FOR FURTHER INFORMATION CONTACT: Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (703) 308-8755.

Michael Shapiro,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 91-20261 Filed 8-22-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-248, RM-7778]

Radio Broadcasting Services; Huntingdon, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Milan Broadcasting Company, Inc. ("petitioner"), licensee of Station WVHR(FM), Channel 265A, Huntingdon, Tennessee, seeking the substitution of Channel 265C3 for Channel 265A at Huntingdon and modification of its license accordingly. Channel 265C3 can be allotted to Huntingdon in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) west to accommodate petitioner's desired transmitter site. The coordinates for Channel 265C3 at Huntingdon are North Latitude 36-01-00 and West Longitude 88-29-00. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 265C3 at Huntingdon or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 11, 1991, and reply comments on or before October 28, 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 R. Cooke, Esq., Harris, Beach & Wilcox, suite 1000, 1611 North Kent Street, Arlington, Virginia 22209 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 654–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–248, adopted August 12, 1991, and released August 20, 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, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

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.

Michael C. Ruger,

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

[FR Doc. 91–20286 Filed 8–22–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–238, RM–7691]

Radio Broadcasting Services; Colfax, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dakota Communications seeking the substitution of Channel 273C3 for Channel 272A at Colfax, Washington, and the modification of its construction permit for Station KRAQ accordingly. Channel 273C3 can be allotted to Colfax in compliance with the Commission's minimum distance separation requirements at the petitioner's requested site without a site restriction. The coordinates for Channel 273C3 at Colfax are North Latitude 46–51–43 and West Longitude 117–10–26. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 273C3 at Colfax or require the petitioner to demonstrate the availability of an additional equivalent class channel. Since Colfax is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been requested.

DATES: Comments must be filed on or before October 10, 1991, and reply comments on or before October 25, 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: J. Dominic Monahan, Esq., Dow, Lohnes & Albertson, 1255 23rd Street, NW., suite 500, Washington, DC 20037 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, No. 91–238, adopted August 8, 1991, and released August 19, 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), 1991 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

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,

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

[FR Doc. 91–20287 Filed 8–22–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–239, RM–7769]

Radio Broadcasting Services; Antigo, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Nicolet Broadcasting, Inc., proposing the allotment of Channel 291C3 to Antigo, Wisconsin, as that community's second local FM broadcast service. Canadian concurrence will be requested for the allotment of Channel 291C3 at coordinates 45–08–54 and 89–09–00.

DATES: Comments must be filed on or before October 10, 1991, and reply comments on or before October 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Roger L. Utnehmer, Nicolet Broadcasting, Inc., P.O. Box 309, 2477 Highway 45 North, Eagle River, Wisconsin 54521.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–239, adopted August 8, 1991, and released August 19, 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, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions for the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–20288 Filed 8–22–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–240, RM–7770]

Radio Broadcasting Services; Peshtigo, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Good Neighbor Broadcasting, Inc., proposing the substitution of Channel 242C2 for Channel 241A, Peshtigo, Wisconsin, and modification of its construction permit for Station WHYB–FM. Canadian concurrence will be requested for this allotment at coordinates 45–07–19 and 87–51–07. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 242C2 at Peshtigo or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 10, 1991, and reply comments on or before October 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Denise B. Moline, McCabe & Allen; 9105 Owens Drive, suite D, P.O. Box 2126, Manassas Park, Virginia 22111.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–240, adopted August 8, 1991, and released August 19, 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, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–20289 Filed 8–22–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–246, RM–7665]

Radio Broadcasting Services; Bay Minette, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Baldwin Broadcasting Company, permittee of Station WFMI(FM), Channel 293A, Bay Minette, Alabama, seeking the substitution of Channel 293C3 for Channel 293A and modification of its permit accordingly to specify operation on the higher powered channel. Petitioner's modification proposal complies with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 293C3 at Bay Minette or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates for this proposal are 30–42–30 and 87–49–35.

DATES: Comments must be filed on or before October 11, 1991, and reply comments on or before October 28, 1991.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ronald D. Maines, Esq., Jones, Waldo, Holbrook & McDonough, P.C., 2300 M St., NW., suite 900, Washington, DC 20037.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–246, adopted August 12, 1991, and released August 20, 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 form the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st St., NW., Washington, DC 20036.

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.

Michael C. Ruger,

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

[FR Doc. 91–20282 Filed 8–22–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–244, RM–7776]

Radio Broadcasting Services; Churubusco, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Robert M. Peters, permittee of Channel 242A, Churubusco, Indiana, seeking the substitution of Channel 242B1 for Channel 242A and modification of his construction permit (BPH–880107MH) accordingly to specify operation on the higher powered

channel. Petitioner's modification proposal complies with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 242B1 at Churubusco or require the petitioner to demonstrate the availability of an additional equivalent class channel. Canadian concurrence will be required for this proposal. Coordinates for this proposal are 41–11–32 and 85–14–02.

DATES: Comments must be filed on or before October 11, 1991, and reply comments on or before October 11, 1991, and reply comments on or before October 28, 1991.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry F. Cole, Bechtel & Cole, Chartered, 1901 L Street NW., suite 250, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–244 adopted August 12, 1991, and released August 20, 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, Downtown Copy Center, (202) 452–1422, 1714 21st St., NW., Washington, DC 20036.

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.

Michael C. Ruger,

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

[FR Doc. 91–20284 Filed 8–22–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–247, RM–7768]

Radio Broadcasting Services; Clayton, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Annette V. Antzes proposing the allotment of Channel 300A to Clayton, Louisiana, as the community's first local service. Channel 300A can be allotted to Clayton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for the allotment of Channel 300A at Clayton are North Latitude 31–43–18 and West Longitude 91–32–30.

DATES: Comments must be filed on or before October 11, 1991, and reply comments on or before October 28, 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: Annette V. Antzes, 9070–C SW. 22d Street, Boca Raton, Florida 33428 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 654–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, MM Docket No. 91–247, adopted August 12, 1991, and released August 20, 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, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

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 rulemaking 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 1.204(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.

Michael C. Ruger,

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

[FR Doc. 91–20285 Filed 8–22–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–245, RM–7775]

Radio Broadcasting Services; Prairie Grove, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Vinewood Communications, a Limited Partnership, permittee of Station KDAB(FM), Channel 235A, Prairie Grove, Arkansas, seeking the substitution of Channel 235C2 for Channel 235A and modification of its permit accordingly to specify operation on the higher powered channel. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 235C2 at Prairie Grove or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates for this proposal are 35–51–00 and 94–23–00.

DATES: Comments must be filed on or before October 11, 1991, and reply comments on or before October 28, 1991.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Arthur Blooston and Caressa L. Davison, Esqs., Blooston, Mordkofsky, Jackson & Dickens, 2120 L Street, NW., Washington, DC 20037.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No.

91–245, adopted August 12, 1991, and released August 20, 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, Downtown Copy Center, (202) 452–1422, 1714 21st St., NW., Washington, DC 20036.

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.

Michael C. Ruger,

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

[FR Doc. 91–20283 Filed 8–22–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571

[Docket No. 90–17; Notice 2]

Federal Motor Vehicle Safety Standards; Tire Selection and Rims: Passenger Cars and Vehicles Other Than Passenger Cars

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

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates a rulemaking proceeding in which the agency issued a notice proposing to adopt new marking requirements for passenger car wheels subject to Standard No. 110. It proposed also to amend the marking requirements for rims and wheels on vehicles other than passenger cars subject to Standard No. 120. The proposed information was intended to facilitate the proper matching of a tire to a rim and to reduce the likelihood of vehicle overloading. After reviewing the public comments on the proposals, the agency concludes that there are insufficient safety benefits to warrant further rulemaking at this time, particularly in light of the costs that would be involved in implementing the proposed requirements. Accordingly, the agency has decided to terminate this rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. Telephone: (202) 366–4803.

SUPPLEMENTARY INFORMATION: On April 26, 1989, the Rubber Manufacturers Association (RMA) petitioned the agency to amend Federal Motor Vehicle Safety Standard No. 110, Tire Selection and Rims (for passenger cars), and Standard No. 120, Tire Selection and Rims for Vehicles Other Than Passenger Cars, to require size labeling on both new and aftermarket wheels. The petitioner stated that such information would provide service personnel with information necessary for the proper selection of replacement tires that would safely fit on a wheel's rim.

In response to the petition, the agency published a notice granting the petition and proposing to adopt new marking requirements for passenger car wheels and to amend the marking requirements for rims and wheels on vehicles other than passenger cars. (55 FR 32929, August 13, 1990). While Standard No. 110 does not include rim marking requirements, Standard No. 120 includes provisions requiring the marking of rims and wheels. Specifically, section S5.2 of Standard No. 120 requires each rim or wheel to be marked with information about the source code designation, the rim size designation, the symbol DOT, the manufacturer's identification, and the build date. These marking requirements, particularly the rim size designation, are intended to ensure that vehicles are equipped with tires that are of the appropriate size and type for the rim. The agency tentatively concluded that the proposal requiring the marking of rims with information about their safe use would be the best way to prevent mismatch.

Under the proposal, Standard No. 110 would have required original equipment wheels and aftermarket wheels to be marked with size information to facilitate the proper matching of a tire to a rim as well as with vehicle load carrying capacity information to reduce the likelihood of overloading. The proposal contained detailed marking provisions specifying the information to be marked on the rims and its order as well as recordkeeping requirements.

Standard No. 120 would have been amended so that the required information would be provided in a specified order on the rims and wheels. In addition, compared to the current requirement, the proposed amendment would have included certain additional information (e.g., the rim contour code, the manufacturer's plant code, and the maximum wheel load capacity and the pressure at which the maximum wheel load capacity is determined.) The notice also proposed additional recordkeeping requirements similar to the ones proposed for Standard No. 110. The NPRM also explained that, notwithstanding the petitioner's understanding of Standard No. 120's applicability, it is presently applicable to aftermarket as well as to original equipment.

Following the proposal, the agency received extensive comments from vehicle manufacturers, large rim and wheel manufacturers, specialty rim and wheel manufacturers, international standardization organizations, and trade associations. The commenters were generally opposed to the proposed amendments, stating that the agency provided no data supporting the proposal. For instance, Chrysler commented that there were no data indicating the magnitude or even the existence of a safety problem attributable to tire and wheel mismatch.

Many commenters submitted comments about the high cost of implementing the proposed requirements and the significant burdens it would place on wheel manufacturers. Costs would be especially significant for specialty manufacturers producing low volume wheels, according to ALCOA and several low volume wheel manufacturers. In general, the commenters' cost estimates far exceeded those presented in the NPRM by the agency.

Several commenters believed that the proposal went much too far in its attempt to reduce the possibility of mismatching tires and rims. RMA, Motor Wheel, Kelsey, Chrysler, General Motors, and Ford said that the agency had unnecessarily gone beyond the intent of the RMA petition, which only requested that some of the requirements in Standard No. 120 be incorporated into Standard No. 110. Chrysler stated that the agency had expanded the petitioner's request into an unfounded, unnecessary proposal which would provide the public with no demonstrated safety benefits.

After reviewing the comments, NHTSA has decided to terminate the rulemaking to adopt the proposed marking requirements to Standard No. 110 and Standard No. 120. Along with the commenters' statements that there were no data demonstrating a safety need, NHTSA's further review of its files indicates that there is little evidence of injuries or fatalities attributable to tire and rim mismatch that would be alleviated by the proposed changes to the rim labeling requirements. In addition, the agency's review of the comments indicate that the costs associated with the proposal, although difficult to estimate accurately, appear to be significantly larger than the agency's initial estimate. The proposal would have been especially burdensome for small manufacturers of wheels. Accordingly, based on current information and analysis, the agency concludes that there are insufficient safety benefits to warrant further rulemaking at this time, particularly in light of the costs that would be involved in implementing the proposed requirements.

The agency emphasizes that vehicles subject to Standard No. 120, including light trucks and MPVs, currently are and will continue to be required to be marked with information about the rim's size designation.

NHTSA also considered adopting a more limited marking requirement for Standard No. 110 consistent with the RMA petition. However, as with the more extensive proposal, the minimal safety benefits do not warrant proceeding further with this more limited approach. Further, the costs would still be significant, especially the initial cost of producing the molds.

For the reasons set forth above, the agency has decided to terminate this rulemaking action.

Issued on: August 20, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-20268 Filed 8-22-91; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 56, No. 164
Friday, August 23, 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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Meeting

Pursuant to the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following Council meeting:

Date and Time: September 11-13, 1991, 8:30 a.m.

Place: Food and Nutrition Service, Park Office Center, 3101 Park Center Drive, Fourth Floor Conference Room, Alexandria, Virginia 22302.

Purpose of Meeting: Public Law 101–147, enacted November 10, 1989, requires the Department to conduct reviews of the nutritional risk criteria used in and the food packages issued by the Special Supplemental Food Program for Women, Infants and Children (WIC) and to submit reports to Congress. To accomplish these reviews and to maximize public involvement in their outcomes, the Department elected to involve the National Advisory Council in Maternal, Infant and Fetal Nutrition in the review process and to work with the Council to develop recommendations in these two program areas.

An *ad hoc* work group, comprised of Council members who volunteered to serve in such a capacity, met June 17-19, 1991 to review draft technical papers on both program review areas developed under cooperative agreement with the Food and Nutrition Services by the University of Arizona and Pennsylvania State University. The final version of these papers will be used as background material as the full Council develops recommendations at its September meeting.

Agenda: The agenda for the Council meeting will include the following: A summary of the legislative mandate for the reviews and the process by which th Department is carrying out such reviews; the methodology used by the cooperators to develop the technical papers; and discussions of issues pertaining to the WIC program's nutritional risk criteria and food packages. Recommendations in these areas will be developed by the Council.

Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the Council before or after the meeting.

Persons wishing to file written statements or to obtain additional information about this meeting should contact Tama Eliff, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 756–3730.

Dated: August 14, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91–20266 Filed 8–22–91; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Fawn Ridge Timber Sale, Mt. Baker-Snoqualmie National Forest, Pierce County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: The Mt. Baker-Snoqualmie National Forest gave notice that an environmental impact statement (EIS) would be prepared for a timber sale in the Fawn Ridge Project Area. The Notice of Intent was published in the February 14, 1991, **Federal Register** (56 FR 5972).

The Forest Service is currently enjoined from auctioning and awarding timber sales in suitable northern spotted own habitat. Since portions of the Fawn Ridge Timber Sale are located in suitable habitat, I have decided not to prepare an EIS at this time, and my previous notice is rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Stuart Woolley, Timber/Fire/Silviculture Assistant, White River Ranger District, 857 Roosevelt Avenue East, Enumclaw, WA 98022; phone: (206) 825–6585.

Dated: August 14, 1991.

Robert L. Dunblazier,

Acting Forest Supervisor.

[FR Doc. 91–20232 Filed 8–22–91; 8:45 am]

BILLING CODE 3410-11-M

South Beckler Timber Sales, Mt. Baker-Snoqualmie National Forest, Snohomish and King Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: The Mt. Baker-Snoqualmie National Forest gave notice that an environmental impact statement (EIS) would be prepared for four timber sales within the South Beckler Project Area. The Notice of Intent was published in the January 31, 1991, **Federal Register** (56 FR 3816).

The Forest Service is currently enjoined from auctioning and awarding timber sales in suitable northern spotted owl habitat. Since large portions of the three of the four sales in the South Beckler Project Area are located in suitable habitat, I have decided not to prepare an EIS at this time, and my previous notice is rescinded. Environmental analysis will continue for the Beckler II sale, but an environmental impact statement is not planned.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Ed DeCarlo, Timber Management Assistant, Skykomish Ranger District, P.O. Box 305, Skykomish, WA 98288; phone: (206) 677–2414.

Dated: August 13, 1991.

Robert L. Dunblazier,

Acting Forest Supervisor.

[FR Doc. 91–20233 Filed 8–22–91; 8:45 am]

BILLING CODE 3410-11-M

Whimbleton Timber Sales, Mt. Baker-Snoqualmie National Forest, Skagit and Snohomish Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: The Mt. Baker-Snoqualmie National Forest gave notice that an environmental impact statement (EIS) would be prepared for three timber sales within the Whimbleton Project Area.

The Notice of Intent was published in the May 10, 1991, Federal Register (56 FR 21657).

The Forest Service is currently enjoined from auctioning and awarding timber sales in suitable northern spotted owl habitat. Since portions of the Whimbleton Project Area are located in suitable habitat, I have decided not to prepare an EIS at this time, and my previous notice is rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Dan Krutina,Timber Management Assistant, Darrington Ranger District, 1405 Emmens St., Darrington, WA 98241; phone: (206) 436–1166.

Dated: August 13, 1991.

Robert L. Dunblazier,

Acting Forest Supervisor.

[FR Doc. 91–20234 Filed 8–22–91; 8:45 am]

BILLING CODE 3410–11–M

Boundary Creek Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed timber sales and the associated road construction in the Boundary Creek area on the Evanston Ranger District, Wasatch-Cache National Forest, Summit County, Utah. The agency invites written comment and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis, and decision-making process that will occur in the analysis so that interested and affected parties are aware how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by October 7, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Steve Ryberg, District Ranger, Evanston Ranger District, P.O. Box 1880, Evanston, WY 82930.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed activities and the environmental impact statement should be directed to Chuck Frank, Evanston Ranger district, P.O. Box 1880, Evanston, WY 82930, phone (307) 789–3194.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Wasatch-Cache Land and Resource Management Plan (approved September 4, 1985), which provides overall guidance (Goals, Objectives, Standards, and Management Area direction) to achieve the Desired Future Condition for the area being analyzed. The proposed action emphasizes vegetation management to promote forest health, increase diversity and improve wildlife habitat, and provide short- and long-term timber outputs through timber management. The Plan has assigned the following prescription to the affected area (located in the Management Area 2, North Slope):

Emphasize big game and cold water fish as key management species. Maintain or slightly increase big game habitat productivity through direct habitat improvement and coordination with management of other resources. Coordinate timber harvest with other resources. Provide for integrated pest management.

For a detailed description of the North slope Management Area, refer to the Wasatch-Cache Land and Resource Management Plan pages IV—74–75.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. Preliminary issues include sedimentation from road construction, visual impacts, protection of riparian areas, protection of fisheries in Boundary Creek, Scow Lake, and Baker Lake, the declining condition of the timber stands, entering an inventoried roadless area, and the need to produce a timber output. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in the preparation of the Draft EIS and the Final EIS. For most effective use, comments should be submitted to the Forest Service by October 7, 1991. Open-house meetings will be held for the purpose of identifying issues. The dates, times, and locations for these meetings will be published in the Salt lake Tribune (Salt Lake City, Utah), and in the Unita County Herald (Evanston, Wyoming).

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process initiated with the publication of this Notice in the Federal Register and, (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in February, 1992. At that time the EPA will publish an availability notice of the Draft EIS in the Federal Register. The Comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the availabilitv notice in the Federal Register.

The Forest Service believes it is important to alert reviewers 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 so that it alerts an agency to the reviewers 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 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 and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may also address the adequacy of the Draft EIS 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, 40 CFR 1503.3, in addressing these points.)

The final EIS is expected to be released in May, 1992. Susan Giannettino, Forest Supervisor for the Wasatch-Cache National Forest, who is the responsible official for the EIS, will then make a decision regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision, also made available in May, 1992. An availability notice of

the Final Environmental Impact Statement and Record of Decision will be published by the EPA in the **Federal Register.**

Dated: August 16, 1991.

Susan Giannettino,

Forest Supervisor.

[FR Doc. 91–20173 Filed 8–22–91; 8:45 am]

BILLING CODE 3410–211–M

Grand Island Advisory Commission Meeting

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission Meeting.

SUMMARY: The Grand Island Advisory Commission will meet on September 8 at 7 p.m. at the Munising Ranger District Office in Munising, Michigan. An agenda for the three day meeting includes discussion and/or review of market analysis overview of available research data, historical overview of Island, soils overview of Island, available water depth information, election of a Chairperson, development of meeting/operating procedures. A trip to Grand Island to look at resource concerns is also tentatively scheduled for Monday.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Art Easterbrook, Staff Officer, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, Michigan 49829, (906) 786–4062.

Dated: August 16, 1991.

William F. Spinner,

Forest Supervisor.

[FR Doc. 91–20089 Filed 8–22–91; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

East Kentucky Power Cooperative, Inc., Intent To Conduct Public Scoping Meetings and Prepare an Environmental Assessment

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to conduct public scoping meetings and prepare an Environmental Assessment for the construction and operation of five proposed 80 megawatt (MW) simple cycle combustion turbine units.

SUMMARY: The Rural Electrification Administration (REA) intends to conduct public scoping meetings and prepare an Environmental Assessment (EA) in connection with possible REA approvals relating to a project proposed by East Kentucky Power Cooperative, Inc. (EKPC), of Winchester, Kentucky. The project consists of the construction and operation of five 80 MW simple cycle combustion turbine generating units. EKPC's preferred location is the J. K. Smith Plant site adjacent to the Kentucky River in southeastern Clark County, Kentucky.

DATES: The REA will conduct two public scoping meetings as follows:

September 23, 1991, 7 p.m., Adair County Courthouse, Public Square, Columbia, Kentucky.

September 24, 1991, 6 p.m., Trapp Elementary School, Irvine Road, Winchester, Kentucky.

ADDRESSES: All interested parties are invited to submit written comments to REA prior to, at, or within 30 days of the scoping meeting in order for comments to be part of the formal record. Comments should be sent to Mr. Larry A. Belluzzo, Director, Northeast Area—Electric, Rural Electrification Administration, South Agriculture Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Wolfe at the above address, telephone (202) 382–9093 or FTS 383–9093, or Mr. Donald R. Norris, President and General Manager, East Kentucky Power Cooperative, Inc., P.O. Box 707, Winchester, Kentucky 40392–0707, telephone (606) 744–4812.

SUPPLEMENTARY INFORMATION: REA, in order to meet requirements under the National Environmental Quality Regulations (40 CFR part 1500), and REA Environmental Policy and Procedures (7 CFR part 1794), intends to conduct public scoping meetings and prepare an Environmental Assessment. This notice is in connection with possible REA approvals relating to a proposal by EKPC for the construction and operation of five 80 MW combustion turbine generating units.

The proposed project will enable EKPC to meet the electrical requirements of its customers during peak periods of usage.

Alternatives to be considered by REA include: (1) No action; (2) demand reduction; (3) purchased power; (4) alternative generation technologies; and (5) alternative sits.

The public scoping meetings to be conducted by REA will be held to solicit comments on the proposed project including, but not limited to, the nature of the proposed project, its possible location, alternatives, and any significant issues and environmental concerns that should be addressed in the EA. Requests for additional information concerning the meetings may be directed to either REA or EKPC at the addresses shown above.

Any REA approval will be subject to and contingent upon reaching satisfactory conclusions with respect to the environmental effects of the project and final action will be taken only after compliance with environmental procedures required by NEPA.

Dated: August 19, 1991.

George E. Pratt,

Deputy Administrator, Program Operations.

[FR Doc. 91–20252 Filed 8–22–91; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–601]

Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary

AGENCY: International Trade Administration, Import Administration, Commerce.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, 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) 377–8371.

Final Results of Antidumping Duty Administrative Review:

Background

On June 21, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 28525) the preliminary results of this administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, (TRBs) from Hungary (52 FR 23319, June 19, 1987). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Petitioner and respondent submitted case and rebuttal briefs on June 12, and June 19, 1991, respectively. A public hearing was held on June 23, 1991. On August 2, 1991, we placed a letter from the public file of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the Republic of Romania—Notice of Final Results of

Antidumping Duty Administrative Review (August 21, 1991), (TRBs from Romania), into the record of this case. We asked petitioner and respondent to comment on the letter which concerned overhead of a firm in the metal processing industry in Yugoslavia. Comments were received from both parties on August 6, 1991, and rebuttal comments were received from respondent on August 7, 1991.

Scope of Review

Imports covered by this review are shipments of TRBs from Hungary. This merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers one manufacturer/exporter of Hungarian TRBs, Magyar Gordulocsopagy Muvek (MGM), and the period June 1, 1989, through May 31, 1990. MGM accounts for all Hungarian exports to the United States of the subject merchandise.

United States Price

We based the United States Price on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Purchase price was based on either the FOB Hamburg port price to unrelated purchasers or the ex-factory price to unrelated purchasers. With respect to FOB Hamburg sales, we made deductions for brokerage and handling and foreign inland freight charges. For the brokerage and handling reported for the TRB model examined at verification, we noted that the correct calculation methodology yielded an amount different from that reported. MGM officials were unable to demonstrate how they allocated total brokerage and handling charges to arrive at the amount reported for each TRB. Therefore, for every TRB model we have used the corrected per-kilogram brokerage and handling amount for the TRB model we examined at verification as best information available (BIA). We valued the inland freight deductions using surrogate data based on Yugoslavian freight costs. We selected Yugoslavia as the surrogate country for the reasons explained in the "Foreign Market Value" section of this notice

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department shall determine foreign market value (FMV) using a factors of production methodology if (1) the merchandise is exported from a non-market economy (NME) country, and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a).

Pursuant to section 771(18) of the Act and based on determinations in prior proceedings, Hungary is an NME. (See e.g., Final Determination of Sales at Less than Fair Value: TRBs from the Hungarian People's Republic, 52 FR 17428 (May 8, 1989). Respondents have not refuted this determination. Accordingly, we conclude for purposes of these final results that because all inputs are not market based, MGM's costs and prices are not accurate, reliable measures of FMV. Therefore, we have determined that the use of factors of production is required to determine FMV in accordance with section 773(c)(1) of the Act. We used the factors of production reported by MGM.

It is the Department's practice to value factor-of-production inputs at actual acquisition prices if it can be established that those inputs are purchased from a market economy country in freely convertible currency. Where market economy prices were not provided, we obtained information for valuing the factors or production from publicly available sources in the selected surrogate country. We determined that South Africa was the most appropriate surrogate country for Hungary because it was comparable in terms of per capita GNP (both actual and in annual growth rate) and the national distribution of labor. However, we were unable to obtain any data for valuing the factors of production in South Africa. Therefore, we selected Yugoslavia as the second most comparable surrogate country and valued the factors of production in Yugoslavia.

The material cost for each component was determined by multiplying the gross weight of steel by the steel unit price less the saleable scrap. The scrap factor was reduced to account for waste and burn off. MGM did not submit actual material usage factors for three of the TRBs under review. For these TRBs we increased standard material factors by the average variance found for each part. Average variances were calculated for cups, cones and rollers based on information collected at verification. In addition, MGM failed to report actual material usage for cages. Therefore, the reported standard material costs for cages were increased by the overall average percentage variance calculated for cups, cones and rollers.

The labor cost for each component was calculated by multiplying the total labor minutes for each TRB component by the surrogate labor rate. As described in our verification report, we noted that MGM made several errors in the labor usage factors reported. MGM submitted actual labor usage information for only five of eight products. Standard labor hours, instead of actual labor hours, were reported for one of the production steps in the calculation. In addition, actual labor factors were not submitted for any of the TRB cages, a washing stage for cups and cones, and the TRB assembly steps. Actual labor usage figures submitted by MGM were increased to account for MGM's failure to include certain actual labor factors in its calculations. The standard labor factors, for parts and processes for which actual labor factors were not submitted, were adjusted and used in the absence of actual factors as follows: increased by either the average variance found for that part, where available, or, otherwise, by the percentage of the overall variance found, as applicable.

We valued the factors of production as follows:

Certain raw material costs were valued based on MGM's imports of steel products from market economies which were paid for in freely convertible currency. As described in our verification report, the price that MGM's importer pays for the steel supplier (the supplier's asking price less a negotiated discount) is the only portion of the transaction that occurs in convertible currency. Therefore, we have used the price paid by MGM's importer as the price of these inputs. However, as set forth in our verification report, we noted that not all of the prices of steel inputs were reported at prices for which the discount had already been deducted. For those steel input prices where we could not document the inclusion or exclusion of discounts, we assumed that the discounts had already been deducted and used the reported prices as BIA.

Based upon findings at verification, we adjusted MGM's market economy steel import data to include shipments that were omitted from its response and to correct clerical errors. These unreported and misreported shipments were at prices both higher and lower than the reported shipments. Therefore, we used these shipment data, as

corrected at verification, in our calculations of the average convertible currency steel purchase prices as BIA.

In the absence of market economy prices paid by MGM, we valued other raw material inputs using Statistics of Foreign Trade of the SFR Yugoslavia Year 1989 (Statistics of Foreign Trade). We used Yugoslavian CIF import data to value hot-rolled steel rods, steel strips and steel scrap.

We valued both inland freight for the finished TRBs and inland freight on the steel inputs using publicly available Yugoslavian truck freight rates. This information was taken from the public record of the administrative review of TRBs from Romania.

We valued direct labor using Yugoslavian labor rate data obtained from the United Nations' Industrial Statistics Yearbook 1988. We used the International Financial Statistics wage index to adjust the labor rate to more closely coincide with the period of review. This rate is the average of salaries and wages of employees plus supplements to wages and salaries for the metal products industry in Yugoslavia. Therefore, this rate is representative of actual labor rates in Yugoslavia for all categories of employees within the metal products industry.

We used the International Financial Statistics producer price index to adjust factor values drawn from periods outside the review period.

We valued factory overhead and indirect labor using public information supplied in the administrative review of TRBs from Romania. The information provided for use in that case reflects the costs a metal processor would incur in Yugoslavia and is the most reasonable data available.

We used the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses.

We used the statutory minimum of eight percent of material and fabrication costs plus general expenses for profit.

Consistent with our valuation of packing in the Final Determinations of Sales at Less than Fair Value: TRBs from the Hungarian People's Republic, 52 FR 17428 (May 8, 1989), and Final Results of Antidumping Duty Administrative Review: TRBs from the Republic of Hungary, 55 FR 48146 (November 19, 1990), the value for packing was based on publicly available data contained in the public file of the investigation of TRBs from Italy, 52 FR 24198 (June 29, 1987).

Currency Conversion

We made currency conversions, in accordance with 19 CFR 353.60(a), at the rates certified by the Federal Reserve Bank or at the rates published by the International Monetary Fund in International Financial Statistics. Daily certified rates were not available for Yugoslavian dinars for the period of review. Therefore, for purposes of these final results, we used the daily exchange rates provided by Jugobanka in New York. Jugobanka officials explained that the rates provided to the Department were obtained from the Yugoslavian central bank.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received case and rebuttal briefs from the respondent, MGM, and from the petitioner, the Timken Company.

Comment 1: MGM argues that the differences found at verification regarding brokerage and handling should not have been publicly impugned because they were small, nor should they have provided a basis for rejecting MGM's data.

Timken states that when an inaccuracy is small the agency is not obliged to reject the questionnaire response entirely or use a punitive BIA as a result of the inaccuracy. Timken notes that it would have no objection to application as brokerage and handling to each part number in each shipment the higher of: (a) the amount reported by MGM in its questionnaire response, or (b) the amount derived by ITA at verification.

DOC Position: The Department's verification report states that MGM was unable to support the amounts reported for brokerage and handling provided in the questionnaire response. We determined that the noted discrepancies were so minor that they did not warrant the use of punitive BIA. Accordingly, we have used the verified amount in these final results, as was done in the preliminary results.

Comment 2: MGM contends that the use of Yugoslavian surrogate steel input costs yield misleading results because the hyper-inflation in Yugoslavia has not occurred in Hungary. Therefore, MGM urges the Department that another surrogate be used, at least with respect to material costs. MGM further suggests that a circumstance-of-sale adjustment be made to account for the lag between the date of sale and the date of production, given the hyper-inflation present in Yugoslavia, as was done in AFBs from Romania.

DOC Position: We used average annual data on material costs and adjusted it to more closely reflect the period of review. No exchange rate adjustment was necessary for the material inputs because they were valued in U.S. dollars; U.S. dollar denominated values do not reflect domestic hyper-inflation occurring within Yugoslavia. The surrogate Yugoslav freight rate is also a U.S. dollar denominated value and, as such, the same principle applies. Furthermore, we applied an average period of review exchange rate, which was in dinars, to the direct labor rate. Thus, it is also unnecessary to adjust the labor rate to reflect hyper-inflation in Yugoslavia because the use of an average rate mitigates the effects of hyper-inflation in this review.

Comment 3: MGM argues that the Department: (1) Used an incorrect currency in its calculation of one of its market-economy steel purchases, (2) used an incorrect value for the cup and cone of one TRB type, and (3) incorrectly applied a market-economy steel purchase price for the cones of three TRB types instead of a surrogate steel price.

Timken states that, by being absent from verification, it cannot assess the reasonableness of the claims MGM has described. Timken urges that, if changes are made, the Department follow its standard methodologies for deriving the values.

DOC Position: We agree with MGM's first two points. The Department did assign and incorrect currency to one of MGM's market-economy steel purchases in its preliminary results. For the final results we have used the correct currency for this market-economy steel purchase. We have also used the correct value for the cup and cone of the TRB type at issue in MGM's second point.

We disagree with MGM's third point that we incorrectly applied a market-economy steel price when a surrogate steel price should have been used for the three TRB components at issue. The questionnaire response submitted by MGM indicates that these components were purchased from a market economy country in convertible currency and, as a result, we determined they should be valued using the average market-economy steel price.

Comment 4: MGM states that since the Department relied on EUROSTAT data for valuing raw material inputs in the past, and in a recent administrative review of TRBs from Romania, it should use EUROSTAT data in this review as well. MGM argues that the Yugoslav Statistics of Foreign Trade are distorted and extremely high and do not reflect MGM's actual TRB production experience. MGM suggest a downward adjustment to the Yugoslav figures, if

used, to account for Yugoslavian inflation.

Timken notes that, in past reviews, Portugal was identified among the potential surrogate countries. Hence, the European Community's trade statistics—the EUROSTAT data—were relevant at that time to the extent they revealed steel prices in Portugal. Timken states that EUROSTAT data would be relevant here only where they represent the best information available for steel prices in Yugoslavia, the surrogate country identified by the Department for purposes of this review. Timken notes that EUROSTAT data only reflect prices for Yuroslavia trade with the European Community, not all Yugoslav trade with all countries as do the Statistics of Foreign Trade data. Timken further states that the values from Statistics of Foreign Trade are stated in U.S. dollars and do not reflect the inflationary effects of the Yugoslav economy on the dinar.

DOC Position: We disagree with MGM. Given that Yugoslavia has been chosen as the appropriate surrogate country in this review, EUROSTAT data do not reflect the best statistical information available to value the factors of production. Simply because a particular source was used in previous reviews of this case does not preclude the Department from relying on alternate sources if the circumstances necessitate a change. The Statistics of Foreign Trade reflect the best source on the record for valuing the raw material inputs for the reasons noted by Timken. Also, as explained in our position in Comment 2, and adjustment for inflation in Yugoslavia is unnecessary.

Comment 5: Timken argues that the Department should use the overhead, indirect labor and general, selling and adminstrative (GS&A) expenses reported by a Thai bearings producer as was done in the Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Romania; Final Results of Antidumping Duty Administrative Review (July 11, 1991, 56 FR 31757). Timken argues that, because of the way in which the Department has classified the components included in the Portuguese bearing producer's financial statement, the Department overstated the total cost of manufacturing (direct materials, direct labor and overhead) and thus, understated the percentage of the cost of manufacturing represented by overhead. Timken notes, however, that in the event that the Department relies upon an overhead rate of the Portuguese bearing producer, it should use the higher rate, taken from Portuguese producer's 1988 financial statement, that was placed on the record by MGM in this review.

Timken also argues that the Department should not use the overhead data of the Yugoslav metal industry, placed on this record from the public file of TRBs from Romania, as it was rejected by the Department in a previous administrative review. Timken contends that the Yugoslav rate is not related to the bearing industry, is subject to an accountant's subjective translation and, thus, is understated.

Timken also argues that the Department should use one source for both the overhead and indirect labor rates, not a combination of sources. Timken states that to use the indirect labor rate contained in the cable sent to the Department by the American Embassy in Lisbon, and to not use the overhead rate contained in the same cable, is unreasonable. Timken states that the use of the Thai producer's rate for overhead and indirect labor is the only reasonable approach.

Timken states that the statute allows the use of a 10 percent minimum GS&A only when actual experience does not exceed that figure. Timken argues that using the Thai producer's GS&A rate would eliminate the need to rely upon the 10 percent minimum.

MGM objects to Timken's suggestion that the Department "shop" for the most advantageous surrogate values rather than using surrogate values from the chosen surrogate country or Portugal. MGM states that an evaluation of critical factors indicates that the use of Thailand as a surrogate for Hungary would be inappropriate, while the use of Portugal remains proper. MGM argues that the Thai producer's ranged data is highly inaccurate, since the ranged numbers need only be within 10 percent of the actual figure. Thus, the actual costs could be either significantly overstated or understated. MGM also objects to Timken's suggestion that the overhead and indirect labor rate must be taken from the same source—the cable sent to the Department from the American Embassy in Lisbon. MGM objects to the use of the overhead rate in the cable because it is derived from an unidentified source without any classification of expenses; MGM does not object to the use of the indirect labor rate from the same cable.

In its rebuttal brief, MGM argues that the Department should rely upon the 1988 Portuguese bearing producer overhead rate that it submitted to the record and use the indirect labor rate submitted by the American Embassy in Lisbon. MGM states that the Portuguese rate is preferable because, even though the Thai and the Portuguese data cover the same categories, the Portuguese overhead accounts may include more overhead costs than the Thai accounts. However, MGM ultimately argues for the use of the overhead rate from the Yugoslav metal processing industry. MGM contends that Timken's assertion that this data is unrelated to the bearings industry is unimportant. MGM states that while bearings have only certain characteristics in common with other products grouped in nearby Standard Industrial Code (SIC) categories from the metal processing industry, bearings have little in common with most products grouped under the same SIC category as bearings. MGM concludes that the metal processing industry data can be used as a proxy for bearing specific data.

DOC Position: Although the Yugoslav overhead data does not pertain to the bearing industry, it relates to a similar industry and is from the surrogate country chosen for the purposes of this review. The overhead information from the metal processing industry in Yugoslavia, placed on the record in this review from the public file of TRBs from Romania, is a more reasonable substitute for the bearing industry in Hungary than is the information concerning the bearing industry in Thailand, a country not chosen as a surrogate country. There is no evidence that overhead expenses for the metal processing industry would be significantly different from overhead expenses in the bearings industry. In addition, this data includes factory overhead as well as indirect labor. Thus, Timken's concern that overhead and indirect labor be obtained from the same source is satisfied. Although this information is not bearing specific, it represents the best information on the record with which to value overhead and indirect labor in Yugoslavia. Therefore, in accordance with the TRBs from Romania, we have used the Yugoslav overhead and indirect labor data for purposes of this review. In addition, because we have not chosen Thailand as an appropriate surrogate for Hungary in this review, we deemed it more appropriate to use the statutory minimums for GS&A and profit of 10 and 8 percent, respectively.

Comment 6: Timken argues that, to assure that the direct labor costs per hour take account of employer costs for employee hours which are not worked but which are nonetheless compensated, it is necessary to divide total compensation and supplements by the total hours worked, not by total hours

compensated. Timken urges the Department to use the Yugoslav data regarding "operatives" as a proxy for the number of hours worked by all employees to calculate an hourly rate based on hours actually worked.

MGM objects to Timken's suggestion that the Department change its labor rate calculation for purposes of the final results of this review. MGM states that Timken's suggestion that we use as the numerator the larger figure of total labor expenses based on the number of *all* persons engaged in the establishment for the reference year and as the denominator only the number of operatives, would result in an "artificially increased" wage rate. MGM suggests that the Department make a downward adjustment to the labor rate used in the preliminary results due to the likely inclusion of higher paid management personnel in the universe of employees whose compensation was used by the ITA. MGM states that an adjustment of 10 percent would seem appropriate.

DOC Position: We have determined that the term "operatives" in the United Nation's Industrial Statistics Yearbook 1988 represents a subset of the number of persons employed in a given industry. Salaries and wages and supplements to salaries and wages are relative to the number of persons employed, not to the number of operatives. Using the larger numerator and smaller denominator proposed by Timken would result in a largely overstated labor rate. MGM's suggestion that the Department decrease the labor rate by 10 percent is not supported by any evidence on the record.

For purposes of these final results, we have continued to use the salaries and wages and supplements to salaries and wages for the number of persons engaged to value direct labor. We have then adjusted this figure to account for 12 months, 4.33 weeks per month, and 42 hours per week. In the absence of specific data, we have used these figures as a reasonable estimate of the actual hours worked by all persons engaged in the industry in our direct labor calculation.

Comment 7: Timken states that the scrap price used by the Department in the preliminary results was unreasonably high because it ranged from 44 to 51 percent of the value of the two types of steel from which the scrap is obtained. Timken notes that the reason for the anomalous scrap percentages is due to the statistical insignificance of the integers "0" and "1", (*i.e.*, the data show $0.00 for one tone of steel scrap.) Timken objects to the Department using the highest end of the range for the value (*i.e.*, $499 to represent the reported $0 amount) with the average of the range for the quantity (*i.e.*, one ton) of the scrap statistics it used in the preliminary results. Timken urges the Department to use either: 1) an alternate source in which to value scrap, *i.e.*, a Portuguese import value or an Organization for Economic Co-operation and Development (OECD) country average, or 2) the average of the value range, not the maximum of the range.

MGM states that Timken has disapproved the scrap rate calculated by the Department in the preliminary results but has approved the Department's other steel calculations when all information is from the same source. MGM notes that the import value of the scrap in Yugoslavia is an appropriate surrogate basis for computing MGM's scrap recovery. However, MGM suggests that the Department use Portuguese scrap values, as the cost of materials in Yugoslavia during the period of review were significantly affected by hyper-inflation not experienced in Hungary.

DOC Position: Statistical data for Yugoslavia is a better source of information for this review that Portuguese or OECD average data since Yugoslavia has been chosen as the surrogate country for purposes of this administrative review. We agree with Timken that the maximum value in the possible range of values should not be used to estimate the actual value of scrap. Therefore, as the best estimate of the actual value, we have adjusted the scrap data taken from the Statistics of Foreign Trade, to represent the average of the value range instead of the maximum of the range.

Final Results of the Review

As a result of our review, we determine the margin to be:

Manufacturer/ Exporter	Time Period	Margin (percent)
Magyar Gordulocsopagy Muvek and all others	6/1/89–5/31/90	1.68

The Department will instruct the Customs Service to assess antidumping duties at that rate on all appropriate entries. Individual differences between United States Price and Foreign Market Value may vary from the percentage stated above. The Department will issue appraisement instructions concerning MGM and all others 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 margin on entries of this merchandise from MGM and all others. This deposit requirement is effective for all shipments of certain TRBs from Hungary 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).

Dated: August 16, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–20271 Filed 8–22–91;8:45am]

BILLING CODE 3510–DS–M

[C–357–404]

Certain Apparel From Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 25, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain apparel from Argentina for the period January 1, 1989 through December 31, 1989 (56 FR 19089). We have now completed that review and determine the total bounty or grant to be zero or *de minimis* for four firms and 2.22 percent *ad valorem* for all other firms.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 19089) the preliminary results of this administrative review of the countervailing duty order on certain apparel from Argentina (50 FR 9846; March 12, 1985). The Department has now completed that administrative

review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain apparel from Argentina as described under the following item numbers of the 1987 Tariff Schedules of the United States Annotated (TSUSA):

372.7540, 374.2500, 374.3530, 374.6500, 376.2830, 381.0540, 381.0542, 381.0546, 381.4130, 381.4160, 381.4770, 381.5650, 381.6240, 381.8930, 381.9035, 381.9540, 381.9547, 381.9549, 381.9565, 384.0207, 384.0208, 384.0212, 384.0237, 384.0239, 384.0320, 384.0330, 384.0340, 384.0350, 384.0360 384.0370, 384.0407, 384.0408, 384.0415, 384.0416, 384.0423, 384.0424, 384.0437, 384.0438, 384.0439, 384.0441, 384.0442, 384.0444, 384.0451, 384.0497, 384.0608, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.0905, 384.0943, 384.0945, 384.1000, 384.1319, 384.1321, 384.1611, 384.1612, 384.1613, 384.1680, 384.1920, 384.2105, 384.2115, 384.2120, 384.2125, 384.2205, 384.2216, 384.2816, 384.2818, 384.2821, 384.2850, 384.2910, 384.2914, 384.2915, 384.2930, 384.2934, 384.2950, 384.3752, 384.3777, 384.4614, 384.4647, 384.4765, 384.4925, 384.5234, 384.5275, 384.5276, 384.5277, 384.5278, 384.5279, 384.5299, 384.5526, 384.5930, 384.6310, 384.6330, 384.6340, 384.6350, 384.6360, 384.6371, 384.6372, 384.6385, 384.7010, 384.7020, 384.7215, 384.7220, 384.7510, 384.7522, 384.7528, 384.7532, 384.7534, 384.7536, 384.7538, 384.7542, 384.7544, 384.7546, 384.7548, 384.7552, 384.7554, 384.7556, 384.7558, 384.7562, 384.7595 384.8024, 384.8025, 384.8027, 384.8073, 384.8225, 384.8300, 384.9115, 384.9445, and 704.6500.

During the reveiw period such merchandise was classifiable under the following item numbers of the Harmonized Tariff Schedule (HTS):

6102.20.00, 6103.22.00, 6103.23.00, 6103.29.10, 6103.42.10, 6103.43.20, 6103.49.20, 6104.13.20, 6104.22.00, 6104.29.10, 6104.41.00, 6104.42.00, 6104.43.10, 6104.43.20, 6104.44.10, 6104.44.20, 6104.51.00, 6104.53.10, 6104.61.00, 6104.62.10, 6104.62.20, 6104.63.10, 6104.63.15, 6104.69.10, 6105.10.00, 6105.20.20, 6106.10.00, 6106.20.10, 6106.90.10, 6109.10.00, 6109.90.10, 6109.90.20, 6110.10.10, 6110.10.20, 6110.20.20, 6110.30.15, 6110.30.30, 6111.10.00, 6111.20.10, 6111.20.20, 6111.20.30, 6111.20.40, 6111.20.60, 6111.30.30, 6111.30.50, 6111.90.50, 6112.19.20, 6112.31.00, 6112.41.00, 6112.49.00, 6114.20.00, 6115.19.00, 6115.20.00, 6115.91.00, 6115.93.10, 6115.99.14, 6115.99.20, 6116.91.00, 6116.93.15, 6117.90.00, 6201.12.20, 6201.92.20, 6202.11.00, 6202.13.30, 6202.91.10, 6202.91.20, 6202.92.20, 6202.93.40, 6203.21.00, 6203.22.30, 6203.41.10, 6203.42.40, 6203.43.40, 6204.11.00, 6204.13.10, 6204.19.10, 6204.21.00, 6204.22.30, 6204.31.20, 6204.32.20, 6204.33.40, 6204.39.20, 6204.41.20, 6204.42.30, 6204.43.30, 6204.44.30, 6204.51.00, 6204.52.20, 6204.53.20, 6204.53.30, 6204.59.20, 6204.59.30, 6204.61.00, 6204.62.40, 6204.63.25, 6204.69.20, 6205.10.20, 6205.20.20, 6205.30.20, 6206.20.10, 6206.20.30, 6206.30.30, 6206.40.25, 6206.40.30, 6209.10.00, 6209.20.10, 6209.20.50, 6209.30.30, 6209.90.30, 6211.12.30, 6211.41.00, 6211.42.00, 6212.10.20, 6214.30.00, 6214.40.00, 6216.00.50, 6217.10.00 and 6217.90.00

The review covers the period January 1, 1989 through December 31, 1989, and involves seven firms and five programs: (1) Rebate Upon Export of Indirect Taxes Paid (Reembolso); (2) Discounts of Foreign Currency Accounts Receivable under Circular RF–21; (3) Pre-financing of Exports under Circular RF–153; (4) Tax Deduction under Decree 173/85; and (5) Exemption from Stamp Taxes under Decree 186/74.

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the benefits received by the seven companies subject to review to determine the overall subsidy from all countervailable programs benefitting exports of the subject merchandise to the United States. Because the country-wide rate was above *de minimis*, as defined by 19 CFR 355.7, we proceeded to the next step in our analysis and examined the aggregate *ad valorem* rate we had calculated for each company including all countervailable programs combined, to determine whether individual company rates differed significantly from the weighted-average country-wide rate. In our final calculations, because we determined that there was no overrebate of indirect taxes in the Reembolso program and consequently no benefit, four companies received aggregate benefits which were zero or *de minimis* (significantly different within the meaning of 19 CFR 355.22(d)(3)(ii)). These four companies must be treated separately for assessment and cash deposit purposes.

The remaining three companies received aggregate benefits from all countervailable programs combined which were not significantly different from the weighted-average country-wide rate; their rates were used in the calculation to establish the "all other" rate for the review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely comments from the Federacion de Industrias Textiles Argentinas (FITA) and seven exporters of certain apparel from Argentina (IVA, FIBRAMAL, TONCE, ALPARGATAS, MECHANT EXPORT, ALGODONERA SANTA FE and FBM).

Comment 1: Respondents state that, for the apparel industry, two tax incidence studies were done for purposes of establishing the rebate rate of the Reembolso program, because the raw material and the production process for wool and cotton apparel are fundamentally different. The Argentine government set the Reembolso level based on both studies. Since apparel producers exported both cotton and wool apparel during the review period, respondents contend that the Department should derive the tax incidence level for the apparel industry by averaging the tax incidence studies for wool and cotton apparel. Alternatively, the Department should use the wool study, which shows the higher tax incidence.

Department's Position: We disagree. As in prior reviews of this case (see, e.g., Certain Apparel from Argentina; Final Results of Countervailing Duty Administrative Review (May 24, 1989; 54 FR 22466), hereinafter Certain Apparel), we have used the tax incidence study on the product that represents the majority of exports to the United States. In Certain Apparel and in prior reviews, the Department used the wool study. However, during 1989 cotton apparel constituted 68 percent of the value of apparel exports to the United States. Therefore, in this review we used the tax incidence study for cotton apparel to calculate the allowable tax incidence on apparel.

Comment 2: Respondents contend that the Merchant Marine Fund tax and the taxes on final stage freight are indirect taxes on the final product packaged for export. As such, they are not subject to the physical incorporation standard and should be included by the Department in the total allowable tax incidence for apparel under the Reembolso program.

In addition, respondents clarify that the final stage taxes listed under "Third Party Services" are taxes paid on the acquisition of finished apparel packed for export, such as the turnover tax, bank debit tax and municipal taxes, and not taxes charged on the services of a finisher. As such, respondents claim that they should be included in the total allowable tax incidence for apparel for purposes of the Reembolso program.

Department's Position: We agree and have adjusted our calculations accordingly. As a result, we have found that the amount of allowable indirect tax incidence on apparel exceeds the effective tax rebate rate. Because the rebate of indirect taxes did not exceed the total amount of indirect taxes paid, we determine that there was no overrebate of indirect taxes for the

review period and, therefore, no benefit accrued to apparel exporters from the Reembolso program during the review period.

Comment 3: Respondents argue that apparel exporters paid 11.47 percent in export taxes on their exports of apparel and that these taxes should be included in the Department's calculation of the allowable tax incidence for apparel. According to respondents, the Department has included these export taxes in the calculation of allowable tax incidence in other Argentine cases. See, *e.g.,* Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (April 26, 1984; 49 FR 18006, 18010).

Department's Position: In our calculation of the allowable tax incidence for apparel, we included certain export taxes claimed in the tax incidence study, such as the foreign currency tax, the statistics tax, and the National Merchant Marine Fund tax. The Department did not include the 11.47 percent export taxes in its calculations of the allowable tax incidence on apparel, because respondent failed to provide sufficient documentation concerning the source of the 11.47 percent figure.

Comment 4: Respondents argue that the Department should prorate the benefit accrued from the Reembolso in 1989, since during the review period the 12.5 percent rebate rate was in effect for only three months. Respondents also argue that the Department should take into account a reduction in the rebate level from 12.5 percent to 8.3 percent when setting the duty deposit rate. This program-wide change was effective April 11, 1991 and occurred prior to the preliminary results in this proceeding.

Department's Position: These issues are moot, since the Department determined that there was no overrebate of indirect taxes for the review period (see Department's Position to Comment 2).

Comment 5: Respondents contend that the Department overstated the benefit attributable to RF–21 loans that originated in 1988 but were repaid in 1989. The loans reported by the companies did not include any 1988 interest payments except for interest payments made on December 31, 1988, which were actually paid in 1989. According to respondents, these companies did pay interest in 1988 but did not report those payments in the questionnaire response because they fell outside the review period. Respondents state that, according to the Department's methodology, only interest payments falling within the review period should be considered. Respondents claim that the Department incorrectly calculated the benchmark interest expense on these loans from the date the principal was received and urges the Department to recalculate the benefit from RF–21 loans following the methodology used in Leather from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (October 2, 1990; 55 FR 40212) hereinafter Leather from Argentina. In Leather from Argentina the Department calculated the amount of interest that would have been paid at the benchmark rate and subtracted the amount of interest that was actually paid.

Department Position: We disagree. In the case of a preferential loan, the Department deems a countervailable benefit to be received at the time the firm pays interest on a loan. While we agree with respondents that we only take into account benefits associated with payments made during the review period, in our questionnaire we clearly require respondents to provide complete information over the life of the loan on all loans with principal and/or interest payments falling within the review period in order to accurately calculate the amount of the benefit.

Respondents did not provide the Department with any information concerning interest or principal payments made in 1988 on loans which originated in 1988 but which were still outstanding during the review period. Based on the information provided, we correctly allocated the benefit derived from these loans over the number of days these loans were outstanding starting from the date the principal was received.

However, we do agree with respondent's argument that we should apply the methodology outlined in Leather from Argentina, and we have revised our calculations accordingly. On this basis, we determine the benefit from this program to be 1.67 percent *ad valorem* for all firms except those with zero or *de minimis* aggregate benefits.

Comment 6: Respondents state that Communication A–1807 of March 8, 1991 effectively eliminated all forms of export financing. Therefore, the Department should recognize this program-wide change by adjusting the deposit rate for the RF–21 and RF–153 loan programs to zero.

Department's Position: Communication A–1807 merely suspended export financing under RF–21 and RF–153. Pending termination of these programs, the cash deposit rate will continue to reflect the assessment rate found in this review.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be zero or *de minimis* for the four firms listed below and 2.22 percent *ad valorem* for all other firms during the period January 1, 1989 through December 31, 1989:

(1) ALPARGATAS;
(2) MERCHANT EXPORT;
(3) ALGODONERA SANTA FE; ar
(4) FBM.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all entries of this merchandise from the four firms listed above, and to assess countervailing duties of 2.22 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms exported on or after January 1, 1989 and on or before December 31, 1989.

Further, as provided by section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise from the four firms listed above, and collect cash deposits of estimated countervailing duties of 2.22 percent of the f.o.b. invoice price on all other shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until 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 Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 16, 1991.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–20272 Filed 8–22–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–405]

Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 6, 1991, the Department of commerce published the preliminary results of its administrative

review of the countervailing duty order on certain textile mill products from Mexico. We have now completed that review and determine the total bounty or grant to be *de minimis* or zero for 24 companies, and 1.88 percent for all other companies for the period January 1, 1988 through December 31, 1988.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Barbara E. Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 26065) the preliminary results of its administrative review of the countervailing duty order on certain textile mill products from Mexico (50 FR 10824; March 18, 1985). The Department has now completed that 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 certain textile mill products from Mexico. During the review period, such merchandise was classifiable under item numbers of the Tariff Schedules of the United States Annotated (TSUSA) listed in appendix A. This merchandise is currently classifiable under item numbers of the Harmonized Tariff Schedule (HTS) listed in appendix B. On February 16, 1990, the Department published a notice of partial revocation of this order (55 FR 5641). As a result of this partial revocation, all duty-free merchandise classifiable under the following TSUSA item numbers is no longer within the scope of this order: 319.0300, 319.0700, 339.1000, 355.8100, 356.2510, 358.0690, 358.1400, 360.7900, 360.8400, 364.0500, 364.1800 and 364.2500.

We verified the questionnaire response of the Government of Mexico from August 13, 1990 through August 22 1990. The review covers the period from January 1, 1988 through December 31, 1988, 37 companies, and the following programs: (1) FOMEX; (2) FOGAIN; (3) FONEI; (4) Program for Temporary Importation of Products Used in the Production of Exports (PITEX); (5) CEPROFI; (6) Article 15 loans; (7) BANCOMEXT loans; (8) State Tax Incentives; and (9) Import Duty Reductions and Exemptions.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Maclin, S.A. de C.V, Derivados Acrilicos, S.A., and the Government of Mexico. The comments were timely within the meaning of 19 CFR 355.38(c)(1)(ii).

Comment 1: The Government of Mexico contends that because the FOMEX loan program was terminated by decree published in the Diario Official on December 30, 1989, there is no reason for the Department to require cash deposits of estimated countervailing duties for a loan program which no longer exists.

Department's Position: We disagree. According to the December 30, 1989 decree, the FOMEX trust is being transferred to the Banco Nacional de Comercio Exterior (BANCOMEXT), which, likewise, is "empowered to carry out operations under the mentioned trust [FOMEX]." Additional information submitted for the Department's consideration regarding the specifics of the BANCOMEXT program is inconclusive. Until the Department can establish from official documentation submitted on the record of a proceeding that countervailable benefits from the pre-export and export loan regime under FOMEX and its successor have been terminated, we will continue to require the collection of cash deposits of estimated countervailing duties for this program.

Comment 2: The Government of Mexico argues that the Program for Temporary Importation of Products Used in the Production of Exports (PITEX) is not countervailable for a number of reasons, including its similarity to the United States Temporary Importation Under Bond (TIB) program. The TIB program allows articles to enter the United States temporarily, free of duty, provided certain conditions are met. Under the TIB program, no distinction is made between goods which are physically incorporated into exported products and machinery or equipment which is not; they receive identical treatment. Therefore, because these two categories of merchandise are treated identically under PITEX as well, and all merchandise imported under PITEX must be reexported, the Department has made an invalid distinction in finding that the PITEX program is countervailable to the extent that it provides duty-free entry of machinery and equipment not physically incorporated in the exported product. Because of the similarity between the U.S. and the Mexican programs, the Department should reconsider its decision regarding the countervailability of the PITEX program.

The Government of Mexico also contends that because PITEX is generally available to all sectors of the economy and is not limited to any region or state of the country, it does not provide countervailable benefits. In addition, the Government of Mexico notes that PITEX does not provide a duty exemption, since a duty cannot be levied on merchandise in transit. Exporters using PITEX to temporarily import machinery must post a bond to guarantee reexport of the merchandise; if the equipment is not reexported, the company must pay the corresponding duties.

Department's Position: We disagree. Although there are similarities between the PITEX program and the United States TIB program, such a comparison is irrelevant in this context. The countervailability of the PITEX program is based on U.S. countervailing duty law, which only allows import duty exemptions or rebates of import duties on merchandise that is physically incorporated into the exported products, making appropriate allowances for waste. Under the current law, the amount of the import duty drawback cannot exceed the amount of the import duties paid on physically incorporated merchandise. To the extent that PITEX allows for the exemption of duties on non-physically incorporated equipment or machinery, and because it is only available to exporters, it is countervailable under U.S. law. Also, although exporters wishing to keep equipment temporarily imported under PITEX are required to pay duties, the duties they pay are based on the depreciated value of the machinery, at the duty rate in effect at the time of conversion. These exporters have already received a countervailable benefit at the time of import. See, the Department's position in response to comments 8, 9, 10 and 13 in Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review (56 FR 12175; March 22, 1991).

Comment 3: The Government of Mexico and Derivados Acrilicos, S.A. (DASA) contend that the Department erred in its calculations of benefits under the PITEX program. Rather than divide the amount of duties not paid on machinery and equipment imported under PITEX during the review period by total exports, as we stated in our preliminary results, the Department divided this benefit by exports of

subject merchandise to the United States. Correcting for this error would result in DASA's aggregate benefits being *de minimis*, and would lower the PITEX rate for all other companies.

Department's Position: We agree. We have corrected this clerical error and determine the PITEX benefit to be 0.22 percent *ad valorem* for Derivados Acrilicos, and 0.23 percent *ad valorem* for all other companies. As a result of correcting this and another calculation error, we determine the total countervailing duty rates to be zero for 24 companies (Derivados Acrilicos, S.A. included), and 1.88 percent *ad valorem* for all other companies.

Comment 4: Maclin, S.A. de C.V. contends that since its aggregate benefits total 0.2 percent *ad valorem*, a *de minimis* rate as specified in 19 CFR 355.7, Maclin should receive a zero assessment and cash deposit rate.

Department's Position: We agree. Maclin's aggregate benefits are *de minimis*; therefore Maclin is entitled to a zero assessment and cash deposit rate.

Firms Not Receiving Benefits

We determine that the following firms received zero or *de minimis* benefits during the period January 1, 1988 through December 31, 1988:

(1) Acytex, S. de R.L.
(2) Boneteria Wabi, S.A. de C.V.
(3) Celanese Mexicana, S.A.
(4) Desarollo Industrial FITEC
(5) Derivados Acrilicos, S.A.
(6) El Pilar, S.A. de C.V.
(7) Encajes Mexicanas, S.A. de C.V.
(8) Fabrica Hilados y Tejidos Sindec
(9) Fabrica la Estrella, S.A. de C.V.
(10) Fieltros Finos, S.A. de C.V.
(11) Grupo HYTT, S.A. de C.V.
(12) Hilaturas de la Laguna, S.A. de C.V.
(13) Hilaturas Maya, S.A. de C.V.
(14) Industrias Leyva Osorio, S.A. de C.V.
(15) Jeramex, S.A. de C.V.
(16) Maclin, S.A. de C.V.
(17) Milyon, S.A. de C.V.
(18) Noblis Lees, S.A. de C.V.
(19) Percotex, S.A. de C.V.
(20) Ryltex, S.A. de C.V.
(21) Tamacani, S.A.
(22) Tapetes Luxor, S.A. de C.V.
(23) Tejidos de Punto Wabi, S.A. de C.V.
(24) Textiles el Centenario, S.A.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be zero or *de minimis* for 24 companies and 1.88 percent for all other companies for the period January 1, 1988 through December 31, 1988.

For all merchandise listed in Appendix A, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments from the 24 firms listed above, and to assess countervailing duties of 1.88 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1988 and on or before December 31, 1988.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on any shipments of merchandise from the 24 firms listed above, and to collect a cash deposit of estimated countervailing duties of 1.88 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement and waiver shall remain in effect until 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 Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 16, 1991.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix A—Certain Textile Mill Products From Mexico—C–201–405

TSUSA Numbers

300.6005
300.6010
300.6024
300.6028
301.0100 through 301.0900
301.1000 through 301.1900
301.2000 through 301.2900
301.3000 through 301.3900
302.0124 through 302.0924
302.1024 through 302.1924
302.1028 through 302.1928
302.2020 through 302.2920
302.2024 through 302.2924
302.2026 through 302.2926
302.2028 through 302.2928
302.3024 through 302.3924
302.3026 through 302.3926
302.3028 through 302.3928
302.4026 through 302.4926
303.2040
303.2042
307.7000
310.0106
310.0107
310.0108
310.0110
310.0114
310.0130
310.0149
310.0150
310.0206
310.0207
310.0208
310.0249
310.0250
310.0270
310.0510
310.1015
310.1070
310.1205
310.1210
310.1555
310.1570
310.2150
310.4027
310.4047
310.4050
310.5046
310.5047
310.5049
310.6034
310.9000
310.9310
310.9320
310.9500
316.5500
316.5800
316.7000
320.0103 through 320.0903
320.0121 through 320.0921
320.0122 through 320.0922
320.0134 through 320.0934
320.0138 through 320.0938
320.0145 through 320.0945
320.0149 through 320.0949
320.0154 through 320.0954
320.0157 through 320.0957
320.0163 through 320.0963
320.0166 through 320.0966
320.0177 through 320.0977
320.0180 through 320.0980
320.0198 through 320.0998
320.1034 through 320.1934
320.1045 through 320.1945
320.1063 through 320.1963
320.1071 through 320.1971
320.1077 through 320.1977
321.0134 through 321.0934
321.1071 through 321.1971
321.1077 through 321.1977
322.0162 through 322.0962
322.0163 through 322.0963
322.1006 through 322.1906
322.1015 through 322.1915
322.1025 through 322.1925
322.1034 through 322.1934
322.1036 through 322.1936
322.1037 through 322.1937
322.1045 through 322.1945
322.1047 through 322.1947
322.1048 through 322.1948
322.1050 through 322.1950
322.1051 through 322.1951
322.1052 through 322.1952
322.1053 through 322.1953
322.1055 through 322.1955
322.1056 through 322.1958
322.1065 through 322.1965
322.1066 through 322.1966
322.1068 through 322.1968
322.1071 through 322.1971
322.1075 through 322.1975
322.1077 through 322.1977
322.1079 through 322.1979
322.1081 through 322.1981
322.1084 through 322.1984
322.1085 through 322.1985
322.1086 through 322.1986
322.1088 through 322.1988
322.1089 through 322.1989
322.1090 through 322.1990
322.1091 through 322.1991

322.1095 through 322.1995
322.1097 through 322.1997
322.2016 through 322.2916
322.2023 through 322.2923
322.2069 through 322.2969
322.2073 through 322.2973
322.4003 through 322.4903
322.4021 through 322.4921
322.4022 through 322.4922
322.4038 through 322.4938
322.4042 through 322.4942
322.4049 through 322.4949
322.4054 through 322.4954
322.4057 through 322.4957
322.4072 through 322.4972
322.4080 through 322.4980
322.4098 through 322.4998
322.5014 through 322.5914
322.5015 through 322.5915
322.5016 through 322.5916
322.5017 through 322.5917
322.5023 through 322.5923
322.5069 through 322.5969
322.5073 through 322.5973
322.8016 through 322.8916
322.8023 through 322.8923
322.8069 through 322.8969
322.8073 through 322.8973
322.9003 through 322.9903
322.9021 through 322.9921
322.9022 through 322.9922
322.9038 through 322.9938
322.9042 through 322.9942
322.9049 through 322.9949
322.9054 through 322.9954
322.9057 through 322.9957
322.9072 through 322.9972
322.9080 through 322.9980
322.9098 through 322.9998
324.2022 through 324.2922
324.2024 through 324.2924
324.2031 through 324.2931
324.2038 through 324.2938
324.2042 through 324.2942
324.2049 through 324.2949
324.2054 through 324.2954
324.2057 through 324.2957
324.2072 through 324.2972
324.2080 through 324.2980
324.2098 through 324.2998
324.8072 through 324.8972
324.8074 through 324.8974
324.8080 through 324.8980
324.8098 through 324.8998
325.1051 through 325.1951
325.1052 through 325.1952
325.1085 through 325.1985
325.1089 through 325.1989
325.1091 through 325.1991
325.1095 through 325.1995
325.8022 through 325.8922
325.8024 through 325.8924
327.2021 through 327.2921
327.2022 through 327.2922
327.2031 through 327.2931
327.2038 through 327.2938
327.2042 through 327.2942
327.2049 through 327.2949
327.2054 through 327.2954
327.2057 through 327.2957
327.3003 through 327.3903
327.3021 through 327.3921
327.3022 through 327.3922
327.3038 through 327.3938
327.3049 through 327.3949
327.3054 through 327.3954
327.3057 through 327.3957
328.2003 through 328.2903
328.2021 through 328.2921
328.2022 through 328.2922
328.2031 through 328.2931
328.2038 through 328.2938
328.2049 through 328.2949
328.2054 through 328.2954
328.2057 through 328.2957
328.2072 through 328.2972
328.2080 through 328.2980
328.2098 through 328.2998
331.2022 through 331.2922
331.2024 through 331.2924
331.2031 through 331.2931
331.2038 through 331.2938
331.2049 through 331.2949
331.2054 through 331.2954
331.2057 through 331.2957
331.2072 through 331.2972
331.2074 through 331.2974
331.2080 through 331.2980
331.2098 through 331.2998
336.1540
336.6260
336.6270
336.6275
338.4004
338.5006
338.5007
338.5009
338.5010
338.5011
338.5013
338.5016
338.5021
338.5023
338.5024
338.5026
338.5027
338.5030
338.5031
338.5036
338.5037
338.5041
338.5043
338.5044
338.5045
338.5046
338.5048
338.5049
338.5051
338.5054
338.5055
338.5059
338.5060
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338.5065
338.5069
338.5073
338.5075
338.5076
338.5079
338.5080
338.5082
338.5084
338.5085
338.5087
338.5088
338.5092
338.5095
338.5098
345.4000
345.5553
345.5555
345.5557
345.5575
345.5585
346.5850
346.6265
346.7000
347.6040
347.6800
348.0065
351.3000
351.5010
351.5060
351.6010
351.7060
351.8060
351.9060
352.2060
352.8010
352.8060
353.1000
353.5012
353.5052
355.1610
355.1620
355.1630
355.2510
355.2520
355.2530
355.2540
355.2550
355.2560
355.4530
355.8500
357.4500
357.7010
357.8060
358.0290
358.3500
358.5040
359.1010
359.1030
360.0600
360.1200
360.2500
360.4225
360.4335
360.4825
360.4835
360.7000
360.7800
360.8300
361.0530
361.0540
361.2410
361.4200
361.4500
361.4600
361.4800
361.5420
361.5426
361.6000
361.7010
363.0510
363.0515
363.1020
363.1040
363.2000
363.3562
363.2564
363.2575
363.2583
363.2585
363.2587
363.2590

363.4505
363.4510
363.6040
363.6050
363.6540
363.6506
363.6509
363.6515
363.6525
363.6545
363.6550
363.6555
364.1300
364.2000
364.2300
364.3000
365.5060
365.6615
365.6625
365.6665
365.6400
365.6700
365.6910
365.6920
365.6940
365.6970
365.6980
366.1720
366.2460
366.2480
366.4200
366.4600
366.4700
366.5100
366.7700
366.7925
366.7930
366.6400
367.3200
367.3300
367.6325
367.6340
367.6380

Appendix—Certain Textile Mill Products From Mexico—C–201–405

Harmonized Tariff System (HTS) Numbers for Duty Deposit Purposes

3918.10.32	3921.12.19	3921.13.19	3921.90.19
3921.90.21	4008.21.00	4010.10.10	5106.10.00
5106.20.00	5107.10.00	5107.20.00	5108.10.60
5108.20.60	5109.10.60	5109.90.60	5111.11.60
5111.19.20	5111.19.60	5111.20.60	5111.30.60
5112.19.60	5112.20.00	5112.30.00	5204.11.00
5204.19.00	5204.20.00	5205.11.10	5205.12.10
5205.12.20	5205.13.10	5205.13.20	5205.14.10
5205.22.00	5205.23.00	5205.24.00	5205.25.00
5205.31.00	5205.32.00	5205.33.00	5205.34.00
5205.42.00	5205.43.00	5205.44.00	5206.11.00
5206.12.00	5206.13.00	5206.14.00	5206.15.00
5206.31.00	5206.32.00	5206.33.00	5206.34.00
5206.35.00	5206.41.00	5206.42.00	5206.43.00
5206.44.00	5206.45.00	5207.10.00	5207.90.00
5208.11.20	5208.12.40	5208.13.00	5208.19.40
5208.21.20	5208.21.40	5208.22.40	5208.22.60
5208.23.00	5208.29.40	5208.29.60	5208.31.40
5208.31.60	5208.31.80	5208.32.30	5208.32.40
5208.32.50	5208.33.00	5208.39.20	5208.39.60
5208.39.80	5208.41.40	5208.41.60	5208.41.80
5208.42.30	5208.42.40	5208.42.50	5208.43.00
5208.49.40	5208.51.40	5208.51.60	5208.51.80
5208.52.30	5208.52.40	5208.52.50	5208.53.00
5208.59.20	5208.59.60	5208.59.80	5209.11.00
5209.19.00	5209.21.00	5209.29.00	5209.31.60
5209.32.00	5209.39.00	5209.41.60	5209.42.00
5209.43.00	5209.49.00	5209.51.60	5209.52.00
5209.59.00	5210.21.40	5210.21.60	5210.22.00
5210.29.40	5210.29.60	5210.31.40	5210.31.60
5210.32.00	5210.39.40	5210.39.60	5210.51.40
5210.51.60	5210.52.00	5210.59.40	5210.59.60
5211.31.00	5211.39.00	5211.51.00	5211.59.00
5212.21.60	5212.22.60	5212.23.60	5212.24.60
5212.25.60	5401.10.00	5401.20.00	5402.10.30
5402.20.30	5402.20.60	5402.31.30	5402.31.60
5402.32.30	5402.32.60	5402.33.30	5402.33.60
5402.39.30	5402.39.60	5402.41.00	5402.42.00
5402.43.00	5402.49.00	5402.51.00	5402.52.00
5402.59.00	5402.61.00	5402.62.00	5402.69.00
5403.10.30	5403.20.30	5403.20.60	5403.31.00
5403.32.00	5403.33.00	5403.39.00	5406.10.00
5406.20.00	5407.10.00	5407.41.00	5407.42.00
5407.43.20	5407.44.00	5407.52.20	5407.53.10
5407.53.20	5407.54.00	5407.60.05	5407.60.10
5407.60.20	5407.71.00	5407.72.00	5407.73.20
5407.74.00	5407.81.00	5407.82.00	5407.83.00
5407.84.00	5407.91.05	5407.91.20	5407.92.05
5407.92.20	5407.93.05	5407.93.20	5407.94.05
5407.94.20	5408.10.00	5408.21.00	5408.22.00
5408.23.20	5408.24.00	5408.31.05	5408.31.20
5408.32.05	5408.32.90	5408.33.05	5408.33.90
5408.34.05	5408.34.90	5508.10.00	5508.20.00
5509.12.00	5509.21.00	5509.22.00	5509.31.00
5509.32.00	5509.41.00	5509.51.30	5509.51.60
5509.53.00	5509.69.20	5509.69.40	5509.99.20
5509.99.40	5511.10.00	5511.20.00	5511.30.00
5512.11.00	5512.19.00	5512.21.00	5512.29.00
5512.91.00	5512.99.00	5513.11.00	5513.13.00
5513.19.00	5513.21.00	5513.23.00	5513.29.00
5513.33.00	5513.39.00	5513.41.00	5513.43.00
5513.49.00	5514.11.00	5514.19.00	5514.21.00
5514.29.00	5514.41.00	5514.49.00	5515.11.00
5515.12.00	5515.13.05	5515.19.00	5515.21.00
5515.29.00	5515.91.99	5515.99.00	5516.11.00
5516.12.00	5516.13.00	5516.14.00	5516.21.00
5516.22.00	5516.23.00	5516.24.00	5516.41.00
5516.42.00	5516.43.00	5516.44.00	5516.91.00
5516.92.00	5516.93.00	5516.94.00	5601.10.20
5601.22.00	5602.10.10	5602.10.90	5602.21.00
5602.90.30	5602.90.60	5602.90.90	5603.00.90
5604.20.00	5604.90.00	5606.00.00	5607.41.30
5607.49.15	5607.49.25	5607.49.30	5607.50.20
5607.50.40	5607.90.20	5608.11.00	5608.19.10
5701.10.16	5701.10.20	5701.90.20	5702.10.90
5702.31.10	5702.31.20	5702.32.10	5702.32.20
5702.39.20	5702.41.10	5702.41.20	5702.42.10
5702.42.20	5702.49.10	5702.51.20	5702.51.40
5702.52.00	5702.59.10	5702.59.20	5702.91.30
5702.91.40	5702.92.00	5702.99.10	5702.99.20
5703.10.00	5703.20.10	5703.20.20	5703.30.00
5704.10.00	5704.90.00	5705.00.20	5801.31.00
5801.33.00	5801.34.00	5801.35.00	5801.36.00
5802.30.00	5803.10.00	5803.90.30	5804.10.00
5804.21.00	5804.29.00	5804.30.00	5805.00.25
5805.00.30	5805.00.40	5806.31.00	5806.32.10
5806.40.00	5808.90.00	5810.10.00	5810.91.00
5810.92.00	5811.00.20	5901.10.20	5901.90.40
5902.10.00	5902.20.00	5902.90.00	5903.10.30
5903.20.30	5903.90.30	5905.00.90	5906.91.30
5906.99.30	5907.00.90	5911.10.20	5911.20.10
5911.31.00	5911.32.00	5911.90.00	6001.10.20
6001.10.60	6001.22.00	6001.92.00	6002.10.90
6002.20.10	6002.20.30	6002.20.60	6002.30.20
6002.43.00	6002.93.00	6301.10.00	6301.20.00
6301.30.00	6301.40.00	6301.90.00	6302.10.00
6302.21.20	6302.22.10	6302.22.20	6302.29.00
6302.31.20	6302.32.10	6302.32.20	6302.39.00
6302.40.10	6302.40.20	6302.51.10	6302.51.20
6302.51.30	6302.51.40	6302.52.10	6302.52.20
6302.53.00	6302.59.00	6302.60.00	6302.91.00
6302.92.00	6302.93.20	6302.99.20	6303.12.00
6303.19.00	6303.92.00	6303.99.00	6304.11.10
6304.11.20	6304.11.30	6304.19.05	6304.19.15
6304.19.20	6304.19.30	6304.91.00	6304.92.00
6304.93.00	6304.99.15	6304.99.20	6304.99.60
6307.10.20	7019.20.10	9404.90.90	

[FR Doc. 91–20273 Filed 8–22–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of membership of NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRB). The NOAA PRB's are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, initial recommendations for potential rank awards and recertification. The appointment of these members to the NOAA PRB's will be for periods of 24 months service beginning August 31, 1991.

EFFECTIVE DATE: The effective date of service of appointees to the NOAA Performance Review Board is August 31, 1991.

FOR FURTHER INFORMATION CONTACT: Debbie J. Scholl, Senior Executive Service Program Officer, Personnel and Civil Rights Office, Office of Administration, NOAA, 1335 East-West Highway, Silver Spring, Maryland 20910, (301) 427–2530.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the NOAA PRB's (NOAA officials unless otherwise identified) are set forth below:.

Gray Castle, Deputy Under Secretary for Oceans and Atmosphere.

Carmen J. Blondin, Deputy Assistant Secretary for International Interests.

Richard A. Edwards, Deputy Assistant Secretary for Oceans and Atmosphere.

William H. Hooke, Executive Director, Office of the Chief Scientist.

Donald Scavia, Director, NOAA Coastal Ocean Program Office, Office of the Chief Scientist.

Curtis T. Hill, Director, Mountain Administrative Support Center, OA.
Donald E. Humphries, Deputy Director, Office of Administration.
Martha R. Lumpkin, Director, Central Administrative Support Center, OA
Kelly C. Sandy, Director, Western Administrative Support Center, OA.
Robert S. Smith, Director, Eastern Administrative Support Center, OA.
James W. Brennan, Deputy General Counsel for Policy, Research Services and Coastal Zone Management, GC.
Thomas A. Campbell, General Counsel.
Jay S. Johnson, Deputy General Counsel for Fisheries, Enforcement and Regions, GC.
Reed H. Boatright, Director, Office of Public Affairs.
Henry R. Beasley, Director, Office of International Affairs, National Marine Fisheries Service (NMFS).
Nancy Foster, Director, Office of Protected Resources, NMFS.
William W. Fox, Jr., Assistant Administrator, NMFS.
Ellsworth C. Fullerton, Director, Southwest Region, NMFS.
Morris M. Pallozzi, Director, Office of Enforcement, NMFS.
Richard B. Roe, Director, Northeast Region, NMFS.
Rolland A. Schmitten, Director, Northwest Region, NMFS.
Michael R. Tillman, Deputy Assistant Administrator, NMFS.
John J. Carey, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service (NOS).
Gertrude Coxe, Director, Ocean and Coastal Resource Management, NOS.
Bruce C. Douglas, Chief, Geodetic Research and Development Laboratory, NOS.
Charles N. Ehler, Director, Office of Oceanography and Marine Assessment, NOS.
Frank W. Maloney, Chief, Aeronautical Charting Division, NOS.
Andrew Robertson, Chief, Ocean Assessments Division, NOS.
Kenneth D. Hadeen, Director, National Climatic Data Center, National Environmental Satellite, Data, and Information Service (NESDIS).
E. Larry Heacock, Director, Office of Satellite Operations, NESDIS.
Russell Koffler, Deputy Assistant Administrator, Satellite and Information Services, NESDIS.
Thomas N. Pyke, Assistant Administrator, NESDIS.
Gregory W. Withee, Deputy Assistant Administrator for Environmental Information Services, NESDIS.
Richard P. Augulis, Director, Central Region, National Weather Service (NWS).
Louis J. Boezi, Deputy Assistant Administrator for Modernization, NWS.
Elbert W. Friday, Assistant Administrator, NWS.
Michael D. Hudlow, Director, Office of Hydrology, NWS.
Robert Landis, Deputy Assistant Administrator for Operations, NWS.
Ronald J. Lavoie, Director, Office of Meteorology, NWS.
Ronald D. McPherson, Director, National Meteorological Center, NWS.
Douglas H. Sargeant, Director, Office of Systems Development, NWS.
Walter Telesetsky, Director, Office of Systems Operations, NWS.
Hugo F. Bezdek, Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research (OAR).
Kirk Bryan, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, OAR.
J. Michael Hall, Director, Office of Climatic and Atmospheric Research, OAR.
Jerry D. Mahlman, Director, Geophysical Fluid Dynamics Laboratories, OAR.
Syukuro Manabe, Supervisory Research Meteorologist, Geophysical Fluid Dynamic Laboratories, OAR.
Ned A. Ostenso, Assistant Administrator, OAR.
Alan R. Thomas, Deputy Assistant Administrator, OAR.
Joseph E. Clark, Deputy Director, National Technical Information Service, Department of Commerce (DOC).
David Farber, Deputy Director, Office of Procurement and Administrative Services, DOC.
Frederick T. Knickerbocker, Executive Director, Economic Affairs, DOC.
Roy R. Mullen, Associate Chief, National Mapping Division, United States Geological Survey, Department of Interior.
Clif Parker, Assistant Director for Administration, Bureau of Census, DOC.
Joe D. Simmons, Deputy Director, Center for Basic Standards, National Institutes of Science and Technology, DOC.

Dated: August 8, 1991.

John A. Knauss,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 91–20190 Filed 8–22–91; 8:45 am]
BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing and Amending Import Restraint Limits and Announcing the Requirement of an Export Declaration (Form ITA-370P) for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

August 19, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending limits and requiring form ITA-370P for certain products.

EFFECTIVE DATES: August 26, 1991 and September 3, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated August 13, 1991 the Governments of the United States and the United Mexican States agreed to increase the designated consultation levels for certain categories. Also, the two governments agreed that, effective on January 1, 1992, Categories 341/641 would be subject to Special Regime requirements.

Further, the Committee for the Implementation of Textile Agreements has decided to control imports of man-made fiber textile products in Category 611 in Group I for the period January 1, 1991 through December 31, 1991.

Beginning on September 3, 1991, U.S. Customs will start signing the first section of form ITA–370P for shipments of U.S. formed and cut fabric in Categories 341/641 that are destined for Mexico and re-exported to the United States during the period January 1, 1992 through December 31, 1992. Shipments of these goods which are re-exported from Mexico prior to January 1, 1992 shall not be permitted entry under the Special Regime Program and shall be charged to the existing quota level for Categories 341/641.

Textile products in Categories 341/641, which are assembled in Mexico from parts cut in the United States from fabric formed in the United States, are governed by Harmonized Tariff Schedule item 9802.00.8010, chapter 61 statistical note 5 and chapter 62 statistical note 3 of the Harmonized Tariff Schedule.

Interested parties should be aware that shipments of cut parts in Categories 341/641 must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Mexico in order to qualify for entry under the Special Regime.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also

see 55 FR 51755, published on December 17, 1990.

Requirements for participation in the Special Regime are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the MOU, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 19, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 11, 1990, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the United Mexican States and exported during the period which began on January 1, 1991 and extends through December 31, 1991.

Effective on August 26, 1991, you are directed to establish and amend the limits for the following categories:

Category	Twelve-month restraint limit [1]
Sublevel in Group I	
611	1,991,682 square meters.
Individual limits not subject to a group	
347/348/647/648 (Special Regime).	4,500,000 dozen.
351/651 (Special Regime).	525,000 dozen.
352/652 (Special Regime).	3,500,000 dozen.
359–C/659–C [2] (Special Regime).	2,325,000 kilograms.
670	3,500,000 kilograms.
Normal Regime Category (Not Subject to the Special Regime)	
347/348/647/648	850,000 dozen.
351/651	113,000 dozen.
352/652	1,696,000 dozen.
359–C/659–C (sublimit).	300,000 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 359–C: only HTS numbers 6103.42.2010, 6103.42.2025, 6103.49.3034, 6104.62.1010, 6104.62.1020, 6104.69.3010, 6114.20.0042, 6114.20.0048, 6114.20.0052, 6203.42.2005, 6203.42.2010, 6203.42.2090, 6204.62.2005, 6204.62.2010, 6211.32.0007, 6211.32.0010, 6211.32.0025, 6211.42.0007 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2015, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1010, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2005, 6203.43.2010, 6203.43.2090, 6203.49.1005, 6203.49.1010, 6203.49.1090, 6204.63.1505, 6204.63.1510, 6204.69.1005, 6204.69.1010, 6210.10.4015, 6211.33.0007, 6211.33.0010, 6211.33.0017, 6211.43.0007 and 6211.43.0010.

Textile products in Category 611 which have been exported to the United States on and after January 1, 1991 shall remain subject to the Group I limit established for the period January 1, 1991 through December 31, 1991.

Beginning on September 3, 1991, U.S. Customs is directed to start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 341/641 that are destined for Mexico and re-exported to the United States on and after January 1, 1992. Shipments of these goods which are re-exported from Mexico prior to January 1, 1992 shall not be permitted entry under the Special Regime Program and shall be charged to the existing quota level for Categories 341/641.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–20230 Filed 8–22–91; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Philippines on Certain Cotton and Man-Made Fiber Textiles and Textile Products

August 19, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: August 26, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 31, 1991, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines, the United States Government requested consultations with the Government of the Philippines with respect to cotton and man-made fiber overalls and coveralls in Categories 359–C/659–C and woven man-made fiber bags in Category 669–P.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Categories 359–C/659–C and 669–P, the Government of the United States has decided to control imports during the ninety-day period which began on July 31, 1991 and extends through October 28, 1991.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish specific limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 359–C/659–C and 669–P, produced or manufactured in the Philippines and exported during the prorated period beginning on October 29, 1991 and extending through December 31, 1991, of not less than 93,103 kilograms for Categories 359–C/659–C and 343,152 kilograms for Category 669–P.

Summary market statements concerning Categories 359–C/659–C and 669–P follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 359–C/659–C and 669–P, under the agreement with the Government of the Philippines, or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 359–C/659–C and 669–P. Should such a solution be reached in consultations with the Government of the Philippines, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Philippines

Category 359–C/659–C—Cotton and Man-Made Fiber Overalls and Coveralls

July 1991

Import Situation and Conclusion

U.S. imports of cotton and man-made fiber overalls and coveralls, Category 359–C/659–C, from the Philippines, reached 94,459 dozen (442,482 kilograms) during the year ending in April 1991, three and one-half times the 26,875 dozen (139,456 kilograms) imported a year earlier. During the first four months of 1991, imports from the Philippines reached 48,321 dozen, (181,641 kilograms) over three and one-half times the 13,073 dozen (49,756 kilograms) imported during the same period a year earlier.

The sharp and substantial increase in 359–C/659–C imports from the Philippines is causing a real risk of disruption in the U.S. market for cotton and man-made fiber overalls and coveralls.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber overalls and coveralls, Category 359–C/659–C, declined to 1,628 thousand dozen in 1990. This represents a decline of 31 percent from the 1987 level. The domestic manufacturers' share of the market fell from 59 percent in 1987, to 49 percent in 1990.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber overalls and coveralls, Category 359–C/659–C, declined from 1,658 thousand dozen in 1987 to 1,453 thousand dozen in 1989, then surged to 1,728 thousand dozen in 1990, 19 percent above the 1989 level and four percent above the 1987 level. Imports continue to surge in 1991, up 54 percent in the first four months of 1991 over the January-April 1990 level. The ratio of imports to domestic production nearly doubled, increasing from 58 percent in 1989 to 106 percent in 1990.

Duty-Paid Value and U.S. Producers' Price

Approximately 73 percent of Category 359–C/659–C imports from the Philippines enter the U.S. under HTS numbers: 6203.42.2010—mens' cotton bib and brace overalls, and 6210.10.4015—other coveralls and overalls made of felt or nonwoven fabrics, whether or not impregnated, coated, covered or laminated. These garments entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable garments.

Market Statement—Philippines

Category 669–P—Woven Man-Made Fiber Bags

July 1991

Import Situation and Conclusion

U.S. imports of woven man-made fiber bags, Category 669–P, from the Philippines reached 1,630,867 kilograms during the year ending April 1991, two and one-half-times the 648,035 kilograms imported a year earlier. In the first four months of 1991 the Philippines shipped 619,271 kilograms, nearly four times their January-April 1990 level. Philippines is the second largest supplier of woven man-made fiber bags, accounting for 12 percent of Category 669–P imports for the year ending April 1991. In the previous year, Philippines was ranked sixth among the major suppliers, accounting for 7 percent of total imports of woven man-made fiber bags.

The sharp and substantial increase of Category 669–P imports from the Philippines is causing a real risk of disruption in the U.S market for woven man-made fiber bags.

Import Penetration and Market Share

U.S. production of woven man-made fiber bags, Category 669–P, dropped to 21,582 thousand kilograms in 1990, 11 percent below the 1989 level and 9 percent below the 1988 level. In contrast, U.S. imports of woven man-made fiber bags from all sources reached 12,310 thousand kilograms in 1990, 52 percent above the 1989 level and 56 percent above the 1988 level. Imports continue to increase in 1991, up 43 percent in the first four months of 1991 over the January-April 1990 level.

The U.S. producers' share of the woven man-made fiber bag market dropped 11 percentage points, falling from 75 percent in 1988 to 64 percent in 1990. The ratio of imports to domestic production increased from 33 percent in 1988 to 57 percent in 1990.

Duty-Paid Value and U.S. Producers' Price

Virtually all of Category 669–P imports from the Philippines enter the U.S. under HTS number 6305.31.0020—sacks and bags of polyethylene or polypolylene strip weighing under 1 kilogram. These bags entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable bags.

Committee for the Implementation of Textile Agreements

August 19, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 26, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the Philippines and exported during the ninety-day period beginning on July 31, 1991 and extending through October 28, 1991, in excess of the following restraint limits:

Category	Ninety-day limit [1]
359–C/659–C [2]	154,869 kilograms.
669–P [3]	570,803 kilograms.

[1] The limits have not been adjusted to account for any imports exported after July 30, 1991.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39 0000.

Textile products in Categories 359–C/659–C and 669–P which have been exported to the United States on and after January 1, 1991 shall remain subject to the Group II limit established in the directive dated December 12, 1991 for the period January 1, 1991 through December 31, 1991.

Textile products in Categories 359–C/659–C and 669–P which have been exported to the United States prior to July 31, 1991 shall not be subject to the ninety-day limits established in this directive.

The conversion factor to be used for merged Categories 359–C/659–C is 10.10.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–20229 Filed 8–22–91; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by a nonprofit agency employing the blind or other severely handicapped.

EFFECTIVE DATE: September 23, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 29, June 28, July 8, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 13129, 29637 and 30904/5) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the services at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the services listed.

c. The action will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial

Naval Air Station
Whiting Field
Milton, Florida

Janitorial/Custodial

Marine Corps Logistics Base
Building 7501
Albany, Georgia

Janitorial/Custodial

U.S. Army Reserve Center
4200 Michaud Boulevard
New Orleans, Louisiana

Janitorial/Custodial

Museum Complex
Hill Air Force Base, Utah

Operation of the Base Information Transfer Center

Elgin Air Force Base, Florida

Parts Machining

Naval Supply Center
Puget Sound
Bremerton, Washington

Switchboard Operation

Elgin Air Force Base, Florida

This action does not affect contracts awarded prior to the effect date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–20259 Filed 8–22–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 23, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Shirt, Extreme Cold Weather

8415–01–228–1353
8415–01–228–1354
8415–01–228–1355
8415–01–228–1356
8415–01–228–1357

Tissue, Facial

8540–00–281–8360
8540–00–793–5425
8540–00–900–4891

Services

Janitorial/Custodial

North Hills USARC
9225 Peebles Road
Allison Park, Pennsylvania

Janitorial/Custodial

U.S. Army Reserve center
950 Saw Mill Run Boulevard
Pittsburgh, Pennsylvania

Janitorial/Custodial,

Col. Harold Steele USARC,
6482 Aurelia Street,
Pittsburgh, Pennsylvania.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–20260 Filed 8–22–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF ENERGY

Floodplain and Wetland Involvement Notification for Installation of Sediment Samplers and Flow Measuring Instrumentation in Stream Channels on the Rocky Flats Plantsite, Golden, CO

AGENCY: Department of Energy.

ACTION: Notification of floodplain/wetland involvement.

SUMMARY: The Department of Energy (DOE) proposes a project at the Rocky Flats Plant (RFP), located approximately 16 miles northwest of Denver, Colorado, that will have potential impacts on wetlands and/or 100-year floodplains. The project entails the installation of suspended sediment samplers and flow measuring instrumentation in stream channels and canals on the plant site. Installation of this equipment was reviewed with the U.S. Army Corps of Engineers during a visit on January 31, 1991.

The samplers will be of two types: A Mississippi-type sediment sampler and a combination unit comprised of US–59 Single-stage Suspended Sediment Samplers secured to a fence post. The Mississippi-type sampler is comprised of a 2.5-gallon sample container (used to store collected sediments) placed within a 12-inch diameter PVC pipe. The pipe, containing both the sample container and intake tubes, is installed vertically and imbedded up to 12 inches into the stream channel. A combination unit is comprised of a 1.5-inch by 1.5-inch fence post supporting five US–59 samplers. Starting one foot from the stream bottom, the samplers are evenly spaced on the fence post at approximately 6–12 inches. Approximately 18 of the Mississippi-type and 13 of the combination units will be installed at various locations in RFP stream channels for the purpose of defining the suspended sediment loads of the streams; 13 of the Mississippi-type samplers will be paired with the 13 combination samplers.

Flow data will be collected using pressure transducers placed in the stream channels, and will be used to activate automatic water-sampling equipment. The transducers will be linked to electronic data loggers placed in storage boxes. Each box will be approximately six square feet in surface area and located near the channel but out of any wetlands. Cables and intake hoses will be buried approximately six inches below the surface in order to insulate and anchor the lines; fence posts may be used to support and anchor staff gauges and automatic water-sampler intake heads. There will be approximately 14 of the transducers/water samplers installed, with 13 of the transducers/water samplers being placed at the same locations as the paired sediment samplers.

The 100-year floodplain has not been delineated for the channels in which these projects will occur. DOE will assume that the samplers and transducer storage boxes are located in the 100-year floodplain for the specific channel.

DATES: Comments are due on or before September 9, 1991.

ADDRESSES: Address comments to: Wetlands Comments, Beth Brainard, Public Affairs Office, U.S. Department of Energy, Rocky Flats Office, P. O. Box 928, Golden, Colorado 80402–0928.

FOR FURTHER INFORMATION CONTACT: Beth Brainard, U.S. Department of Energy, Rocky Flats Office, P. O. Box 928, Golden, Colorado 80402–0928; telephone (303) 966–5993.

SUPPLEMENTARY INFORMATION: A map showing the locations of the sampling stations is available upon request.

Issued at Washington, DC, this 15th day of August, 1991.

Howard R. Canter,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 91–20256 Filed 8–22–91; 8:45 am]

BILLING CODE 6450–01–M

Environmental Compliance for Oil and Gas Exploration and Production

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of Non-Competitive Financial Assistance (Grant) Award with Interstate Oil and Gas Compact Commission.

SUMMARY: The Department of Energy (DOE), Metairie Site Office announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (D), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to the Interstate Oil and Gas Compact Commission for a series of seminars entitled "Environmental Compliance for Oil and Gas Exploration and Production". The IOGCC is unique in that it represents all of the 29 oil producing states and the 6 associate member states. The proposed seminars are relevant to a DOE mission to train and motivate independent and major oil and gas operating company personnel to more effectively comply with State and Federal environmental regulations and to apply available environmental mitigation technologies.

SUPPLEMENTARY INFORMATION:

Awardee: Interstate Oil and Gas Compact Commission.

Grant Number: DE–FG22–91MT91006.

Grant Value: $150,000.

Scope

The objective of the grant project is to fund up to ten seminars entitled "Environmental Compliance for Oil and Gas Exploration and Production" throughout the United States. These one-day seminars are currently planned in 10 cities throughout the United States over a 24 month period beginning with a pilot seminar in the Spring of 1992. The seminars are designed to train and motivate the personnel of both independent and major oil and gas operating companies to more effectively comply with State and Federal environmental regulations. In addition, the seminars will train and motivate the subject personnel to apply available mitigation technologies for oil and gas exploration and production operations. The DOE funding of $150,000 shall be used to pay for the reasonable cost of staff, administrative support personnel, consultants, experts, rental charges, and printing charges as necessary for the seminars.

A minimum of ten regional seminars are proposed in the following (or equivalent) ten locations: 1. Texas—Midland and Houston; 2. Rocky Mountain—Casper, WY; 3. California—Bakersfield; 4. Southeast/Gulf—Lafayette, LA; 5. New Mexico—Albuquerque; 6. Oklahoma/Arkansas—Oklahoma City; 7. Tri-State—Evansville, IN; 8. Appalachian/East—Pittsburgh, PA; 9. Midwest—Wichita, KS.

Justification

10 CFR 600.7(b)(2)(i) criteria (D). The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Larry D. Gillam, Telephone: AC (412) 892–5024.

Issued in Washington DC on August 13, 1991.

Dated: August 13, 1991.

Richard D. Rogus,

Contracting Officer, Pittsburgh Energy Technology Center.

[FR Doc. 91–20254 Filed 8–22–91; 8:45 am]

BILLING CODE 6450–01–M

Analysis of the Environmental Constraints on Expanding Reserves in Current and Future Oil and Gas Reservoirs in Wetlands

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of acceptance of an Unsolicited Proposal Assistance (Grant) Award with Louisiana Geological Survey.

SUMMARY: The Department of Energy (DOE), Metairie Site Office, announces that pursuant to 10 CFR 600.14, it intends to award a grant to Louisiana Geological Survey based on acceptance of an unsolicited proposal. The Louisiana Geological Survey has proposed significant new research to identify and evaluate the environmental and technological constraints surrounding the recovery of oil and gas from wetland areas. The research will contribute to the DOE goals of understanding the environmental impacts of petroleum development and the development of environmentally acceptable mitigation technologies. The project will contribute to the transfer of technology and information to the petroleum industry, State and Federal agencies, and to the scientific community.

SUPPLEMENTARY INFORMATION:

Awardee: Louisiana Geological Survey.

Grant Number: DE–FG22–91MT91004.

Grant Value: $399,722.

Scope

The objective of the grant is to develop alternative environmental management and mitigation options for future drilling, development, production, and enhanced recovery activities in wetlands.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Larry D. Gillham, Telephone: AC (412) 892–5024.

Issued in Washington, DC on August 13, 1991.

Richard D. Rogus,

Contracting Officer, Pittsburgh Energy Technology Center.

[FR Doc. 91–20255 Filed 8–22–91; 8:45 am]

BILLING CODE 6450–01–M

Office of the Secretary

Amendment to Delegation Order for Approval of Power Marketing Administration Power and Transmission Rates

AGENCY: Department of Energy.

ACTION: Notice of amendment to Delegation Order.

SUMMARY: Notice is hereby given of Amendment No. 2 to Delegation Order No. 0204–108. Amendment No. 2 revises the delegation of authority to confirm, approve, and place into effect on an interim basis power and transmission rates of the Alaska, Southeastern, Southwestern, and Western Area Power Administrations by delegating such authority to the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy rather than to the Deputy Secretary of the Department of Energy. The amendment also makes minor conforming changes to reflect the fact of that revision in delegation of authority and adds a provision that such revision is to have no effect upon rates which have been previously placed into effect by the Deputy Secretary.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Lawrence A. Gollomp, Assistant General Counsel, GC–33, U.S. Department of Energy, Washington, DC 20581, (202) 586–6958.

SUPPLEMENTARY INFORMATION: Delegation Order No. 0204–108, 48 FR 55664, which became effective December 14, 1983, delegated to the Deputy Secretary of the Department of Energy on a nonexclusive basis, among other things, the authority to confirm, approve, and place into effect on an interim basis, power and transmission rates for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations. The Delegation Order was amended on May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions. The Secretary of the Department of Energy has determined that revisions in that Delegation Order are desirable at this time, which will delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which had been previously delegated to the Deputy Secretary. The principal reason for these revisions is to reflect revised organizational relationships within the Department.

Issued in Washington, DC, August 15, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy, Amendment No. 2 to Delegation Order No. 0204–108, Delegation Order for Approval of Power Marketing Administration Power and Transmission Rates

Pursuant to the authority vested in me as Secretary of Energy and by sections 203(a), 301(b), 302(a), 402(e), 641, 642, 643, and 644, of the Department of Energy Organization Act (Pub. L. 95–91), there is hereby delegated to the Assistant Secretary, Conservation and Renewable Energy, of the Department of Energy all authority which was previously delegated to the Deputy Secretary of the Department of Energy in Department of Energy Delegation Order No. 0204–108, as published in the **Federal Register**, December 14, 1983 (48 FR 55664), as amended on May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions. Department of Energy Delegation Order No. 0204–108 is hereby amended to reflect such revision to that delegation of authority and to reflect related changes so as to read and provide in its amended form as follows:

1. There is hereby delegated to the respective Administrators of the Alaska, Southeastern, Southwestern, and Western Area Power Administrations on a nonexclusive basis the authority to develop power and transmission rates for their respective power marketing administrations (PMA). Rates developed by an Administrator shall not become effective on a final basis unless and until such rate is confirmed and approved by the Federal Energy Regulatory Commission (Commission) acting under section 3 below. In submitting a rate the Administrator shall certify that the rate is consistent with applicable law and that it is the lowest possible rate to customers consistent with sound business principles.

2. There is hereby delegated to the Assistant Secretary, Conservation and Renewable Energy, of the Department of Energy on a nonexclusive basis the authority to confirm, approve, and place in effect on an interim basis power and transmission rates for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations for such periods as he or she may provide.

3. There is hereby delegated to the Commission on an exclusive basis the authority to confirm, approve, and place

in effect on a final basis, to remand, or to disapprove, rates developed by each Administrator under section 1. The Commission review will be limited to: (a) Whether the rates are the lowest possible to customers consistent with sound business principles, (b) whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment; and (c) the assumptions and projections used in developing the rate components that are subject to Commission review. The Commission may require the Administrator to provide any information relevant to the Commission's confirmation and review function.

The Commission shall not review policy judgments and interpretations of laws and regulations made by the power generating agencies (i.e., the Bureau of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission). The Commission shall reject decisions of the PMA Administrators only if the Commission finds them to be arbitrary, capricious, or in violation of the law. *Provided,* That the Commission may reject decisions that are not in accord with (a) the standards set forth in DOE Order No. RA6120.2, or any revisions or modifications to such standards, adopted pursuant to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and the Department of Energy Organization Act (42 U.S.C. 7191), and (b) the standards set forth in any interagency agreement between the Administrator and the power generating agency that is applicable. Should the Commission reject such decisions, the PMA Administrator will have 30 days in which to seek rehearing.

4. In the event a rate developed by an Administrator is disapproved by the Commission, the Administrator shall, within 120 days or such additional time periods as the Commission may provide, submit to the Commission a substitute rate for action by the Commission under section 3 hereof.

A rate confirmed, approved, and placed in effect by the Assistant Secretary, Conservation and Renewable Energy, on an interim basis that is disapproved by the Commission shall remain in effect, as provided by the Assistant Secretary, Conservation and Renewable Energy, until a substitute rate is confirmed and approved on a final basis by the Commission, unless the original interim rate has been superseded by a subsequent rate placed in effect on an interim basis. *Provided,* That if the Administrator does not file a substitute rate within 120 days or such greater time as the Commission may provide, and if the rate has been disapproved because the Commission determined that it would result in total revenues in excess of those required by law, the rate last previously confirmed and approved on a final basis will become effective on a date and for a period determined by the Commission, and revenues collected in excess of those generated by such rate during the interim period will be refunded with interest to the extent determined by the Commission. If a substitute rate confirmed and approved on a final basis by the Commission is lower than the rate in effect on an interim basis, any overpayment shall be refunded with interest as determined by the Commission. If a substitute rate confirmed and approved on a final basis by the Commission is higher than the rate in effect on an interim basis, such rate, if no subsequent and higher rate has been put into effect by the Assistant Secretary, Conservation and Renewable Energy, shall become effective on a subsequent date set by the Commission. If at any time it is determined by the Commission that the administrative cost of a refund would exceed the amount to be refunded, no refund will be required.

5. Notwithstanding any other provisions of this delegation order, there is hereby delegated to each Administrator the authority to develop and place into effect on a final basis rates for short-term sales of capacity, energy, or transmission service. Short-term sales are those sales that last no longer than one year.

6. For the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration:

A. All rates placed into effect on a final basis pursuant to any authority delegated prior to this order shall remain in full force and effect.

B. Rates filed on or before the effective date of this order, and for which the Commission has issued any substantive orders, will be governed by the terms of Amendment No. 1 to Delegation Order No. 0204–108, reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions until placed in effect by the Commission on a final basis.

C. Rates filed under previous delegation orders for which the Commission has not issued any substantive orders on or before the effective date of this order will be governed by the terms of this delegation order.

7. In exercising the authority delegated by this order, the delegates shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by the Secretary or his delegates.

8. Nothing in this order shall preclude the Secretary from exercising any of the authority delegated to the Assistant Secretary, Conservation and Renewable Energy, and the Administrators whenever in his judgment his exercise of such authority is necessary or appropriate to administer the functions vested in him.

9. For the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration and the Western Area Power Administration:

A. All rates placed into effect on a final basis pursuant to any authority delegated pursuant to Delegation Order No. 0204–108 as such order existed prior to the effective date of Amendment No. 2 thereto shall remain in full force and effect.

B. All rates filed before the effective date of Amendment No. 2 to Delegation Order No. 0204–108 which rates, as of the effective date of said Amendment No. 2, are in effect but which have not been placed in effect on a final basis, shall continue in effect subject to the provisions of this amended Delegation Order. In no event shall any rates which have been filed on or before the effective date of Amendment No. 2 to Delegation Order No. 0204–108 be invalidated solely by virtue of the change in the delegation of authority from the Deputy Secretary to the Assistant Secretary, Conservation and Renewable Energy, provided for in said Amendment. All actions heretofore taken by the Deputy Secretary pursuant to Delegation Order No. 0204–108 with respect to such rates are hereby confirmed, and such rates shall not be subject to challenge on the ground that any such actions were taken by the Deputy Secretary rather than by the Assistant Secretary, Conservation and Renewable Energy.

C. All rates filed on and after the effective date of Amendment No. 2 to Delegation Order No. 0204–108 shall be governed by that order as thus amended.

10. This amended order becomes effective upon publication in the Federal Register.

Issued in Washington, DC, August 6, 1991.

James D. Watkins,

Admiral, U.S. Navy (Retired).

[FR Doc. 91-20257 Filed 8-22-91; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Intent to Prepare an Environmental Impact Statement for Northwest Montana/North Idaho Support Project

AGENCIES: Bonneville Power Administration (BPA), U.S. Department of Energy (DOE); Kootenai National Forest (KNF), U.S. Department of Agriculture; and State of Montana Department of Natural Resources and Conservation (DNRC).

ACTION: Notice of intent to prepare and consider a joint National Environmental Policy Act (NEPA), 42 U.S.C. 102(2)(c), and Montana Environmental Policy Act (MEPA), title 75 chapter 1 Montana Code Annotated, environmental impact statement (EIS).

SUMMARY: To meet BPA reliability criteria, to maintain reliable service to the Northwest (NW) Montana/North (N) Idaho areas, and to meet BPA's contractual obligations with Pacific Power & Light (PP&L) to serve Sandpoint area loads, BPA seeks to upgrade its electrical transmission facilities by removing an existing 59-mile sequence of single-circuit 115,000-volt (115-kV) transmission lines between Bonners Ferry, Idaho, and Libby Dam, Montana, and replacing it with a double-circuit 230-kV line. (One circuit would operate at 230-kV; one at 115-kV.) BPA also proposes to construct a new 230/115-kV substation in the Sandpoint, Idaho, area; to raise the voltage of one circuit of its existing double-circuit transmission line between Bonners Ferry and Sandpoint, Idaho, to its design level of 230 kV; and to add new equipment at the existing BPA Libby Substation, possibly expanding that substation by less than an acre. PP&L and The Washington Water Power Co. (TWWP) would then extend their 115-kV feeder lines from TWWP's existing Bronx Tap Substation directly to BPA's proposed new Kootenai Substation in the Sandpoint area, eliminating the Bronx Tap Substation east of Sandpoint and the associated BPA tap. BPA also proposes to locate and install appropriate system control, protective, and communications equipment, including a new microwave site near Sandpoint, Idaho.

BPA, the KNF, and the DNRC are preparing a joint EIS on these actions to fulfill both NEPA and MEPA requirements. BPA is the lead agency. Through joint planning with the State of Idaho, local governments, Indian tribes, and interested groups, and in consultation with local landowners, the agencies propose to analyze feasible local routing alternatives, designs for the proposed transmission facilities, and site locations for the proposed new substation and microwave site.

BPA proposes to begin construction on the substation site in 1993, and on the microwave site and transmission line in 1994. This schedule would allow BPA to maintain reliability and meet increasing electric power loads on the system.

DATES: BPA will solicit comments from affected landowners, special interests, local governmental and civic organizations, and concerned citizens in the summer of 1991, with the aim of identifying environmental resources and issues to be addressed in the EIS. Scoping meetings will be held in September of 1991 in the following communities:

September 9, 1991 6:30–9:30 p.m., Connie's Motor Inn, 323 Cedar, Sandpoint, ID.

September 10, 1991 6:30–9:30 p.m., Kootenai River Inn, Kootenai River Plaza, Highway 95, Bonners Ferry, ID.

September 11, 1991 6:30–9:30 p.m., Troy High School Auditorium, 105 East Missoula Avenue, Troy, MT.

September 12, 1991 6:30–9:30 p.m., Senior Citizens Center, 206 East Second, Libby, MT.

The meetings will be well publicized by general announcement as well as by written invitation to all interested parties. Written comments should be submitted by October 1, 1991, to the Public Involvement Manager, at the address below. Comments received after this date will be considered to the extent practicable.

The draft EIS (DEIS) is scheduled to be circulated for public review and comment in the fall of 1992. Well-publicized public meetings will be held after the release of the DEIS.

ADDRESSES: To have your name placed on the mailing list for this project, to submit comment letters, or to receive a copy of the DEIS, write to the Public Involvement Manager, Bonneville Power Administration—ALP, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION: Write the Area Manager for Engineering, Bonneville Power Administration, Upper Columbia Area Office, room 561, U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, or telephone him at 509–353–2567.

Additional information is available from BPA's Public Involvement office at 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside Portland; 800–547–6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California.

SUPPLEMENTARY INFORMATION: BPA serves the NW Montana/N Idaho area with a primarily single-circuit 115-kV transmission line from Albeni Falls, Idaho, to Troy, Montana. A 17-mile PP&L 115-kV line continues the service from Troy to their substation at Libby, Montana; BPA owns and operates the remainder of the 115-kV line from PP&L's Libby Substation east to BPA's Libby Substation near Libby Dam.

In the early 1980s, BPA removed the 115-kV single-circuit line between Sandpoint and Bonners Ferry and replaced it with a double-circuit 230-kV transmission line. This action was taken in anticipation of additional transmission requirements for increasing local loads and to handle additional power from a proposed (but not built) reregulation dam downstream from Libby Dam, and from additional generation at Libby Dam. The 230-kV line section is now operated as a single-circuit 115-kV line.

Also serving the Sandpoint area is a 115-kV power line from Cabinet Gorge Dam, east of Sandpoint. Both dam and line are owned and operated by TWWP, and supply PP&L load in the town of Oden, Idaho, and part of the PP&L load at Sandpoint. The NW Montana/N Idaho study area is thus served electrically through three sources: Albeni Falls, Libby, and Cabinet Gorge Dam.

Load growth has increased in the Sandpoint and North Idaho area, putting more pressure on the existing system in the event of a line outage. Peak winter loads in January on the Albeni Falls-Libby system are estimated to grow from 152.9 megawatts (MW) in 1994 to 172.9 MW in 2000. BPA estimates that the peak load at Oden (Cabinet Gorge line) will grow from 8.9 MW in January 1990 to 10.3 MW in January 2000. Under present contractual arrangements, BPA is required to serve all of the PP&L Sandpoint load from the BPA transmission system beginning in July 1993.

System planning studies of future load increases and their potential consequences indicate oncoming problems. As the energy supply system is presently configured, if the line segment from Albeni Falls east or the segment west from Libby Dam were to go out, the remaining sources would have to supply the full load. The Cabinet

Gorge line would exceed its maximum capability of 48 MW during such an outage. This limitation would mean that all the rest of the load (beyond 48 MW) would have to be met from a single remaining source.

After 1993, Libby or Albeni Falls alone could meet all the needs along the single 115-kV line, but the voltage would drop to unacceptable levels. This event would violate BPA's reliability criteria; it would also cause some dimming of lights. The situation worsens as winter loads grow. After 1996, if either the Albeni Falls or Libby source were to fall out of service, some of the load would have to be dropped. Some customers and consumers would be without power until the problem was corrected and the source was available again. BPA needs to take action to increase power support to the area.

Proposed Action

BPA would remove its existing 115-kV line between Bonners Ferry, Idaho, and Troy, Montana, and between Libby, Montana, and BPA's Libby Substation, replacing it with a double-circuit 230-kV line. One circuit would be operated at 115 kV. With PP&L agreement, BPA would buy PP&L's single-circuit 115-kV line between Troy and Libby, replacing it with a double-circuit 230-kV line. One circuit would be operated at 115 kV. BPA would install a 240-kV power circuit breaker and three disconnect switches at its Libby Substation, preferably in an existing vacant bay. However, the substation might be expanded by less than an acre to accommodate the equipment. BPA would also construct a new 230/115-kV substation in the Sandpoint area, along with necessary power system control, protection, and microwave communication systems. PBA would also change operation of one circuit of its existing powerline between Sandpoint and Bonners Ferry from 115 kV to 230 kV. PP&L and TWWP would extent their 115-kV lines from TWWP's existing Bronx Tap Substation to BPA's new proposed substation near Sandpoint. TWWP would remove the Bronx Tap Substation.

Alternatives

The new BPA line would replace existing ones, generally following the existing right-of-way. In a few locations, some minor variations will be considered. Alternatives will include design options for the structures to be used, including lattice steel towers, single-pole steel towers, and H-frame wood pole structures. Several location options for the new substation exist in the Sandpoint area and will be evaluated in the DEIS. At present, these locations are within a radius of about 5 miles from the town of Sandpoint, between the existing Bronx and Selle Substations. A new microwave site would be located within line-of-sight of the new substation and of an existing mountaintop microwave radio station.

A second alternative would be for TWWP to rebuild its 115-kV line from cabinet Gorge Dam to the Bronx Tap Substation near Sandpoint to 230 kV. This would alleviate the immediate need to re-build the Bonners Ferry-Libby line. It would mean rebuilding the PP&L Oden Substation between Cabinet Gorge Dam and Sandpoint, Idaho, if the line were rebuilt to a higher voltage.

A third alternative would be to take No Action. Analysis of this alternative would focus on the state of the transmission system, the potential deterioration in reliability of service to the NW Montana/N Idaho area if the transmission were not upgraded, and any resulting environmental and socioeconomic impacts.

An element of this alternative (no action) would consider the potential for reducing load in the NW Montana/N Idaho area through conservation to reduce or counter the projected load growth and thereby eliminate or delay the need for the project.

Additional alternatives may be identified through the scoping process.

Identification of Environmental Issues

Issues presently identified for consideration in the DEIS include (1) temporary disruption of wildlife communities, including those in the Kootenai Falls Wildlife Management Area near Libby; (2) potential effects of construction on floodplains and wetlands; (3) temporary disruption of agricultural production, residential, and other land uses during construction of the transmission line and substation; (4) potential requirements for new right-of-way and acquisition of land for the substation site and microwave site; (5) concern about whether there are possible health effects from exposure to electric and magnetic fields produced by high-voltage transmission lines and what those effects might be; (6) concern of local residents for operation of Libby Dam relative to fluctuating water levels; (7) potential socioeconomic effects from the influx of construction workers in sparsely populated areas; (8) economic effect of removing the Troy-Libby (PP&L) line from the tax base through Federal ownership; (9) visual impacts associated with the presence of new structures or with different transmission structure designs; (10) impacts on cultural resources on National Forest and other lands; and (11) the concern of Native Americans that sacred sites might be affected. These, together with any additional issues identified through the scoping process, will be examined in the EIS.

Related Documentation

Background information on the project as it was originally conceived is available in the public reading rooms listed below. The available documentation is: Final Supplement, Final Environmental Impact Statement, Bonneville Power Administration Proposed Fiscal Year 1980 Program Facility Location Supplement: Northwest Montana/North Idaho Support and Libby Integration, U.S. Department of Energy, Washington, DC, DOE/EIS–0030–FS–1, August 1981.

Public reading rooms are:

Boundary County Library, 118 East Kootenai, Bonners Ferry, ID 83805
Lincoln County Library, 220 West Sixth Street, Libby, MT 59923
Troy Branch Library, 207 North Third Street, Troy, MT 59923
East Bonner County Public Library, 419 North Second Ave, Sandpoint, ID 83864
Kootenai National Forest, 506 Highway 2, West Libby, Mt 59923
Montana Department of Natural Resources and Conservation, Energy Division, 1520 East Sixth, Helena, MT 59620
Upper Columbia Area, Bonneville Power Administration, Room 561, U.S. Court House, 920 West Riverside Avenue, Spokane, WA 99201
Montana District Office, Bonneville Power Administration, 800 Kensington, Missoula, MT 59801

Jack Robertson,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 91–20258 Filed 8–22–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER91–583–000, et al.]

Wisconsin Power and Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 16, 1991.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power and Light Company

[Docket No. ER91–583–000]

Take notice that on August 9, 1991, Wisconsin Power and Light Company (WPL) tendered for filing an amendment to its Wholesale Power Agreement dated July 15, 1991, between the City of Elkhorn and WPL. WPL states that this

new Wholesale Power Agreement amends the previous agreement between the two parties which was dated October 1, 1990, and designated Rate Schedule No. 148 by the Commission.

The purpose of this new agreement is to revise the points of service. Terms of service for this customer will be on a similar basis to the terms of service for other W-3 wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the City of Elkhorn and the Wisconsin Public Service Commission.

Comment date: August 30, 1991, in accordance with Standard Paragraph E end of this notice.

2. Central Louisiana Electric Company, Inc.

[Docket No. ER90-39-003]

Take notice that on August 12, 1991, Central Louisiana Electric Company, Inc. tendered for filing its refund report in the above-referenced docket.

Comment date: August 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Vineland Cogeneration Limited Partnership

[Docket No. QF90-176-001]

On August 14, 1991, Vineland Cogeneration Limited Partnership tendered for filing an amendment to their filing in this docket.

The amendment provides additional information on ownership of the facility. This notice is also to correct the name from Cogeneration Partners of America to Vineland Cogeneration Limited Partnership.

Comment date: September 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. West Texas Utilities Company

[Docket No. ER91-588-000]

Take notice that on August 13, 1991, West Texas Utilities Company (WTU) tendered for filing an Interconnection and Interchange Agreement between WTU and Lower Colorado River Authority (LCRA). The Agreement supersedes a prior agreement between the parties by substituting a formula-based facilities charge for the previous demand-based charge.

WTU requests an effective date of July 1, 1990 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon LCRA and the Public Utility Commission of Texas.

Comment date: August 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. George H.V. Cecil

[Docket No. ID-2649-000]

Take notice that on August 7, 1991, George H.V. Cecil filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Carolina Power & Light Company
Director—First Union Corporation

Comment date: September 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Indiana Michigan Power Company and Michigan Power Company

[Docket No. ER91-575-000]

Take notice that Indiana Michigan Power Company (I&M) and Michigan Power Company (MPCo) on August 6, 1991, jointly tendered for filing proposed I&M FERC Electric Tariff PPD, Original Volume No. 1, and Notice of Cancellation of I&M FERC Electric Tariff No. 25 and MPCo FERC Electric Tariff MRS. An application requesting authority to merge MPCo into I&M is currently pending before the Securities and Exchange Commission. The tariff filings herein reflect rate changes made necessary by the proposed merger, including the initiation of wholesale service by I&M to the Village of Paw Paw, Michigan (Paw Paw) and the City of Dowagiac, Michigan (Dowagiac). Paw Paw and Dowagiac are presently wholesale customers of MPCo.

I&M states that the implementation of I&M FERC Electric Tariff PPD will not cause the billings to Paw Paw or Dowagiac to increase. I&M requests a waiver of Commission Regulation 35.3(a) and proposes an effective date of November 30, 1991, the anticipated date of the merger.

I&M and MPCo state that a copy of their filings was served upon Paw Paw, Dowagiac, the Michigan Public Service Commission, and the Indiana Utility Regulatory Commission.

Comment date: August 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER91-586-000]

Take notice that on August 12, 1991, Commonwealth Edison Company ("Edison") tendered for filing Amendment No. 2, dated July 15, 1991, to the Interconnection Agreement, dated July 1, 1979, between Edison, Northern Indiana Public Service Company ("Northern Indiana") and Commonwealth Edison Company of Indiana Inc. ("Edison of Indiana"). The Amendment changes various rates for coordination transactions between the parties. The Amendment also revises the points of interconnection at Edison of Indiana's State Line Station.

Edison, Northern Indiana, and Edison of Indiana request expedited consideration of the filing and an effective date for each rate schedule of August 12, 1991. Accordingly, the parties request waiver of the Commission's notice requirements to the extent necessary.

Copies of this filing were served upon Northern Indiana, Edison of Indiana, the Illinois Commerce Commission, and the Indiana Utility Regulatory Commission.

Comment date: August 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Nevada Power Company

[Docket No. ER91-579-000]

Take notice that on August 12, 1991, Nevada Power Company, (NPC) tendered for filing an agreement entitled Interconnection Agreement between Nevada Power Company and Utah Associated Municipal Power System (UAMPS) hereinafter the "Agreement". The primary purpose of the Agreements is to establish the terms and conditions for the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.

NPC states that copies of the filing were served upon the UAMPS.

Comment date: August 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Power Service Corporation on Behalf of Monongahela Power Company The Potomac Edison Company West Penn Power Company (The APS Companies)

[Docket No. ER91-189-000]

Take notice that on August 13, 1991, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies), filed a second amendment to the initial rate filing of December 31, 1990, for a Standard Transmission Service Rate schedule to provide for transmission service through the facilities of the APS Companies. The proposed effective date for the rate schedule is December 31, 1990.

Copies of the initial filing and the amended filings have been provided to the Public Utilities Commission of Ohio,

the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and West Virginia Public Service Commission.

Comment date: August 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation on Behalf of West Penn Power Company and Duquesne Light Company

[Docket No. ER91-315-000]

Errata

August 16, 1991.

Notice of Filing.

August 5, 1991.

Take notice that the Notice of Filing issued in Docket No. ER91-560-000 on August 5, 1991, should have been issued in Docket No. ER91-315-000.

11. Northern States Power Company (Minnesota Company)

[Docket No. ER91-580-000]

Take notice that on August 8, 1991, Northern States Power Company (Minnesota) ("NSP-MN" or "NSP") tendered for filing a Supplement No. 2 to the Municipal Transmission Service Agreement dated January 4, 1991, between NSP-MN and the City of Granite Falls, Minnesota ("Granite Falls").

Supplement No. 2 to the Municipal Transmission Service Agreement essentially provides for the extension of the effective term of the agreement to December 31, 2000. It maintains the same level of service and rates as the service NSP-MN provided pursuant to the Municipal Transmission Service Agreement dated February 1, 1984 and Supplement No. 1 to the Municipal Transmission Service Agreement also dated February 1, 1984. The underlying Municipal Transmission Service Agreement was accepted for filing in FERC Docket No. ER88-247-000 the current rates and charges were accepted for filing in FERC Docket No. ER88-76 are on file with the Commission for similar agreements with other NSP-MN municiapl transmission customers.

NSP requests that Supplement No. 2 to the Municipal Transmission Service Agreement be accepted for filing effective October 20, 1990, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule FERC No. 436, the original rate schedule for service to Granite Falls.

Comment date: August 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-20189 Filed 8-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL91-49-000]

Citizens for Clean Air and Reclaiming Our Environment v. Newbay Corporation; Shortening Comment Period

August 19, 1991.

On August 14, 1991, Newbay Corporation (Newbay) filed a motion to shorten the answer period in response to the Commission's Notice of Petition For Revocation of Qualifying Facility Status issued August 9, 1991, in the above-docketed proceeding. The Commission's Notice was published in the **Federal Register** on August 16, 1991 (56 FR 40891). In its motion, Newbay states that it is necessary for the Commission to take action in this proceeding before August 29, 1991 due to a hearing currently scheduled before the Rhode Island Coastal Resources Management Council (CRMC) on that date so that Newbay can participate effectively at the hearing.

Upon consideration, notice is hereby given that the time for filing comments, answers, or protests is shortened to and including August 26, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-20188 Filed 8-22-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3988-3]

Environmental Impact Statements and Regulations: Availability of EPA Comments

Availability of EPA comments prepared August 5, 1991 through August 9, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-E65039-MS Rating EC1, W.W. Ashe Nursery Integrated Pests Management Plan, Implementation, DeSoto National Forest, Forest County, MS.

Summary

EPA believes that the preferred alternative, integrated pest management, is environmentally acceptable if rigorous monitoring and mitigation measures are included.

ERP No. D-AFS-J65178-CO Rating EC2, Corral Mountain Timber Sale, Implementation, San Juan National Forest, Pagosa Ranger District, Archuleta County, CO.

Summary

EPA finds that analysis was incomplete and insufficient in a number of areas. The Forest Service needs to address some of the broader ecological and land management issues pertaining to supporting old-growth communities within the present Forest Service management system. The Forest Service needs to provide a more detailed discussion of its analytical and implementation rationale for determining impacts and choosing appropriate area units of analysis and viability. A section devoted to the analysis of wetland impacts needs to be included.

ERP No. D-AFS-J65180-UT Rating LO, Deep Creek and Snow Bench Timber Sales, Approval and Implementation, Thousand Lake Mountain, Fishlake National Forest, Loa Ranger District, Wayne County, UT.

Summary

EPA finds that it has no significant objections to the proposed actions as presented in the draft EIS. Additionally, EPA finds the two alternatives 2 and 5 to be acceptable for the purposes and areas identified in the document.

ERP No. D–AFS–K31017–CA Rating EC2, Littlerock Dam and Reservoir Restoration Project, Implementation and Special Use Permit, Section 404 Permit, Los Angeles National Forest, Valyermo Ranger, Los Angeles County, CA.

Summary

EPA has environmental concerns with the project's potential to impact to wetlands, riparian habitat, water and air quality. The final EIS should further address project compliance with the Clean Water Act and the Clean Air Act and fully address mitigation for adverse environmental impacts.

ERP No. D–AFS–L65149–OR Rating EC2, Bergan Fire Salvage Timber Sale and other Fire Recovery Projects, Silver Creek Wild and Scenic River Designation, Implementation, Snow Mountain Ranger District, Ochoco National Forest, Harney County, OR.

Summary

EPA has environmental concerns regarding potential adverse impacts to water quality from fire salvage activities. Additional information is needed to describe the effectiveness or proposed mitigation, site-specific monitoring, and whether cumulative effects will contribute to the proposed action's environmental impacts.

ERP No. D–ICC–F53018–OH Rating EC2, Indiana and Ohio Railroad Line, Construction and Operation extending from the northern border at Brecon to the southern city limits of Mason, Right-of-Way, Butler, Warren, and Hamilton Counties, OH.

Summary

EPA expressed environmental concern about the project's purpose and need, and requested additional information associated with the "Build" alternative.

ERP No. D–NPS–D61035–MD Rating LO, Antietam National Battlefield General Management Plan, Implementation, Washington County, MD.

Summary

EPA has no objections to the proposed project.

Final EISs

ERP No. F–AFS–J65161–CO. Elkhead Creek/Slater Creek Vegetation Management Plan, Implementation, Routt National Forest, Bears Ears Ranger District, Routt County, CO.

Summary

EPA believes that the Forest Service's response concerning the actual methodology being employed, the timing and intended response due to unfavorable monitoring reports lacks specificity. The Forest Service identifies only general references to mitigation measures listed in Appendix A, not a cohesive and comprehensive plan.

ERP No. F–AFS–J65170–MT. Moose Creek Timber Sales and Road Construction reconstruction, Implementation, Lewis and Clark National Forest, Kings Hill Ranger District, Meagher County, MT.

Summary

EPA still recommends Alternative 5 as the most appropriate alternative, even though the Lewis and Clark National Forest has changed their preferred Alternative 2 by developing a new Alternative 2A. Serious concerns remain over impacts on fisheries and water quality.

ERP No. F–AFS–K61109–CA. Lake Red Bluff Recreation Development, Implementation, Mendocino National Forest, Sacramento River, Tehama County, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F–AFS–L65142–AK. Shelter Cove and George Inlet Areas Timber Sale, Implementation, Tongass National Forest, Ketchikan Ranger District, AK.

Summary

EPA has reviewed the final EIS and has no objections to the preferred alternative.

ERP No. F–BLM–H70000–KS. Kansas Comprehensive Resource Management Plan (RMP), Oil and Gas Leasing and Development, Implementation, Several Counties, KS.

Summary

EPA feels the final EIS adequately describes the process by which oil and gas wells are regulated on federal lands. EPA still remains concerned about the BLM's level of mitigation for impacts and monitoring to ensure that operators are remaining in compliance with federal regulations.

ERP No. F–FHW–F40303–MI. Haggerty Road Connector Construction, I–96/I–696/I–275 Interchange to Pontiac Trail, Funding and 404 Permit, Oakland County, MI.

Summary

EPA continues to have environmental objections to the project, and does not believe that the full extent of reasonably foreseeable adverse environmental impacts are fully disclosed in several key areas. In addition, EPA believes that the project's scope of review should have included substantial consideration for potential cumulative impacts associated with an upgraded highway connection between I–96 and M–59.

ERP No. F–FHW–F40305–MI. MI–45 Reconstruction, west of 68th Avenue to east of 24th Avenue, Funding and Section 404 Permit, Ottawa County, MI.

Summary

EPA expressed environmental concern about noise impacts, wetlands impacts as they pertain to suitable mitigation/compensation.

ERP No. F–FHW–F40313–IL. FAP 302 (formerly FAP 407)/IL–336 Construction, US 24 at Quincy to US 136 at Carthage, Funding and Section 404 Permit, Adams and Hancock Counties, IL.

Summary

EPA recommended that mitigation for impacted wetlands is accomplished on an in-kind basis.

ERP No. F–IBR–K39030–CA. Shasta Lake Outflow Temperature Control, Upper Sacramento River, Keswick Dam to Red Bluff Diversion Dam, Funding, Shasta County, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F1–AFS–J65134–WY. Threemile Area Timber Sale and Road Construction, Implementation, Medicine Bow National Forest Land and Resource Management Plan, Medicine Bow National Forest, Carbon County, WY.

Summary

EPA believes that the final EIS could be substantially improved in the area of the analysis of cumulative impacts. EPA also understands that this section might be summary in nature until more refined techniques are established.

Dated: August 20, 1991.

C. Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 91–20295 Filed 8–22–91; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3988-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed August 12, 1991 Through August 16, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910270, Draft Supplement, AFS, CA, Plumas National Forest Prototype Project, Augmenting Snow Pack by Cloud Seeding Using Ground Based Dispenses, Additional Information, Plumas and Sierra Counties, CA, Due: October 07, 1991, Contact: R.C. Bennett (916) 283–2050.

EIS No. 910271, Draft EIS, SCS, MO, Town Branch Watershed Protection Plan, Fish and Wildlife Improvement, Funding, Section 404 Permit, City of Albany, Gentry County, MO, Due: October 07, 1991, Contact: Russell C. Mills (314) 876–0900.

EIS No. 910272, Final EIS, FHW, WI, WI–26/Fort Atkinson Bypass Construction, Old WI–26/Existing WI–26 to the northern terminus of Existing WI–26 near Airport Road, Section 10 and 404 Permits and Funding, Koshkonong and Jefferson Townships, City of Fort Atkinson, Jefferson County, WI, Due: September 30, 1991, Contact: James L. Wenning (608) 264–5966.

EIS No. 910273, Draft Supplement, AFS, MT, East Boulder Mine Project, Platinum and Palladium Mining, Construction and Operation, Additional Alternative, Plan of Operations Approval and COE Section 404 Permit, Gallatin National Forest, Sweet Grass County, MT, Due: October 14, 1991, Contact: Sherm Sollid (406) 587–6701.

EIS No. 910274, Final EIS, AFS, MT, St. Joseph Timber Sale and Road Management, Implementation, Bitterroot National Forest, Stevensville Ranger District, Ravalli and Missoula Counties, MT, Due: September 30, 1991, Contact: Calvin Joyner (406) 777–5461.

EIS No. 910275, Final EIS, AFS, WA, Loose Bark/Grouse Butte West Timber Sale, Road Construction, Implementation, Mt. Baker-Snoqualmie National Forest, Mt. Baker Ranger District, Whatcom and Skagit Counties, WA Due: September 23, 1991, Contact: Patricia Grantham (206) 856–5700.

EIS No. 910276, Draft EIS, BLM, NM, Mimbres Resource Management Plan, Implementation, (MFP), La Cruces District, Dona Ana, Luna, Grant and Hidalgo Counties, NM, Due: November 25, 1991, Contact: Tim Salt (505) 525–8228.

EIS No. 910277, Draft EIS, AFS, OR, White King and Lucky Lass Uranium Mine Cleanup and Rehabilitation, Section 404, NPDES Permit and Special Use Permit, Licenses Approval, Fremont National Forest, Lakeview Ranger District, Lake County, OR, Due: October 07, 1991, Contact: Felix R. Miera Jr. (503) 947–3334.

EIS No. 910278, Draft EIS, NOA, DE, Delaware National Estuarine Research Reserve Management Plan, St. Jones River and Blackbird Creek Designation Sites, Implementation and Funding, Kent and Castle Counties, DE, Due: October 07, 1991, Contact: Ms. Susan E. Durden (202) 606–4122.

EIS No. 910279, Final EIS, NOA, SC, Ashepoo—Combahee—Edisto (ACE) Basin National Estuarine Research Reserve Management Plan, Site Designation, Beaufort, Colleton, and Charleston Counties, SC, Due: September 23, 1991, Contact: Ms. Susan E. Durden (202) 606–4122.

EIS No. 910280, Draft EIS, UMT, IL, Chicago Central Area Circulator Transit System Improvement, from Division Street (north) Halsted Street and the Chicago River, the Stevenson Expressway, and Lake Michigan, Funding, Cook, DuPage, Kane, Lake, McHenry and Will, IL, Due: October 07, 1991, Contact: Donald Gismondi (312) 353–2865.

EIS No. 910281, Draft EIS, BLM, CO, NM, TransColorado Gas Pipeline Transmission Project, Construction, Operation, and Maintenance, Section 404 and 10 Permits; Right-of-Way and Special Use Permit, La Plata, Delta, Dolores, Garfield, Mesa, Montezuma, Montrose, Rio Blanco, San Miguel Counties and San Juan County, NM, Due: October 08, 1991, Contact: Chuck Finch (303) 249–7791.

EIS No. 910282, Final EIS, USA, KY, MD, PA, AL, Lexington Facility of Lexington-Bluegrass Army Depot Closure and Realignment of functions to Tobyhanna Army Depot, Lackawanna and Wyoming Counties, PA; Letterkenny Army Depot, Fulton and Franklin Counties, PA and Washington County, MD; Redstone Arsenal, Madison County, AL; and Anniston Army Depot, Calhoun County, AL, Due: September 23, 1991, Contact: William R. Haynes (502) 582–6015.

EIS No. 910283, Final EIS, USA, NM, OR, NV, AZ, OR, Fort Wingate Depot and Navajo Depot Activity Closures, Realignment of Umatilla Depot Activity with transfers to Hawthorne Army Ammunition Plant, Mineral County, NV; McKinley County, NM; Coconino County, AZ; Morrow and Umatilla Counties, OR, Due: September 23, 1991, Contact: Arver Ferguson (817) 334–2095.

EIS No. 910284, Final EIS, USA, MD, VA, MD, Fort George G. Meade and Fort Holabird Comprehensive Base Realignment and Partial Closure, Implementation, Relocation from Fort Meade and Fort Holabird to Fort Belvoir, Fairfax County, VA and Anne Arundel and Baltimore Counties MD, Due: September 23, 1991, Contact: Keith Harris (301) 962–4999.

EIS No. 910285, Draft Supplement, AFS, ID, Sunbeam Mining Project Modifications, Grouse Creek Gold and Silver Mines Project, Development and Operation, Section 404 Permit and NPDES Permit, Challis National Forest, Yankee Fork Ranger District, Custer County, ID, Due: October 11, 1991, Contact: Ken Rodgers (208) 838–2201.

EIS No. 910286, Draft Supplement, APH, AL, AZ, AR, CA, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX, VA, National Boll Weevil Cooperative Control Program, Implementation and Funding, AL, AZ, AR, CA, FL, GA, KS LA, MS, MO, NM, NC, OK, SC, TN, TX, VA, Due: October 07, 1991, Contact: Nancy Sweeney (301) 436–8565.

EIS No. 910287, Final EIS, FHW, AL, Patton Island Bridge and Approach Roads Construction, crossing the Tennessee River and connecting the cities of Florence and Muscle Shoals, Funding, 404 Permit, TVA Permit, and CGD Bridge Permit, Colbert and Lauderdale Counties, AL, Due: September 23, 1991, Contact: Joe D. Wilkerson (205) 832–7370.

EIS No. 910288, Draft EIS, USA, NM, White Sands Missile Range Aerial Cable Test Capability Facility, Construction, Integration and Development, Jim Site or Fairview Mountain Site Selection, Socorro, Lincoln, Otero, and Sierra Counties, NM, Due: October 07, 1991, Contact: Ronald V. Hite (505) 678–2224.

EIS No. 910289, Final EIS, USA, IN, AZ, IN, AZ, Jefferson Proving Ground Base Closure and Realignment, Relocating the U.S. Army Munitions Production Acceptance Test and Evaluation Mission to Yuma Proving Ground, Yuma and La Paz Counties, AZ and Jefferson, Jennings, and Ripley Counties, IN, Due: September 24, 1991, Contact: James M. Baker (502) 582–5774.

EIS No. 910290, Final EIS, USA, CO, UT, TX, Pueblo Depot Activity Realignment, Transfers of Ammunition Mission to Red Army Depot, Davis, Salt Lake, Tooele and Utah Counties, UT; Bowie County, TX and Pueblo County, CO, Due: September 23, 1991, Contact: Robert Nebel (402) 221–4598.

Amended Notices

EIS No. 910134, Draft EIS, AFS, MT, East Boulder Mine Project, Platinum and Palladium Mining, Construction and Operation, Plan of Operations Approval and COE Section 404 Permit, Gallatin National Forest, Sweet Grass County, MT, Due: June 24, 1991, Contact: Leonard L. Lucero (406) 587–6701. Published FR 05–10–91—Review period reopened and extended.

EIS No. 910262, Draft EIS, EPA, VA, Offshore Norfolk Ocean Dredged Material Disposal Site, Designation, Norfolk, VA, Due: October 07, 1991, Contact: William Muir (215) 597–2541. Published FR 8–09–91—Refiled due to completion of distribution.

Dated: August 20, 1991.

C. Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 91–20296 Filed 8–22–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3986–6]

Open Meeting on September 6, 1991: Pollution Prevention Education Committee of the National Advisory Council for Environmental Policy and Technology

Under Public Law 92563 (The Federal Advisory Committee Act), EPA gives notice of a fact finding meeting of the Focus Group on Environmental Permitting of the Pollution Prevention Education Committee (PPEC). The PPEC is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory to committee to the Administrator of the EPA. The first meeting of the Academic Working Group of the PPEC will be a fact finding meeting held, on September 6, 1991 from 9 a.m. to 5 p.m. at The Director's Conference Room, Washington State Department of Wildlife, 600 Capitol Way North, Olympia, Washington, 98501–1091.

The Academic Working Group's mission involves establishing guidelines for the EPA's creation of national leadership in pollution prevention education by fostering curriculum development and use, and institutional networking. Goals include working with textbook publishers and accreditation boards to promote environmental literacy and the integration of pollution prevention into curricula and course work. The group also seeks to encourage individuals and institutions in academia realize environmental awareness by awarding grants, holding roundtables, and honoring green campuses.

The group identifies two levels to address in the pursuit of its agenda. The first involves networking on a national basis among like institutions, such as Ph.D.-granting universities, non-Ph.D. four-year colleges, junior colleges and technical schools; the second is the job of regional networking. The group envisions beacon campuses to serve as models for other institutions, much in the way that Tufts University functions today.

The group is pursuing discussions of a project tentatively described as the EPA National Prize in Pollution Prevention Education. Two prizes would be awarded in each region; one would recognize curriculum development, and the second would be determined by progress in making campuses environmentally sound or "green." The working group has made contact with a number of campuses who have performed "environmental audits" in an effort to measure the environmental impact of their campuses. Several of these campuses of integrated environmental impact assessment data into on-going course work, creating a data base for studying changes over time. These campuses will serve as case studies for what is possible within a campus environment. They will also help to establish criteria for which a "green campus" award may be recommended.

The group will also discuss ways in which academic institutions can best coordinate with their communities and on the state level with respect to fostering the pollution prevention ethic.

Members of the public interested in further information may contact Peter Voigt, EPA (A–101 F6), room 115, 499 South Capital Street, SW., Washington, DC 20460; (202) 245–3752.

Robert Hardaker,

Acting Director NACEPT, Designated Federal Official.

[FR Doc. 91–20262 Filed 8–22–91; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00307; FRL–3941–1]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the peer review classification of Triphenyltin hydroxide (TPTH) as a Group B_2 carcinogen; Hexaconazole as a Group C carcinogen; Metolachlor as a Group C carcinogen;Prodiamine as a Group C carcinogen; and a dose-response analysis for ETU. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, September 18, 1991, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 418–1234.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, –Designated Federal Official, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, –U.S. EPA, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 821C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA –(703) 557–4369/2244.

Copies of documents related to the following items 1 through 5 may be obtained by contacting: By mail: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, –U.S. EPA, 401 M St., SW., Washington, DC 20460. Office location and telephone number:–Rm. 1128 Bay, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–2805.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following topics:

1. Review a set of scientific issues in connection with the Agency's classification of TPTH as a Group B_2, probable human carcinogen, based on a significant increase in fatal pituitary gland adenomas in female Wistar rats and significant increasing dose-related-trends in female NMRI mice of combined hepato-cellular (adenoma and/or carcinoma) tumors and, separately, of hepatocellular carcinomas.

2. Review a set of scientific issues in connection with the Agency's classification of Hexaconazole as a Group C, possible human carcinogen, based on significant increase in benign Leydig cell tumors, with a positive dose-related trend in rats.

3. Review a set of scientific issues in connection with the Agency's classification of Metolachlor as a Group C, possible human carcinogen, based on an increase in hypertrophic-hyperplastic liver nodules and hepatocellular carcinomas in female CR rats; and induction of nasal turbinate tumors in female CD-Crl:CD (SD) BR rats.

4. Review a set of scientific issues in connection with the Agency's classification of Prodiamine as a Group C, possible human carcinogen, based upon a compound-related increase in thyroid follicular cell neoplasia and pancreatic adenomas in SD rats, and an increase in subcutaneous fibrosarcomas in male CD-1 mice.

5. Review a dose-response risk assessment for the carcinogenic effects of ETU in rats and mice.

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or the phone number given in the **FOR FURTHER INFORMATION CONTACT:** section to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advance notice to the Designated Federal Official, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in room 1128 Bay at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel.

Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit ten copies of a summary no later than September 5, 1991, in order to ensure appropriate consideration by the Panel.

Copies of the Panel's report of their recommendations will be available 5–10 working days after the meeting and may be obtained by contacting the Public Docket and Freedom of Information Section at the address or telephone number given above.

Dated: August 20, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc 91–20301 Filed 8–22–91; 8:45 a.m.]

BILLING CODE 6560–50–F

[FRL–3987–9]

Privacy Act of 1974; System of Records

ACTION: Notice of amendment to existing Privacy Act system of records.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend its Privacy Act system of records covering payroll data maintained on current and former EPA employees to make editorial revisions and minor administrative modifications, to update and clarify certain provisions, and to add compatible routine uses.

EFFECTIVE DATE: This proposed action will be effective, without further notice, September 23, 1991, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be addressed to: Branch Chief, EPA, Headquarters Accounting Operations Branch, 401 M Street SW., (PM–226), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Henrietta Dickerson, EPA, Headquarters Accounting Operations Branch, 401 M Street SW., (PM–226), Washington, DC 20460, (202) 382–5157.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), EPA proposes to amend a system of records maintained by the Agency. This system was last published in the **Federal Register** on April 30, 1985 (50 FR 18303) as EPA–1, "Payroll and Accounting System (EPAYS; Payroll Accounting Master File and Detail History File)." Except as noted below, all changes being published are editing corrections, updating and clarifying amendments, and other minor administrative revisions which have occurred since the previous publication of the system in the **Federal Register.**

The name of the system has been shortened and simplified to read "EPA–1, Environmental Protection Agency Payroll System (EPAYS)." The portions of the notice describing the categories of individuals, categories of records, and the Agency's policies and procedures for storing, retrieving, retaining and disposing of records in the system have been revised to provide a more accurate, detailed and precise description of the individuals, records and policies included in the system. The section of the system listing the record sources has been modified to reflect that information in the system may be derived from consumer reporting agencies, debt collection agencies and other Federal agencies. A "Purpose" section, which was inadvertently omitted from previous publications, has been included in the system notice.

The routine use provision of the system notice has also been modified as follows: Routine uses have been added to provide for disclosures to the Department of Agriculture in connection with administration of the employee Thrift Savings Plan; to the Department Labor regarding employee claims for injuries or illness; to unemployment offices in connection with claims for unemployment benefits by former EPA employees; to EPA contractors and others providing services to the Agency when access to the records is necessary for performance of the activities; to Federal, state, local or foreign agencies for authorized computer matching programs; to appropriate Federal agencies, consumer reporting agencies, debt collection contractors and other EPA agents for authorized debt collection purposes; and to Federal Agencies authorized to conduct records management inspections or to receive reports related to EPA financial management responsibilities.

In addition, a list of five general routine uses currently applicable to the EPAYS system of records, but published in a separate **Federal Register** notice (40 FR 43194, September 18, 1975), have been reprinted with modifications in this notice. The routine uses have been modified to provide more accurate and precise descriptions of the permitted disclosures, including disclosures to Congress at the individual's request; for law enforcement purposes; in connection with litigation and other judicial or administration proceedings; and in connection with employment,

contract and benefit entitlement decisions.

The proposed amendments do not require a report of an altered system of records pursuant to 5 U.S.C. 552a(r).

Dated: August 15, 1991.

Charles L. Grizzle,

Assistant Administrator for Administration and Resources Management.

EPA 1

SYSTEM NAME:

Environmental Protection Agency's Payroll System (EPAYS) EPA/FMD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All EPA Servicing Finance Offices. These are:

Headquarters—401 M Street, SW., Washington, DC 20460
Region 1—John F. Kennedy Bldg. R2203, Boston, MA 02203
Region 2—26 Federal Plaza, New York, NY 10278
Region 3—841 Chestnut Street, Philadelphia, PA 19107
Region 4—345 Courtland Street, NE., Atlanta, GA 30365
Region 5—230 South Dearborn Street, Chicago, IL 60604
Region 6—1445 Ross Avenue, suite 1200, Dallas, TX 75202–2733
Region 7—726 Minnesota Avenue, Kansas City, KS 66101
Region 8—999 18th Street, suite 500, Denver, CO 80202–2405
Region 9—75 Hawthorne Street, San Francisco, CA 94105
Region 10—1200 6th Avenue, Seattle, WA 98101
Cincinnati Financial Office—26 West Martin Luther King Dr. Cincinnati, OH 45268
Las Vegas Financial Office—P.O. Box 98515, Las Vegas, NV 89193–8515
Research Triangle Park, NC (MD–20), 27711.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former EPA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to pay, cash awards and leave. This includes, but is not limited to, information such as names, date of birth, social security numbers, home addresses, grade, employing organization, salary, pay plan, number of hours worked, leave accrual rate, usage, and balances, Civil Service Retirement and Federal Retirement System (FERS) contributions including TSP, FICA withholdings, Federal, state, and city tax withholdings, Federal Employees Group Life Insurance withholdings, Federal Employees Health Benefits withholdings, charitable deductions, allotments to financial organizations, garnishment documents, savings bonds allotments, union dues withholdings, deductions for IRS levies, court ordered child support levies, Federal salary offset deductions, and information on the leave transfer program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments: 5 U.S.C. 301; 5 U.S.C. 5101; 44 U.S.C. 3101; 31 U.S.C. 3512; Executive Order 9397.

PURPOSE:

The records are used to administer the pay and leave requirements of the Environmental Protection Agency, including processing, accounting and reporting requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information in this system may be disclosed for routine uses as follows:

1. To the Department of Treasury to issue checks and U.S. Savings Bonds.

2. To the Department of Agriculture National Finance Center to credit Thrift Savings Plan deductions to employee accounts.

3. To the Department of Labor in connection with a claim filed by an employee for compensation due to a job connected injury or illness.

4. To the Internal Revenue Service; Social Security Administration; State and local tax authorities in connection with the withholding of employment taxes.

5. To State Unemployment Offices in connection with a claim filed by former employees for unemployment benefits.

6. To the officials of labor organizations as to the identity of employees contributing union dues each pay period and the amount of dues withheld from each employee.

7. To OPM and Health Benefit carriers in connection with enrollment in and/or payroll deductions.

8. To Combined Federal Campaign in connection with payroll deductions for charitable contributions.

9. To a member of Congress or a Congressional Office in response to an inquiry from that member or office made at the request of the individual to whom the record pertains.

10. To EPA contractors, grantees or volunteers who have been engaged to assist EPA in the performance of a contract, service, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients are required to maintain records in the system in accordance with the requirements of the Privacy Act.

11. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

12. In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the records were collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determined that the litigation is likely to affect the Agency. Such disclosures include, but are not limited to, those made in the course of presenting evidence, conducting settlement negotiations, and responding to subpoenas and request for discovery.

13. To an appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

14. To a Federal agency which has requested information relevant to its decision in connection with the hiring or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

15. To a Federal, State or local agency where necessary to enable EPA to obtain information relevant to an EPA decision concerning the hiring or

retention of an employee; the letting of a contract, or the issuance of a security clearance, license, grant, or other benefit.

16. To representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

17. To the General Accounting Office, Office of Management and Budget, and Department of Treasury for the purposes of providing reports required of EPA in carrying out EPA's financial management responsibilities.

18. To provide information as necessary to other Federal, State, local or foreign agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals (in that event, EPA will comply with the Computer Matching and Privacy Protection Act of 1988 and appropriate Office of Management and Budget guidelines).

19. The following disclosures of information in this system may be made in order to help collect debts owed the EPA.

a. To provide information to the Internal Revenue Service in order to obtain taxpayer mailing addresses to locate such taxpayers for the purposes of collecting debts owed the EPA.

b. To provide taxpayer mailing addresses obtained from the IRS to agents of EPA in order to locate the taxpayer for debt collection purposes. The Debt Collection Act of 1982 prohibits the disclosure of such mailing addresses to consumer reporting agencies except for the purpose of having such agencies prepare reports on the taxpayer for use by Federal agencies. Accordingly, EPA will disclose this information to consumer reporting agencies only to obtain credit reports to help collect debts owed the EPA.

c. To provide debtor information to consumer reporting agencies in order to obtain credit reports for use by EPA for debt collection purposes.

d. To provide debtor information to other Federal agencies to effect salary and administrative offsets.

e. To provide debtor information to debt collection agencies under contract to EPA to help collect debts owed EPA. Such agencies will be required to comply with the Privacy Act and their agents will be made subject to the criminal penalty provisions of the Act.

f. To provide debtor information to the Justice Department for litigation or further administrative action in connection with debt collection.

g. To provide debtor information to the Internal Revenue Service for the purpose of reporting discharged debts declared uncollectible as a result of defaulted obligations.

Note: The term "debtor information" as used in the routine uses above is limited to the individual's name, address, social security number, and other information necessary to identify the individual; the amount, status and history of the claim; and the agency or program under which the claim arose.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosure may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Tapes, disks, microfiche and other hard copies. Computer tapes and disks maintained in Research Triangle Park, North Carolina, National Computer Center. Back up computer tapes maintained in Cincinnati, Ohio, Cincinnati Financial Office.

RETRIEVABILITY:

Payroll records are retrieved primarily by social security number. Employee name is used as the secondary identifier.

SAFEGUARDS:

Records are accessible only to authorized EPA or contractor personnel. Information on automated records at each of the servicing finance offices is restricted through the use of passwords and sign on protocols which are required to be changed every ninety days. Other records and microfiche are maintained in offices which are locked during nonduty hours.

RETENTION AND DISPOSAL:

Employee records are retained on magnetic tapes for an indefinite period of time. Microfiche and manual reports are maintained for varying periods of time, at which time they are disposed of by shredding.

Ultimately, all records are disposed of in a manner consistent with EPA Records Control Schedules.

SYSTEMS MANAGER(S) AND ADDRESS:

Director, Financial Management Division (PM–226F), U.S. EPA, 401 M Street SW., Washington, DC 20460

NOTIFICATION PROCEDURE:

Current EPA employees who wish to determine whether this system of records contains information on them may do so by contacting the appropriate Agency Servicing Finance Office in person. Employees must present their photo identification passes to verify their identity. EPA employees may, and all other individuals must, submit their inquiries in writing to the System Manager at the address listed above. Written requests should be notarized and should contain the requester's full name, current address, telephone number, and Social Security Number (SSN). The SSN will be used only for identification purposes. The System Manager may require additional information.

Record access procedures:

Same as Notification Procedure described above. In addition, the records sought should be specified.

Contesting record procedures:

To request a correction or amendment of a record pertaining to the individual the Notification Procedure described above should be followed: In addition, the individual should identify the record to be corrected and the corrective action sought, and provide supporting justification for the correction.

Record source categories:

Individuals covered by the system, supervisors, consumer reporting agencies, debt collection agencies, the Department of Treasury and other Federal agencies.

System exempted from certain provisions of the Act:

None.

[FR Doc. 91–20264 Filed 8–22–91; 8:45 am]
BILLING CODE 6560–50–M

[FRL–3987–4]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; the Estate of Jay E. Altfater, Formerly d/b/a Lancaster Metal Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into an administrative consent agreement under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability

Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(h). This proposed settlement is intended to resolve the liabilities under CERCLA of the settling parties for response costs incurred and to be incurred at the United Scrap Lead facility, Highway 25A in Troy, Ohio.

DATES: Comments will be received until September 23, 1991.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, and should refer to: In Re United Scrap Lead Site in Troy, Ohio, U.S. EPA Docket No. V–W–91–C–11.

FOR FURTHER INFORMATION CONTACT: Sherry L. Estes, U.S. Environmental protection Agency, Office of Regional Counsel, 5CS–TUB–7, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–7164.

SUPPLEMENTARY INFORMATION: Notice of Administrative Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the United Scrap Lead hazardous waste site at Highway 25A, Troy, Ohio. The present agreement was proposed by EPA Region V on March 7, 1991. Subject to review by the public pursuant to this Notice, the agreement has been approved by the United States Department of Justice. The settlement resulted from negotiations between the attorney for the Settling Parties, and U.S. EPA.

EPA is entering into this agreement under the authority of section 122(h) and 107 of CERCLA. Section 122(h) authorizes administrative settlements with parties potentially liable under section 107 of CERCLA if the claim has not been referred to the Department of Justice for further action. Under this authority, the agreement proposes to settle the potential CERCLA Section 107 liability of a party in the United Scrap Lead case, an individual scrap broker, Jay E. Altfater, now deceased, whose assets are presently owned by his probate estate. The parties to this agreement are the probate estate, the two co-executors to the estate, and the U.S. EPA. The proposed settlement reflects, and was agreed to based on, conditions as known to the parties as of the time that this agreement becomes effective.

The Settling Parties (the estate and the two co-executors) are required to pay $27,000 of the Government's past response costs and future response costs at the Site. The proposed settlement acknowledges that Settling Parties have already paid in full this obligation, but also provides that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

The U.S. Environmental Protection Agency has made a preliminary determination that the proposed settlement is in the public interest, because otherwise the assets of the probate estate might be distributed, leaving the Agency without recovery for the clean up costs associated with the operations of Mr. Altfater's business, Lancaster Metal Company.

The U.S. Environmental Protection Agency will receive written comments relating to this agreement for 30 days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V Office of Regional counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Additional background information relating to the proposed settlement is available for review at the EPA's Region V Office of Regional Counsel.

Authority: The comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 91–20263 Filed 8–22–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

American President Lines Ltd. et al; 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.: 203–009735–029.

Title: Steamship Operators Intermodal Committee Agreement.

Parties: American President Lines, Ltd, Atlantic Container Line, Columbus Line, Inc., Companhia de Navegacao Maritima Netumar, Crowley Maritime Corporation, Evergreen International (U.S.A.) Corporation, Farrell Lines, Incorporated, Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Sea-Land Service, Inc., Yang Ming Marine Line Corporation, Wilhelmsen Lines USA Inc. Zim Container Service.

Synopsis: The proposed amendment would delete Atlantic Container Line and Mitsui OSK Lines Ltd. as parties to the Agreement.

Dated: August 19, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–20180 Filed 8–22–91; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 91–33]

Transportation Services, Inc. as Agent for Sea-Land Service, Inc. v. Pumice Supply Co.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Inc. as agent for Sea-Land Service, Inc. ("Complainant") against Pumice Supply Co. ("Respondent") was served August 19, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to Complainant's applicable tariffs or service contracts for sixteen shipments of pumice rock from Guatemala City, Guatemala to New Orleans, Louisiana between February 1989 and December 1989.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are

necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by August 19, 1992, and the final decision of the Commission shall be issued by November 17, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-20249 Filed 8-22-91; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

U.S. Express, Inc., 137-44 94th Ave., Jamaica, New York 11435. Officer: Thomas D. Murray, President.

Thomas J. Tomasco, 150 Midatlantic Parkway, Thorofare, NJ 08086, Sole Proprietor.

Nippon Express Hawaii, Inc., 2270 Kalakaua Ave., suite 1517, Honolulu, Hawaii 96815. Officers: Shinsuke Otsuka, President/Director, Yuichiro Mori, Vice President, Takashi Saito, Vice President, Einji Kanazawa, Secretary/Director, Takashi Goto, Director.

Chicagoland International Forwarding, Inc., 506 West Higgins Road, Park Ridge, IL 60068. Officers: John Harrington, President, Thomas C. Smith, Vice President.

Affordable Freight Forwarders, Inc., 100 Dunbar Avenue, Oldsmar, FL 34677. Officers: Arie Blok, President, Gary J. Krupa, Vice President.

Galaxy Forwarding Inc., 1424 NW. 82nd Ave., Miami, FL 33126. Officers: George Pineiro, President, Stanley Leskin, Vice President, Malvis Sanchez, Secretary, Antonio Traizarry, Treasurer.

Amerpole International, Inc., 220 McCellan Highway, E. Boston, MA 02128. Officers: Alfred Landano, Director, Anna Landano, Director.

Continental Equipment, Inc., 4601-C Washington Blvd., Baltimore, MD 21227. Officer: Sten Hakan Emilsson, President/Treasurer.

Kelly's Freight Forwarders Inc., 301 SW. 112nd Avenue, Miami, FL 33184. Officer: Louis Colindres President.

F.R.T. International Inc. dba Frontier Freightliner, 18805 Laurel Park Road, Rancho Dominguez, CA 90220. Officers: Brian B. Chung, President, Joyce D. Chung, Secretary.

Fast Forward and Company, 8131 Phaeton Drive, Oakland, CA 94605, Jennifer Y.C. Eng, Sole Proprietor.

Freight Management Services, Inc., 200 West Thomas St., suite 305, Seattle, WA 98119. Officers: Douglas K. Wickre, President/Director/Stockholder, Gail E. Wickre, Secretary/Director/Stockholder, David A. Mayo, V. President Finance & Admin./Director.

Demetrios Air Freight Co., Inc., 144 Addision Street, E. Boston, MA 02128. Officer: Demetrios Tsiaousopoulos, President.

Leticia S. Redondo, 718 Edinburgh Street, San Francisco, CA 94112, Sole Proprietor.

Carlos Lopez-Chavez, 114 W. 16th Street, Hialeah, FL 33010, Sole Proprietor.

By the Federal Maritime Commission.

Dated: August 19, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-20179 Filed 8-22-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Bancshares of St. Landry, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 12, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. First Bancshares of St. Landry, Inc., Opelousas, Louisiana; to merge with Iberia Bancshares Corporation, New Iberia, Louisiana, and thereby indirectly acquire Bank of Iberia, New Iberia, Louisiana.

Board of Governors of the Federal Reserve System, August 19, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-20207 Filed 8-22-91; 8:45 am]

BILLING CODE 6210-01-F

Michigan National Corporation; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 12, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. Michigan National Corporation, Farmington Hills, Michigan; to acquire Independence One Asset Management Corporation, Farmington Hills, Michigan, and thereby engage in providing asset management, servicing, and collection activities for unaffiliated third parties. *NCNB Corporation*, 77 Federal Reserve Bulletin 124 (1991).

Board of Governors of the Federal Reserve System, August 19, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-20208 Filed 8-22-91; 8:45 am]

BILLING CODE 6210-01-F

Gad Zeevi; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 12, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Gad Zeevi, London, England; to acquire 94.9 percent of the voting shares of Ameritex Bancshares Corporation, Fort Worth, Texas, and thereby indirectly acquire Riverbend Bank, N.A., Fort Worth, Texas; American Bank, Grapevine, Texas; and American Bank of Haltom City, Haltom City, Texas.

Board of Governors of the Federal Reserve System, August 19, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-20209 Filed 8-22-91; 8:45 am]

BILLING CODE 6210-01-F

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 acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080691 AND 081691

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
CPI Corp., Carl D. Newton, III, FPI Holding Corporation	91-1212	08/06/91
Chevron Corporation, Great Western Resources Inc., Great Western Offshore Inc.	91-1217	08/06/91
The Kassar Family Trust, B.T. Trustees (Jersey) Ltd., LIVE Entertainment, Inc., LIVE Entertainment, Inc.	91-1240	08/06/91
Mosvold Shipping AS, Grosvenor Holding Limited, Hogarth Shipping Corporation	91-1251	08/06/91
Damon Group Inc., Ballantrae Partners, L.P., Damon Corporation	91-1223	08/07/91
Saratoga Partners II, L.P., National Record Mart, Inc., National Record Mart, Inc	91-1255	08/07/91
American Southwest Mortgage Investments Corp., Residential Mortgage Investments, Inc., RMA Financial Corporation/Residen. Mortg. Accept., Inc	91-1219	08/08/91
S.I. Newhouse, Jr., R.E. Turner, Turner Broadcasting System, Inc	91-1237	08/08/91
Mitsubishi Motors Corporation, Chrysler Corporation, Diamond-Star Motors Corporation	91-1192	08/09/91
Telephone and Data Systems, Inc. Voting Trust, Tri-State Cellular Partnership, Tri-State Cellular Partnership	91-1252	08/09/91
Donald E. Newhouse, R.E. Turner, Turner Broadcasting System, Inc	91-1260	08/09/91
Amoco Corporation, General Electric Company, General Electric Capital Corporation	91-1268	08/09/91
Information Partners Capital Fund, L.P., Richard C. Hawk, Hemar Corporation	91-1284	08/09/91
JWP Inc., Brandt Engineering Co., Inc., Brandt Engineering Co., Inc	91-1198	08/13/91
Aetna Life and Casualty Company, Bay Pacific Health Corporation, Bay Pacific Health Corporation	91-1208	08/13/91
Huntington Bancshares Inc., The Cumberland Federal Bancorporation, Inc., The Cumberland Federal Savings Bank	91-1229	08/13/91
Corning Incorporated, Jack L. Custer, Wadsworth/ALERT Laboratories, Inc.	91-1247	08/13/91
George Soros, Pansophic Systems, Incorporated, Pansophic Systems, Incorporated	91-1256	08/13/91
Anuhco, Inc., Estate of Paul E. Crouse, Deceased, CC Investment Corporation	91-1287	08/13/91
Glenn R. Jones, FKC Partners, Empire Cable Television, Inc	91-1181	08/14/91
Glenn R. Jones, Shapell Industries, Inc., Empire Cable Television, Inc	91-1199	08/14/91
Medco Containment Services, Inc., Rix Dunnington Inc., Rix Dunnington Inc	91-1241	08/14/91
Rix Dunnington Inc., Medco Containment Services, Inc., Synetic, Inc	91-1243	08/14/91
Kobe Portopia Hotel Co., Ltd., EIE-international corporation, EIE Saipan Corporation	91-1258	08/14/91
Perstorp AB, Arnold E. Ditri, Lafayette Automotive Industrial Corp.	91-1274	08/14/91
JWP Inc., Telenova, Inc., Telenova, Inc.	91-1288	08/14/91
CBS Inc., Midwest Communications, Inc., Midwest Communications, Inc.	91-1289	08/14/91
Continental Materials Corporation, Whitman Corporation, Krack Corporation	91-0989	08/15/91
General Electric Company, The Chase Manhattan Corporation, Chase Manhattan Leasing Company—Technology Equipment	91-1270	08/15/91
Western Mining Corporation Holdings Limited, Australian Consolidated Minerals Ltd., Australian Consolidated Minerals Ltd.	91-1282	08/16/91
Trustees of the Estate of Bernice Pauahi Bishop, Highness Kosan Co., Ltd., WM Associates	91-1293	08/16/91
Heidelberger Zement AG, J. Thomas Holton, Sherman International Corp.	91-1295	08/16/91
Capital Holding Corporation, Durham Corporation, Durham Corporation	91-1301	08/16/91
Sumitomo Metal Industries, Ltd., Read-Rite Corporation, Read-Rite Corporation	91-1302	08/16/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representative, 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. 91–20251 Filed 8–22–91; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3339]

The Perrier Group of America, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Connecticut-based company and its subsidiary from making false claims that any mineral water it sells is unprocessed or unfiltered, or regarding the manner by which the water is carbonated.

DATES: Complaint and Order issued August 5, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Robert Cheek, FTC/S–4002, Washington, DC 20580. (202) 326–3045.

SUPPLEMENTARY INFORMATION: On Tuesday, March 26, 1991, there was published in the **Federal Register**, 56 FR 12541, a proposed consent agreement with analysis In the Matter of The Perrier Group of America, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91–20250 Filed 8–22–91; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F–0289]

Rohm and Haas Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of methyl methacrylate/butyl acrylate-grafted polypropylene as a component of propylene homopolymer and copolymer food-contact materials.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, 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: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4272) has been filed on behalf of the Rohm and Haas Co., c/o 1150 17th St. NW., Washington, DC 20036, proposing that the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of methyl methacrylate/butyl acrylate-grafted polypropylene for use as a component of propylene homopolymer and copolymer food-contact materials.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 15, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–20218 Filed 8–22–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90P–0193]

Cottage Cheese Deviating From Identity Standard; Amendment of Temporary Permit of Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is amending a temporary permit issued to The Kroger Co. to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identify for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131) to include 340-gram (g) (12-once (oz)) and 454-g (16-oz) container sizes not specified in the original temporary permit for market testing. In addition, the milkfat content allowed in the nonfat cottage cheese test product is changed from "0.1 percent" to "less than 0.4 percent."

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0106.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 1990 (55 FR 32473), FDA issued a temporary permit under the provisions of 21 CFR 130.17 to The Kroger Co., 1014 Vine Street, Cincinnati, Ohio 45202, to market test in interstate commerce "nonfat cottage cheese." The agency issued the permit to facilitate interstate market testing of a nonfat cottage cheese, formulated from dry curd cottage cheese and a dressing, such that the finished product contained 0.1 percent milkfat. The food deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the test product contains 0.1 percent milkfat compared to not less than 4.0 percent milkfat in cottage cheese and 0.5 to 2.0 percent milkfat in lowfat cottage cheese. The test product also deviates from the U.S. standard of identify for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The test product meets all requirements of the standards with the

exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese but contains less fat.

The Kroger Co. has requested that FDA amend its temporary permit to include container sizes not previously specified. The company states that these changes in package size are necessary, based on preliminary acceptance and consumer requests that the product be offered in container sizes beyond the current 680-g (24-oz) container size.

The Kroger Co. has also requested that FDA change the level of milkfat allowed in the test product form "0.1 percent" to "less tan 0.4 percent." The Company maintains that this amendment will not alter the substance of the temporary permit (55 FR 32473), but will reflect a more realistic statement of the nutritional values of the product based on experience gained from mass production. Milkfat content remains less than 0.5 g per serving.

Therefore, under the provision of 21 CFR 130.17(f), FDA is amending the temporary permit to include 340-g (12-oz) and 454-g (16-oz) container sizes not previously specified. In addition, FDA is changing the level of milkfat allowed in the test product from "0.1 percent" to "less than 0.4 percent." All other terms and conditions of this permit remain unchanged.

Dated: August 15, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-20291 Filed 8-22-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91P-0246]

Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Marigold Foods, Inc., to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 21, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0112.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Marigold Foods, Inc., 2929 University Ave. SE., Minneapolis, MN 55414.

The permit covers limited interstate marketing tests of a nonfat cottage cheese, formulated from dry curd cottage cheese and a dressing, such that the finished product contains less than 0.5 gram of milkfat per serving. The food deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the test product contains 0.5 percent milkfat compared to not less than 4.0 percent milkfat in cottage cheese, and 0.5 to 2.0 percent milkfat in lowfat cottage cheese. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The test product meets all requirements of the standards with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese products with dressing but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 680,400 kilograms (1,500,000 pounds) of the test product. The product will be manufactured at Marigold Foods, Inc., 15 Fourth St., Farmington, MN 55024, and distributed in Illinois, Indiana, Iowa, Michigan, Minnesota, and Wisconsin.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR Part 101. This permit is effect for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 21, 1991.

Dated: August 15, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-20292 Filed 8-22-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91P-0270]

Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Oak Farms Dairy to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 21, 1991.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW, Washington DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Oak Farms Dairy, 1114 North Lancaster Avenue, Dallas, TX 75203.

The permit covers limited interstate marketing tests of a nonfat cottage cheese, formulated from dry curd cottage cheese and a dressing, such that the finished product contains less than 0.5 percent milkfat and less than 0.5 gram fat per serving. The food deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of cottage cheese is not less than 4.0 percent, and

the milkfat content of lowfat cottage cheese ranges from 0.5 to 2.0 percent. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The test product meets all requirements of the standards with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese products with dressing but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 454,000 kilograms (1 million pounds) of the test product. The product will be manufactured at Oak Farms Dairy, 1114 North Lancaster Avenue, Dallas, TX 75203, and distributed in Louisiana and Texas.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 21, 1991.

Dated: August 15, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-20293 Filed 8-22-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1991.

Name: Statistical Review Committee of the Advisory Commission on Childhood Vaccines.

Date and Time: September 11, 1991, 1 p.m.-5 p.m.

Place: Room 703-A Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The meeting is open to the public.

Purpose: This Committee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Claims Court, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Committee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Committee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Committee will also be the first line of study for all outside studies and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: The Committee will discuss: (1) Preliminary review of the Institute of Medicine (IOM) report entitled Adverse Effects of Pertussis and Rubella Vaccines, (2) criteria setting for injury table, (3) analysis of types of claims receiving payouts, and VAERS update.

Name: Accounting Review Committee of the Advisory Commission on Childhood Vaccines.

Date and Time: September 11, 1991, 1 p.m.-5 p.m.

Place: Room 405-A Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The meeting is open to the public.

Purpose: The Committee reviews quarterly with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund. If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full commission and if accepted, can be forwarded to the Secretary.

Agenda: The Committee will discuss: (1) Overview of Trust Fund finances, and (2) Status of FY 1991 spending for pre-1988 awards.

Name: Advisory Commission on Childhood Vaccines.

Date and Time: September 12, 1991, 9 a.m.-5 p.m.

Place: Room 703-A Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the full commission will include, but not be limited to: The routine Program reports, reports from the National Vaccine Program and the National Vaccine Advisory Committee, reports from the ACCV committees of the previous day, a report on the IOM Study entitled Adverse Effects of Pertussis and Rubella Vaccines, and a presentation from the Assistant Secretary for Health, Dr. James O. Mason.

Public comment will be permitted at the respective committee meetings on September 11; and before noon and at the end of the second day, September 12. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, by September 6 to Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, room 7-02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443-6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room 703-A before 10 a.m., September 12. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, room 7-02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443-6593.

Agenda Items are subject to change as priorities dictate.

Dated: August 16, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, Health Resources and Services Administration.

[FR Doc. 91-20217 Filed 8-22-91; 8:45 am]

BILLING CODE 4160-15-M

Indian Health Service

Research and Demonstration Projects for Indian Health

AGENCY: Indian Health Service, HHS.

ACTION: Notice of single source cooperative agreement with the National Indian Health Board (NIHB).

SUMMARY: The Indian Health Service (IHS) announces the award of a

cooperative agreement to the National Indian Health Board (NIHB) for a demonstration project for tribal health care advocacy and consultation. The project is for a five year project period effective August 15, 1991 to August 14, 1996. Funding for the first year of the project is $341,849.

The award is issued under the authority of the Public Health Service Act, section 301, and is listed under Catalog of Federal Domestic Assistance number 93.933.

The specific goals of the project are: To provide advice to and to consult with Indian health care consumers on problems and issues identified by the NIHB on which IHS needs to take action; to establish consumer networking and to prepare analytical reports on topics related to IHS policy, proposed or existing IHS program activities, and the impact of proposed legislation on Indian health care; to publish a quarterly newsletter; and to coordinate and present a national annual Indian consumer conference.

Justification for Single Source: This project has been awarded on a non-competitive single source basis. The NIHB is the only nationwide Indian organization which is specifically established to address the health care of American Indians and Alaska Natives and which has elected representatives from tribes from within the 12 IHS Areas. Furthermore, it is the only nationwide organization of Indians providing community-based recommendations and direction for health care.

Use of Cooperative Agreement: A cooperative agreement has been awarded because of anticipated substantial programmatic involvement by IHS staff in the project. Substantial programmatic involvement is as follows:

(1) IHS staff shall participate in at least one quarterly Board meeting. Purpose will be to present the IHS prospective on current health care and legislative issues affecting the Indian people.

(2) IHS staff may provide articles for publication in the NIHB Newsletter.

(3) IHS staff shall review and approve the NIHB Newsletter prior to publication.

(4) IHS staff shall participate in discussions at the NIHB Consumer Conference. The IHS may recommend topics for presentation.

Contacts: For program information, contact Mr. Douglas Black, Acting Associate Director, Office of Tribal Activities, Indian Health Service, room 6A-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, (301) 443-1104. For grants management information, contact Mrs. M. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grants Operations, suite 605, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Rockville, Maryland 20857, (301) 443-5204.

Dated: August 19, 1991.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 91-20294 Filed 8-22-91; 8:45 am]

BILLING CODE 4160-16-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on August 9, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package).

Questionnaire About Employment or Self-Employment Outside The United States—0960-0050—The information collected on the form SSA-7163 is used by the Social Security Administration to determine whether work performed by beneficiaries outside the United States should cause a reduction in their monthly benefits. The affected public is comprised of beneficiaries (individuals) who may be subject to such deductions because of excess earnings.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 4,000.

OMB Desk Officer: Laura Oliven.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package).

State Mental Institution Policy Review—0960-0110—The information is used by the Social Security Administration (SSA) to determine whether an institution's policies conform with SSA's regulations on the use of benefits/payments. The affected public is comprised of State mental institutions serving as representative payees for beneficiaries/recipients.

Number of Respondents: 183.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 183.

OMB Desk Officer: Laura Oliven.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package).

Compensation For Qualified Organizations Serving As Representative Payee—0960-0000—The information collected by these final rules F-20-404.2040(a) and F-20-416.640(a) is needed by the Social Security Administration (SSA) to certify certain nonprofit organizations as entitled to receive a monetary reimbursement when acting as a representative payee for title II beneficiaries and title XVI recipients. The affected public consists of nonprofit organizations who act as the representative payee for 5 or more beneficiaries or recipients.

Number of Respondents: 80.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 40 hours.

OMB Desk Officer: Laura Oliven.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package).

Claimant's Statement When Request For Hearing Is Filed and The Issue Is Disability—0960-0316—The information collected on the form HA-4486 is needed by the Social Security Administration (SSA) to update the work background and medical history of the individual in order to establish an adequate record on which to hold a hearing. The affected public is comprised of individuals who request a hearing before an Administrative Law Judge.

Number of Respondents: 257,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 64,250.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package).

Medical Report (Individual With Childhood Impairment)—0960-0102—The information collected by form SSA-3827 is used by the Social Security Administration (SSA) to determine whether or not an individual with a childhood impairment medically qualifies for benefits or payments under the provisions of the Social Security Act. The affected public is comprised of attending physicians.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 37,500.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports

Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: August 15, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91–19929 filed 8–22–91; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–91–3304]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 16, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Performance Funding System: Energy Conservation Savings, Audit Responsibilities, Miscellaneous Revisions (FR–2404)

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) must submit documentation for approval of a nonprofit insurance entity created by PHAs/IHAs. They may apply for increased operating subsidy payments due to; (1) sharing of energy rate reductions, (2) non-HUD financing of energy conservation, (3) revision of allowable expense levels, or (4) units lost through combining of units into larger units.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Section:							
905.715(c)(4) and (g) 905.730(c)(2)(ii) and (e), 990.107(c)(4) and (g) 990.110(c)(2)(ii) and (e)	200		1		8		1,600
905.730(c)(1)(i), 905.730(c)(4) 990.110(c)(1)(i) and 990.110(c)(4)	100		1		2		200
905.720(e) and 905.108(e)	15		1		1		15
Recordkeeping burden:							
905.715(c)(4) and (g) 905.703(c)(2)(ii) and (e) 990.107(c)(4) and (g) and 990.110(c)(2) and (e)	200		1		2		400

Total Estimated Burden Hours: 2,215.

Status: Reinstatement.

Contact: John T. Comerford, HUD (202) 708–1872, Wendy Swire, OMB (202) 395–6880.

Dated: August 16, 1991.

[FR Doc. 91–20222 Filed 8–22–91; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–91–3303]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be

sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Office for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 13, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Existing Housing Allowances Tenant Furnished Utilities and Other Services.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–52667 will assist families searching for housing in determining gross vs. fair market rent comparisons and providing public housing agencies with a record of approved allowances for tenant paid utilities and services.

Form Number: HUD–52667.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52667:							
PHA	2,500		1		3		7,500
Tenants	91,600		1		.25		22,900
Recordkeeping	2,500		1		.08		200

Total Estimated Burden Hours: 30,600.

Status: Revision.

Contact: Gwen Carter, HUD, (202) 708–3887, Wendy Swire, OMB, (202) 395–6880.

Dated: August 13, 1991.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee's Certificate.

Office: Housing.

Description of the Need for the Information and its Proposed Use: HUD requires the mortgagee to submit Form HUD–92434, Mortgagee's Certificate; to assure that fees are within acceptable limits and required escrows will be collected. HUD determines the reasonableness of the fees and uses the information in calculating the financial requirements for closing and determining allowable financing fees at cost certification.

Form Number: HUD–92434.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–92434	500		1		.75		375

Total Estimated Burden Hours: 375.

Status: New.

Contact: Genevieve A. Tucker, HUD, (202) 708–0283, Wendy Swire, OMB, (202) 395–6880.

Dated: August 13, 1991.

[FR Doc. 91–20223 Filed 8–22–91; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1917; FR–2934–N–40]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to July Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets, NW., Washington, DC 20405; (202) 510–0067; Dept. of Agriculture: Marsha Pruitt, Realty Officer, USDA, South Bldg. Rm. 1566, 14th and Independence Ave. SW., Washington, DC 20250; (202) 447–3338; Dept. ot Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St., NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Dept. of Commerce: Jim McCombs, Office of Federal Property Programs, room 1037, 14th St. and Constitution Ave. NW., Washington, DC 20230; (202) 377–3580; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586–1191; Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10317, Washington, DC 20590; (202) 366–5601. (These are not toll-free numbers.)

Dated: August 16, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

SUITABLE/AVAILABLE PROPERTIES

Buildings (by State)

Idaho

Storage and Training Facility
INEL DOE-ID
Idaho Falls Co: Bonneville ID
Landholding Agency: Energy
Property Number: 419040001
Status: Excess
Comment: 2072 sq. ft., 1 story wood frame, needs major rehab, offsite use only.

Louisiana

Dwelling #1
USCG Station Calcasieu
Calcasieu Co: Cameron Parish LA 71433–
Landholding Agency: DOT
Property Number: 879120091
Status: Unutilized
Comment: 2716 sq. ft., needs rehab, potential utilities, most recent use—residence, possible flooding

Dwelling #2
USCG Station Calcasieu
Calcasieu Co: Cameron Parish LA 71433–
Landholding Agency: DOT
Property Number: 879120092
Status: Unutilized
Comment: 2716 sq. ft., needs rehab, potential utilities, most recent use—residence, possible flooding

Equipment Building
USCG Station Calcasieu
Calcasieu Co: Cameron Parish LA 71433–
Landholding Agency: DOT
Property Number: 879120094
Status: Unutilized
Comment: 1380 sq. ft., potential utilities, most recent use—equipment storage, possible flooding

Maine

White Mountain National Forest
Stoneham ME
Location: From Bethel, ME: 20 mi. SW on State Hwy 35—10 mi. west on Hwy 5 to Virginia Lake Access Rd.—4 mi. north to property
Landholding Agency: Agriculture
Property Number: 159040001
Status: Unutilized
Comment: 2256 sq. ft., 2 story wood frame, needs major rehab, structurally unsound.

North Carolina

Dwelling 1
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120083
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Dwelling 2
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120084
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Dwelling #3
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120085
Status: Unutilized

Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

USCG Station—Building
Oregon Inlet Coast Guard Station
Rodanthe Co: Dare NC 27968—
Landholding Agency: DOT
Property Number: 879120086
Status: Unutilized
Comment: 1207 sq. ft., two story wood frame most recent use—office, storage, shops, communications, dining, etc.

USCG Station—Building
Oregon Inlet Coast Guard Station
Rodanthe Co: Dare NC 27968—
Landholding Agency: DOT
Property Number: 879120088
Status: Unutilized
Comment: 1521 sq. ft., two story lightweight steel frame, must recent use—office, shops communications, storage, berthing, dining, etc.

USCG Station—Garage
Oregon Inlet Coast Guard Station
Rodanthe Co: Dare NC 27968—
Landholding Agency: DOT
Property Number: 879120089
Status: Unutilized
Comment: 1920 sq. ft., one story steel frame most recent use—garage/storage.

USCG Station—Building
Oregon Inlet Coast Guard Station
Rodanthe Co: Dare NC 27968—
Landholding Agency: DOT
Property Number: 879120090
Status: Unutilized
Comment: 320 sq. ft., one story wood frame most recent use—storage.

New Mexico

Old Helium Plant
Gallup Co: McKinley NM 87301—
Location: ¼ mile north of Gallup, adjacent to Old US Highway 666.
Landholding Agency: Interior
Property Number: 619010002
Status: Excess
Comment: 7653 sq. ft., 1 story office and warehouse space, possible asbestos, on 4.65 acres, secured area with alternate access.

Puerto Rico

Mona Island
Punta Este Co: Mona Island PR
Landholding Agency: DOT
Property Number: 879010004
Status: Excess
Comment: Light house on 2.09 acres.

Virginia

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066—
Landholding Agency: DOT
Property Number: 879120082
Status: Unutilized
Comment: 929 sq. ft., one story residence.

Washington

Thompson Main Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles WA 98362—
Landholding Agency: Interior
Property Number: 619030001
Status: Unutilized
Comment: 2 story residence, no utilities, needs rehab, off-site use only.

Thompson Older Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362—
Landholding Agency: Interior
Property Number: 619030002
Status: Unutilized
Comment: 888 sq. ft., 1 story residence, no utilities, needs rehab, off-site use only.

Thompson Garage
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362—
Landholding Agency: Interior
Property Number: 619030003
Status: Unutilized
Comment: 240 sq. ft., 1 story garage, no utilities, needs rehab, off-site use only.

Thompson Shop
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362—
Landholding Agency: Interior
Property Number: 619030009
Status: Unutilized
Comment: 300 sq. ft., 1 story shop, no utilities, needs rehab, off-site use only.

Thompson Powerhouse
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362—
Landholding Agency: Interior
Property Number: 619030010
Status: Unutilized
Comment: 160 sq. ft., 1 story powerhouse no utilities, needs rehab, off-site use only.

Spracklen Utility Shed
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526—
Landholding Agency: Interior
Property Number: 619030012
Status: Unutilized
Comment: 150 sq. ft., frame utility shed, limited utilities, off-site use only.

Dahinden Storage Building
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526—
Landholding Agency: Interior
Property Number: 619030013
Status: Unutilized
Comment: 240 sq. ft., frame storage building, no utilities, needs rehab, off-site use only.

Bldg. 1185
Lake Crescent Ranger Station, HC 62, Box 10
Carter Storage Building
Port Angeles, WA 98362—
Landholding Agency: Interior
Property Number: 619030016
Status: Unutilized
Comment: 92 sq. ft., 1 story storage building, no utilities, off-site use only.

Haas Barn
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park, Co: Grays Harbor, WA 98526—
Landholding Agency: Interior
Property Number: 619040001
Status: Excess
Comment: 1408 sq. ft., 1 story wood frame barn, potential utilities, poor condition, off-site use only.

Haas Shed
% Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526–
Landholding Agency: Interior
Property Number: 619040002
Status: Excess
Comment: 480 sq. ft., wood frame shed, poor condition, off-site use only.

Haas Shed
% Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526–
Landholding Agency: Interior
Property Number: 619040003
Status: Excess
Comment: 64 sq. ft., wood frame shed, poor condition, off-site use only.

Haas Residence
% Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526–
Landholding Agency: Interior
Property Number: 619040006
Status: Excess
Comment: 624 sq. ft., 1 story wood frame residence, potential utilities, poor condition, off-site use only.

Bldg. 1323
Jensen Barn
% Quinault Ranger Station, Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526–
Landholding Agency: Interior
Property Number: 619040007
Status: Excess
Comment: 4200 sq. ft., wood frame barn, most recent use—storage, no utilities, off-site use only.

Wyoming

Administration Bldg.
Fontenelle Camp
Fontenelle Co: Lincoln WY
Location: Approximately 24 miles southeast of Labarge, off State Road 372 and on County Road 316.
Landholding Agency: Interior
Property Number: 619030017
Status: Excess
Comment: 4464 sq. ft., 2 story brick structure with a 2880 sq. ft. wood frame addition, needs rehab, possible asbestos, off-site use only.

Residential House
Fontenelle Camp
Fontenelle Co: Lincoln WY
Location: Approximately 24 miles southeast of Labarage, off State Road 372 and on County Road 316.
Landholding Agency: Interior
Property Number: 619030018
Status: Excess
Comment: 1200 sq. ft., 1 story with basement, needs rehab, possible asbestos, off-site use only.

Land (by State)

Alaska

Gibson Cove
1211 Gibson Cove Road
Kodiak Co: Kodiak Island AK 99615–

Landholding Agency: Commerce
Property Number: 279010002
Status: Excess
Comment: 7.44 acres, small rock peninsula, most recent use—windbreak for cove.

Wrangell Narrows Reservation
Wrangell Co: Wrangell AK
Location: Approximately 6 miles south of Petersburgh, Alaska along Mitkof highway.
Landholding Agency: DOT
Property Number: 879010008
Status: Excess
Comment: 42.15 acres

California

Remote Transmitter
Section 35
Red Bluff Co: Tehema CA 96080—
Landholding Agency: DOT
Property Number: 879010010
Status: Unutilized
Comment: 4 acres; paved road; current use—storage.

Louisiana

Land
USCG Station Calcasieu
Calcasieu Co: Cameron Parish LA 71433—
Landholding Agency: DOT
Property Number: 879120093
Status: Unutilized
Comment: 2.7 acres, potential utilities, possible flooding

North Carolina

USCG Station—Land
Oregon Inlet Coast Guard Station
Rodanthe Co: Dare NC 27968—
Landholding Agency: DOT
Property Number: 879120087
Status: Unutilized
Comment: 10 acres, potential utilities

Oregon

Port Orford Radio Station
Port Orford Co: Curry OR 97465—
Landholding Agency: DOT
Property Number: 879010007
Status: Excess
Comment: 5.17 acres, radio station

Wyoming

Wind Site A
Medicine Bow Co: Carbon WY 82329—
Location: 3 miles south and 2 miles west of Medicine Bow
Landholding Agency: Energy
Property Number: 419030010
Status: Excess
Comment: 46.75 acres, limitation—easement restrictions.

SUITABLE/UNAVAILABLE PROPERTIES

Buildings (by State)

Texas

Brownsville Urban System
(Grantee)
700 South Iowa Avenue
Brownsville Co: Cameron TX 78520—
Landholding Agency: DOT
Property Number: 879010003
Status: Unutilized
Comment: 3500 sq. ft., 1 story concrete block, (2nd floor of Admin. Bldg.) on 10750 sq. ft. land, contains underground diesel fuel tanks.

Washington

Mica Peak Radio Station
Approx. 15 miles SE of Spokane
Spokane Co: Spokane WA 99210—
Landholding Agency: GSA
Property Number: 549120065
Status: Excess
Comment: 25×48 ft. on 0.4 acre one story concrete block, most recent use—radio communications, only accessible from late June to October
GSA Number: 9–B–WA–895

Land (by State)

Arizona

Liberty Substation
Buckeye Co: Maricopa AZ 85326—
Location: 3 miles south of Interstate 10 on Tuthill Road
Landholding Agency: Energy
Property Number: 419030001
Status: Underutilized
Comment: 15 acres, buffer area for substation.

Florida

Parcel A & B
U.S. Coast Guard Light Station
Lots 1, 8 &11, Section 31
Jupiter Inlet Co: Palm Beach FL 33420-
Location: Township 40 south, range 43 east.
Landholding Agency: DOT
Property Number: 879010009
Status: Unutilized
Comment: 56.61 acres; area is uncleared, vegetation growth is heavy; no utilities.

Iowa

Sioux City Substation
Hinton Co: Plymouth IA 51024-
Location: 1 mile south of Hinton Iowa on Highway 75.
Landholding Agency: Energy Property Number: 419030003
Status: Underutilized Comment: 34 acres, limitation—easement restrictions, most recent use—transmission line corridor and buffer area.

Montana

Miles City Substation
Miles City Co: Custer MT 59301-
Location: 1 mile east of Miles City
Landholding Agency: Energy Property Number: 419030004
Status: Underutilized
Comment: 59 acres, limitation—easement restrictions subject to grazing lease, most recent use—buffer area for substation.

Custer Substation
Custer Co: Yellowstone MT 59024-
Location: 2 miles east of the town of Custer—east of Highway 47
Landholding Agency: Energy
Property Number: 419030006
Status: Underutilized
Comment: 18 acres, buffer area for substation.

North Dakota

Fargo Substation
Fargo Co: Cass ND 58102-
Landholding Agency: Energy
Property Number: 419030005
Status: Underutilized
Comment: 25 acres, most recent use—transmission line corridor and buffer.

Nebraska

Grand Island Substation
Phillips Co: Merrick NE 68865-
Location: 5 miles east of Grand Island and 4 miles west of Phillips.
Landholding Agency: Energy
Property Number: 419030002
Status: Underutilized
Comment: 11 acres, buffer area for substation, right-of-way for transmission lines for Nebraska Public Power District.

Pennsylvania

Weather Service Forecast
192 Shafer Road
Corapolis Co: Allegheny PA 15108-
Landholding Agency: Commerce
Property Number: 279010006
Status: Underutilized
Comment: 5 acres, limitation—future weather radar system site, potential utilities.

Washington

NOAA Western Regional Center
7600 Sand Point Way, NE
Seattle Co: King WA 98115–0070
Landholding Agency: Commerce
Property Number: 279040001
Status: Underutilized
Comment: 35 acres with 600 sq. ft., two story wood frame Bldg. #7, presence of asbestos, structurally deteriorated.

Raver Substation
(See County) Co: King WA
Location: Approximately 16 miles east of Kent.
Landholding Agency: Energy
Property Number: 419030012
Status: Unutilized
Comment: 10+ acres, potential utilities, heavily treed.

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 22
USCG Support Center Kodiak
Jct. of 5th Street and C Avenue
Kodiak Co: Kodiak Island AK 99619–
Landholding Agency: DOT
Property Number: 879130003
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

USCG MSD Office (2 buildings)
2948 Tongass Avenue
Ketchikan Co: Ketchikan AK 99901–
Landholding Agency: DOT
Property Number: 879130004
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Alabama

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120001
Status: Excess

Reason: Floodway

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120002
Status: Excess
Reason: Floodway

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshroes Co: Baldwin AL 36542-
Landholding Agency: DOT
Property Number: 87912003
Status: Execss
Reason: Floodway

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120004
Status: Excess
Reason: Floodway

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 879120005
Status: Excess
Reason: Floodway

California

Comment: Bldg. 17
Coast Guard Island
USCG Support Center, Alameda
Alameda Co: Alameda CA 94501–
Landholding Agency: DOT
Property Number: 879130002
Status: Unutilized
Reason: Other
Comment: Structural deficiencies

Colorado

Geneva Basin Ski Area
65 miles from Denver, CO
N. Forest Road 118
Grant Co: Clear Creek CO 80448–
Landholding Agency: Agriculture
Property Number: 159130001
Status: Unutilized
Reason: Floodway

Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 879010014
Status: Unutilized
Reason: Other environmental
Comment: Contamination

New Jersey

Bldg. 120
USCG Training Center Cape May
North side of Munro Ave.
Cape May Co: Cape May NJ 08204–
Location: Opposite GSK Bldg. 204
Landholding Agency: DOT
Property Number: 879120007
Status: Unutilized
Reason: Secured Area

New Mexico

Farmington Office and Yard
900 La Plata Highway
Farmington Co: San Juan NM 87499–
Landholding Agency: Interior
Property Number: 619010001
Status: Unutilized
Reason: Within airport runway clear zone

Oregon

Eugene District Office Site
751 South Danebo
Eugene Co: Lane OR 97402–
Landholding Agency: Interior
Property Number: 619010003
Status: Underutilized
Reason: Within 2,000 ft. of flammable or explosive material

Washington

Dahinden Chicken Coop
Quinault Ranger Station
Route 2, Box 76
Amanda Park WA 98526–
Landholding Agency: Interior
Property Number: 619030014
Status: Unutilized
Reason: Other
Comment: Chicken Coop.

Dahinden Outhouse
Quinault Ranger Station
Route 2, Box 76
Amanda Park WA 98526–
Landholding Agency: Interior
Property Number: 619030015
Status: Unutilized
Reason: Other
Comment: Detached latrine.

Haas Chicken Coop
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor WA 98526–
Landholding Agency: Interior
Property Number: 619040004
Status: Excess
Reason: Other
Comment: Chicken Coop.

Haas Lean-to
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor, WA 98526—
Landholding Agency: Interior
Property Number: 619040005
Status: Excess
Reason: Other Comment: Lean-to.

Wisconsin

Building
Laona Ranger District
Nicolet National Forest
Laona WI 54541—
Landholding Agency: Agriculture
Property Number: 159040002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Land (by State)

California

Elverta Substation
736 W. Eleverta Road
Elverta Co: Sacramento, CA 95626—
Landholding Agency: Energy
Property Number: 419030008
Status: Underutilized
Reason: Secured Area

Colorado

Curecanti Substation
Cimarron Co: Montrose CO 81220—
Location: 2 miles east of Cimarron on Highway 50
Landholding Agency: Energy
Property Number: 419030009
Status: Excess
Reason: Floodway

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198—
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 879120006
Status: Unutilized
Reason: Within airport runway clear zone

Montana

Dawson County Substation
Glendive CO: Dawson MT 59330—
Location: 3 miles east of Glendive, MT on highway 20
Landholding Agency: Energy
Property Number: 419030011
Status: Underutilized
Reason: Secured Area

Anaconda Substation
(See County) Co: Deer Lodge MT
Location: 4 miles southeast of Anaconda
Landholding Agency: Energy
Property Number: 419030013
Status: Unutilized
Reason: Other environmental
Comment: Contamination.

Pennsylvania

Weather Service Forecast Of.
192 Shafer Road
Corapolis Co: Moon Township PA 15108—
Landholding Agency: Commerce
Property Number: 279010004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Virginia

Parcel #3
Atlantic Marine Center
439 West York Street
Norfolk Co: Norfolk VA 23510—
Landholding Agency: Commerce
Property Number: 279010001
Status: Underutilized
Reason: Floodway

Washington

Snoqualmie Substation
(See County) Co: King WA
Location: 12 miles southwest of North Bend.
Landholding Agency: Energy
Property Number: 419030007
Status: Unutilized
Reason: Secured Area

Land
Puffin Island Light House Res.
San Juan Co: San Juan WA
Landholding Agency: DOT
Property Number: 879010013
Status: Excess
Reason: Other

Comment: Island

[FR Doc. 91-20079 Filed 8-22-91; 8:45 am]
BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3300; FR-3101-N-01]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c)(5) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, SW., room 9146, Washington, DC 20410, telephone (202) 708-1824. The Telecommunications Device for the Deaf (TDD) number is (202) 708-4594). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989)) requires that HUD "Publish in the **Federal Register** a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from February 1, 1991 through July 1991.

1 Inland Mortgage Corporation, Tulsa, OK

Action: Suspension.

Cause: A HUD monitoring review citing violations of HUD requirements. The violations include: Submitting false documents in order to obtain HUD-FHA mortgage insurance; placing a non-existent loan in a Government National Mortgage Association (GNMA) mortgage-backed securities pool; and failure to remit payments to originating mortgagees which transferred loans to Inland Mortgage Corporation and the placement of these loans into GNMA mortgage-backed securities pools.

2. United Western Mortgage Corporation, Ogden, UT

Action: Settlement Agreement that provides for indemnification to HUD for claim losses in connection with 23 improperly originated loans and a review of certain appraisals performed by former staff appraisers of United Western Mortgage Company.

Cause: A HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements by the company's Missoula, Montana branch office. The violations include: Submitting false statements to HUD; failure to assure that mortgagors made the required minimum investment in the property; failure to verify mortgagors' source of funds; improper appraisals; and "strawbuyers" in FHA transactions.

3. MisCorp, Inc., San Antonio, TX

Action: Withdrawal of HUD Mortgagee Approval.

Cause: A HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements. The violations include: Failure to conduct face-to-face interviews with borrowers; failure to assure that borrowers made the minimum required investment in the property; failure to implement a written Quality Control Plan; failure to determine borrowers' source of funds used for downpayments and closing costs; permitting seller/brokers to perform loan processing functions; failure to have borrower gift letter funds deposited and verified in a bank account; falsely certifying that a loan was current when it was in default at the time of submission for HUD-FHA insurance; and failure to verify or consider borrowers' previous rent/mortgage payment history.

4. Streeter Brothers Mortgage Corporation, Billings, MT

Action: Letter of Reprimand.

Cause: A HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements including: Failure to assure that borrowers made the required minimum investment in the property; and overinsured mortgages.

5. Intermountain Mortgage Company, Billings, MT

Action: Letter of Reprimand and a Settlement Agreement that provides for indemnification to HUD-FHA for any claim loss in connection with an improperly originated insured mortgage, and a buy-down of an overinsured mortgage.

6. Valley Bank & Trust Company, Salt Lake City, UT

Action: Settlement Agreement that provides for indemnification to HUD in the amount of $18,442 for its claim loss in connection with an improperly originated insured mortgage, and agreement by the company not to submit any further claims on 34 improperly originated HUD-FHA insured mortgages.

Cause: Violations of HUD-FHA single family program loan origination requirements by an affiliated company of Valley Bank & Trust Company (Valley Mortgage) involving the circumvention of HUD-FHA downpayment requirements by mortgagors.

7. Tri-Coast Financial, Inc., Santa Maria, CA

Action: Withdrawal of HUD Mortgagee Approval.

Cause: A HUD monitoring review citing violations of HUD-FHA requirements. The company failed to remit to HUD-FHA 264 One-Time Mortgage Insurance Premiums (OTMIPs) totalling approximately $800,000 that were collected with HUD-FHA insured mortgage transactions.

8. Mortgage and Trust, Inc., Houston, TX

Action: Proposed Settlement Agreement that provides for reimbursement to HUD in the amount of $2 million for losses in connection with certain improperly originated and serviced HUD-FHA insured mortgages.

Cause: A HUD monitoring review citing violations of HUD-FHA loan servicing requirements that include: Failure to take prompt collection action and meet HUD-FHA servicing requirements on delinquent loans; failure to properly administer the assignment program; failure to initiate foreclosures in a timely manner. Also, a HUD Office of Inspector General Audit Report that disclosed violations of HUD-FHA loan origination requirements by the company's Austin, Texas branch office. The violations include failure to assure that borrowers had sufficient assets to close the loan transaction; failure to verify borrowers' earnest money deposits; and failure to verify borrowers' gift deposits.

9. Gateway Mortgage Company, Dallas, TX

Action: Probation and proposed Settlement Agreement that includes indemnification of HUD for claim losses in connection with 14 improperly originated loans.

Cause: A HUD monitoring review citing violations of HUD–FHA single family program loan origination requirements. The violations include: Submitting loans involving a "strawbuyer" for HUD–FHA mortgage insurance; failure to follow HUD–FHA source of funds requirements in meeting cash investment and other cash requirements; failure to conduct adequate face-to-face interviews with mortgagors; false certifications on loan applications; failure to timely remit One-Time Mortgage Insurance Premiums (OTMIPs) to HUD–FHA; failure to provide information concerning mortgagors escrow funds; and failure to implement and maintain a written Quality Control Plan.

10. SCM Mortgage, Inc., Mesquite, TX

Action: Probation and proposed Settlement Agreement that includes indemnification of HUD for claim losses in connection with nine improperly originated loans and suspension and proposed withdrawal if HUD's financial reporting requirements are not complied with.

Cause: A HUD monitoring review citing violations of HUD–FHA single family program loan origination requirements. The violations include: Failure to perform face-to-face interviews with mortgagors; permitting the use of "strawbuyers" in connection with HUD–FHA insured mortgage transactions; failure to assure that mortgagors made the required minimum investment in the property; failure to meet the required principal activity of a HUD–FHA approval Loan Correspondent; and failure to implement and maintain a written Quality Control Plan.

11. Cambridge Mortgage Corporation, Forth Worth, TX

Action: Probation and Settlement Agreement that includes indemnification of HUD for claim losses in connection with three improperly originated loans.

Cause: A HUD monitoring review citing violations of HUD–FHA single family program loan origination requirements. The violations include: Late payments of One-Time Mortgage Insurance Premiums (OTMIPs); failure to implement a Quality Control Plan; failure to meet the principal activity requirement of a HUD–FHA approved mortgagee; and failure to assure that borrowers made the minimum required investment in the property.

12. Sundance Mortgage Fund, Inc., Salt Lake City, UT

Action: Suspension and proposed withdrawal of HUD mortgagee approval.

Cause: A HUD monitoring review citing violations of HUD–FHA requirements for failure to timely remit One-Time Mortgage Insurance Premiums (OTMIPs), that were collected from borrowers in connection with 27 HUD–FHA insured mortgage transactions, and failure to remit late charges.

13. Horizon Savings Association, Austin, TX

Action: Suspension and proposed withdrawal of HUD mortgagee approval.

Cause: A HUD Office of Inspector General Audit Report which cited violations of HUD–FHA single family program loan origination requirements by Horizon's Houston, Texas branch office. The violations include: Overstating mortgagors' income; mishandling mortgagors' employment verifications; mishandling mortgagors' income tax information; use of erroneous employment and other data in verifying borrowers' incomes; incomplete preliminary loan applications; failure to resolve questions concerning the residency status of borrowers; improperly completing loan application certifications; inadequate underwriting reviews; and an inadequate Quality Control Plan.

14. Citadel Mortgage Company, San Antonio, TX

Action: Suspension and proposed withdrawal of HUD mortgagee approval, and collection action to recover misappropriated funds.

Cause: A HUD Office of Inspector General Audit Report which cited violations of HUD requirements in connection with the company's activities as a multifamily coinsurance lender and GNMA mortgage-backed securities issuer. The violations include: Misuse of multifamily project tax and insurance escrow funds and reserve for replacement funds; permitting improper and questionable cost certifications by mortgagors; and deficiencies in the company's administration of GNMA mortgage-backed securities pools.

15. Kenper Mortgage Corporation, Grand Terrace, CA

Action: Suspension and proposed withdrawal of HUD mortgagee approval.

Cause: A HUD monitoring review citing violations of HUD–FHA requirements including: Failure to remit One-Time Mortgage Insurance Premiums (OTMIPs); writing OTMIP checks on a closed account; late OTMIP payments; failure to implement a Quality Control Plan; and assigning loans to other lenders instead of closing and funding them.

16. Westmark Mortgage Corporation, Corpus Christi, TX

Action: Suspension and proposed withdrawal of HUD approval.

Cause: Failure to remit periodic mortgage insurance premiums (MIPs) to HUD totalling approximately $1.1 million; failure to remit taxes and hazard insurance premiums from mortgagor escrow accounts; failure to implement and maintain a Quality Control Plan; failure to maintain sufficient trained personnel for the servicing of HUD–FHA insured mortgages; failure to maintain documentation of loan collection activities; failure to provide information to HUD–FHA as required by the Single Family Default Monitoring System; and failure to properly identify section 235 mortgages serviced by Westmark.

17. Colorado First Mortgage, Inc., Denver, CO

Action: Probation.

Cause: Failure to maintain the required net worth for HUD–FHA mortgagee approval; failure to timely deposit payroll tax liabilities; and noncompliance with the State of Colorado law concerning workman's compensation insurance for employees.

Dated: August 13, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal HousingCommissioner.

[FR Doc. 91–20227 Filed 8–22–91; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. D–91–957; FR–3051–D–01]

Redelegation of Authority To Conduct Multifamily Mortgage Foreclosures

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Redelegation of authority to conduct foreclosures of mortgages on HUD-held multifamily housing projects.

SUMMARY: This notice redelegates to the Regional Administrators and Regional Directors of Housing the authority to determine whether to foreclose on defaulted mortgages held by HUD on multifamily housing projects. This notice also redelegates to HUD Regional Administrators, Regional Directors of Housing, HUD Field Office Managers, and Directors of Housing Management Divisions in HUD Field Offices the authority to perform all administrative functions necessary to initiate and complete such foreclosures and to assure compliance by purchasers (other

than HUD) with their post-foreclosure obligations.

EFFECTIVE DATE: August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Courtland H. Wilson, Chief, Property Sales Branch, Office of Multifamily Preservation and Property Disposition, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6284, Washington, DC 20410, (202) 708–1220. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development has statutory authority to foreclose the mortgage on any property (1) which is covered by a mortgage which has been assigned to HUD in exchange for mortgage insurance benefits under section 207(k), National Housing Act, 12 U.S.C. 1713(k), or (2) in connection with which the Secretary has made a grant or loan under section 7(i)(1) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(i)(1). This authority includes, among other things, the authority to foreclose purchase money mortgages taken back upon sale of HUD-owned properties and mortgages given to secure the repayment of direct loans made by the Secretary under section 202 of the Housing Act of 1959. As used in this notice, the term "multifamily housing project" means multifamily rental housing projects (including retirement service centers and mobile home parks) as well as other multifamily housing facilities such as hospitals, nursing homes, intermediate care facilities, group practice facilities and board and care homes.

The Secretary has delegated the authority to perform all of the administrative tasks necessary to institute and complete the foreclosure of defaulted, HUD-held mortgages on multifamily housing projects to the Assistant Secretary for Housing—Federal Housing Commissioner. See the delegation of authority published in the **Federal Register** on May 22, 1989, at 54 FR 22033 which delegates authority under Title II of the National Housing Act and section 203 of the Housing and Community Development Amendments of 1978. The Assistant Secretary is now redelegating that authority.

When the Secretary forecloses the mortgages on most low and moderate income multifamily housing projects, the purchaser (other than HUD) must accept subsidy payments or other financial assistance from the Secretary to assure that those projects will continue to be available for use by low and moderate income tenants. See section 203, Housing and Community Development Amendments of 1978, 12 U.S.C. 1701z–11. In addition, under sections 364 and 367(b) of the Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3703 and 3706(b)), the Secretary must place post-foreclosure obligations on the purchaser (other than HUD) if a majority of the residential units in the project are occupied by residential tenants at the time of the sale. If less than a majority of residential units are occupied at the time of foreclosure, the Secretary may place such obligations on the purchaser, if other than HUD. The purpose of these restrictions is to assure that the project continues to serve as a housing resource after the foreclosure in the same manner as it would have served if the foreclosure had not taken place. The Multifamily Mortgage Foreclosure Act, and the post sale restrictions, do not apply to projects which have received direct loans from HUD under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q.

To ensure that purchasers observe their obligations under these provisions, the Secretary requires purchasers to execute a Foreclosure Sale Use Agreement with HUD. The power to execute Foreclosure Sale Use Agreements on behalf of HUD has been delegated from the Secretary to the Assistant Secretary for Housing—Federal Housing Commissioner. See the delegation of authority at 54 FR 22033 which delegates authority under title II of the National Housing Act. The Assistant Secretary is now redelegating that authority as well.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates the following authority:

Section A. Authority Redelegated

To HUD Regional Administrators and Regional Directors of Housing, the authority to decide whether HUD should foreclose defaulted, HUD-held mortgages on multifamily housing projects and to direct that all administrative actions necessary under applicable State or Federal law be taken to initiate and complete such foreclosure.

Section B. Authority Redelegated

To HUD Regional Administrators, Regional Directors of Housing, HUD Field Office Managers, and Directors of Housing Management in HUD Field Offices:

1. The power to take all administrative actions necessary under applicable State or Federal law to initiate and complete the foreclosure of defaulted, HUD-held mortgages on multifamily housing projects.

2. The power to execute, on behalf of the Secretary, all Foreclosure Sale Use Agreements and all other related documents which embody the post-foreclosure obligations of the purchaser (other than HUD).

3. The power to take all administrative action to enforce the rights of the Secretary under the Foreclosure Sale Use Agreement and all other related documents which embody the post-foreclosure obligations of the purchaser (other than HUD).

Authority: Section 369I, Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3717; section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 15, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–20224 Filed 8–22–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–01–4333–11; Closure Notice NV–030–91–03]

Temporary Closures of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Notice.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands during the official running of two competitive vehicle events. This action is being taken to provide for the public's safety and to protect adjacent resources. The following events are included in this notice.

August 31, September 01, 1991 Valley Off-road Racing Association
Yerington 250—Permit Number NV–03516–91–13

October 5, 1991—High Sierra Motorcycle Club
Carson Valley Qualifier—Permit Number NV–03516–91–16

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: A map of each closure may be obtained from Fran Hull at the contact address. The event permittee is required to clearly mark and monitor the event route during the closure period. Specific information on each event is as follows:

1. Valley Off-Road Racing Association Yerington 250 Off-Road Race—Permit Number NV–03516–91–13. This event is located on roads and washes near Yerington, Nevada in Douglas and Lyon Counties, within T12N R24E; T13N R24E; T14N R24E; T13N R25E. Bureau Lands to be closed include existing roads and washes identified on the ground as the 1991 Yerington 400 Off-Road Race and Bureau Lands within 500 feet of either side except at designated pit and spectator areas. This closure will be in effect from 7 a.m. on August 31, 1991 until midnight on September 1, 1991.

2. High Sierra Motorcycle Club Carson Valley Qualifier—Permit Number NV–03516–91–16. This event is located on roads and trails near Gardnerville, Carson City and Dayton, Nevada in Douglas, Carson and Lyon Counties within T13N R20E; T13N R21E; T14N R20E; T14N R21E; T14N R22E; T15N R20E; T15N R21E; T15N R22E; T16N R21E; T16N R22E. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground as the 1991 Carson Valley Qualifier and Bureau Lands within 500 feet of either side except at designated pit and spectator areas. This closure will be in effect from 7 a.m. until 8 p.m. October 5, 1991.

Spectators shall remain in safe locations as directed by event officials and BLM personnel. All vehicles not participating in the event shall maintain a maximum speed of 10 MPH within designated spectator and pit areas. Cross country travel by any vehicle is prohibited.

Dated: July 29, 1991.

James W. Elliott,

District Manager.

[FR Doc. 91–20221 Filed 8–22–91; 8:45 am]

BILLING CODE 4310–HC–M

[NV–030–4333–12; Closure Notice NV–030–91–04]

Road Closure; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Road Closure, Notice.

SUMMARY: Notice is hereby given that the road leading north-northwest from the fenceline (JDR #4306) near Summit Spring, up to the existing public land closure on Petersen Mountain, northwest of Reno, Nevada, is closed to all vehicles. This action is in conformance with the Lahontan Resource Management Plan and is being taken in order to protect wildlife habitat and riparian meadows and to prevent soil erosion within the Petersen Mountain Natural Area.

DATES: This closure goes into effect on January 1, 1992, and will remain in effect until the Carson City District Manager determines it is no longer needed.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706. Telephone (702) 885–6000.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8341.2, 43 CFR 8342.3 and 43 CFR 8364.1. Any person who fails to comply with a closure order is subject to arrest and fines of up to $1000 and/or imprisonment not to exceed 12 months.

This closure applies to all motorized vehicles and non-motorized vehicles, such as mountain bikes, excluding (1) any emergency or law enforcement vehicle while being used for emergency purposes, and (2) any vehicle whose use is expressly authorized in writing by the Lahontan Resource Area Manager.

The road affected by this closure is located primarily within the Petersen Mountain Natural Area and crosses the following lands:

Mt. Diablo Meridian

T. 22N., R.18E.
Sec. 15
Sec. 16

A map showing the closed road is posted in the Carson City District Office.

Dated: August 15, 1991.

James W. Elliott,

Carson City District Manager.

[FR Doc. 91–20220 Filed 8–22–91; 8:45 am]

BILLING CODE 4310–HC–M

[(WY–920–00–4120–14); Jacobs Ranch Tract, WYW117924]

Coal Lease Sale Offering

August 16, 1991

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in the Jacobs Ranch Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 2 p.m., on Thursday, September 26, 1991. Sealed bids must be submitted on or before 4 p.m., on Wednesday, September 25, 1991.

ADDRESSES: The lease sale will be held in the Third Floor Conference Room of the Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming, 82003. Sealed bids must be submitted to the Cashier, Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Laura Steele, Land Law Examiner, or Eugene Jonart, Coal Coordinator at (307) 775–6250.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to an application for a coal lease sale filed by Kerr-McGee Coal Corporation of Oklahoma City, Oklahoma. The coal resources to be offered consist of all reserves recoverable by surface mining methods in the following described lands located approximately 30 miles southeast of the city of Gillette, Wyoming:

T. 44 N., R. 70 W., 6th P.M., Wyoming

Sec. 33: Lots 1 thru 3, 6 thru 11, and 14 thru 16;
Sec. 34: Lots 1 thru 16;
Sec. 35: Lots 2 thru 15.

Containing 1708.62 acres.

The tract is located adjacent to the existing Jacobs Ranch Mine.

Up to three minable coal seams and two splits occur in the tract. The units are, from youngest to oldest, the Upper Wyodak (UW), Split A, Middle Wyodak (MW), Split B, and Lower Wyodak (LW). The average thickness of the seams is 8.9 feet in the UW, 39.9 feet in the MW, and 5.7 feet in the LW. The average cumulative stripping ration is 2.46 BCY/ton. The tract contains an estimated 161,216,000 tons of in-place coal reserves. Average tract in-place coal quality is 8,540 BTU/lb, 5.4 per cent ash, 0.47 per cent sulphur, and 28.8 percent moisture. All three seams rank as subbituminous C and are within typical quality ranges of coal mined in the Powder River Basin.

The tract in this lease offering contains split estate lands. The surface is not held by a qualified surface owner as defined in the regulations, 43 CFR 3400.0–5.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bid should be sent by "Certified Mail, Return Receipt Requested", or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids

received after 4 p.m., on Wednesday, September 25, 1991, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within fifteen (15) minutes following the Sale Official's announcement at the sale that identical high bids have been received.

The lease issued as a result of this offering will provide for payment of an annual advance rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12½ percent of the value of coal produced by strip or augur mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 203.250(f).

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the Wyoming State Office at the addresses above. Case file documents, WYW117924, are available for inspection at the Wyoming State Office.

Ray Brubaker,

State Director.

[FR Doc. 91–20174 Filed 8–22–91; 8:45 am]

BILLING CODE 4310–22–M

Office of Environmental Affairs

[CO–030–91–5101–09–YCKD]

Availability of the Draft Environmental Impact Statement for the TransColorado Gas Transmission Project

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Montrose District, has prepared a Draft Environmental Impact Statement (DEIS) for the TransColorado Gas Transmission Project in accordance with the National Environmental Policy Act of 1969, and 40 CFR part 1500. This document is now available to the public for review and comment.

SUMMARY: The proposed TransColorado Gas Transmission Project would involve the construction and operation of a new natural gas pipeline system in western Colorado and Northwestern New Mexico. At the Blanco gas treatment plant in New Mexico, gas would be commingled with that from other sources and then distributed to Southern California and Midwest markets via existing interstate natural gas pipelines.

Major project actions and components consist of construction and operation of a 302-mile pipeline and appurtenent facilities. Approximately 260 miles of pipe would be 22-inch diameter, and approximately 43 miles would be 24-inch diameter. The project is designed to transport 300 million cubic feet of natural gas per day. Six new compressor stations, and expansion of one existing station would be required. The pipeline would be constructed within a 75-foot wide construction right-of-way (ROW). The permanent ROW would be 50 feet.

The applicants have applied to the U.S. Department of the Interior, Bureau of Land Management (BLM), for ROW grants and permits to cross federal land managed by the BLM and Forest Service. The BLM has been delegated the administrative lead for preparation of the DEIS. The Office of Environmental Affairs is responsible for filing the DEIS with the Environmental Protection Agency.

In addition to the Proposed Action, the Agency Preferred Alternative and the No Action Alternative have been evaluated. Pipeline route segment variations that may be substituted for portions of the Proposed Action were also analyzed.

DATES: The public review and comment period for the DEIS will be 45 days. The comment period will begin August 23, 1991, and end October 8, 1991. The BLM invites interested or affected parties to provide written comments on the DEIS prior to the October 8, 1991, closing date. Interested parties who wish to make written comments are requested to send them to Chuck Finch, Project Manager, Bureau of Land Management, Montrose District Office, 2465 South Townsend, Montrose, Colorado 81401. Public hearings on the DEIS will be held on September 24, 1991, in Grand Junction, Colorado, at 7:30 p.m. in the BLM Grand Junction District Office conference room, 764 Horizon Drive; September 25, 1991, in Montrose, Colorado, at 7:30 p.m. in the BLM Montrose District Office conference room, 2465 South Townsend Avenue; and September 26, 1991, in Cortez, Colorado, at 7:30 p.m. in the Anasazi Motor Inn Convention Center, 666 South Broadway. Oral statements will be heard and recorded at the public hearings. Each of the public hearings will be preceded by an informal open house to provide an opportunity to meet with BLM representatives to discuss and ask questions about the DEIS. The open house sessions will run from 6:30 p.m. to 7:30 p.m.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain a copy of the DEIS by writing to Chuck Finch, Project Manager, Bureau of Land Management, 2465 South Townsend Avenue, Montrose, Colorado 81401, or by calling Mr. Finch at 303–249–7791.

Dated: August 2, 1991.

Alan L. Kesterke,

District Manager.

Dated: August 15, 1991.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 91–19971 Filed 8–22–91; 8:45 am]

BILLING CODE 4310–JB–M

Bureau of Land Management

[WY–030–00–4351–02]

Rawlins District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rawlins District Advisory Council.

SUMMARY: Notice is hereby given of a meeting of the Rawlins District Advisory Council, in accordance with Public Law 94–597.

DATE: Wednesday, September 11, 1991.

ADDRESS: Wolf Hotel, 101 E. Bridge Ave., Saratoga, WY 82331.

FOR FURTHER INFORMATION CONTACT: Alan Pierson, BLM Rawlins District Manager, 1300 North 3rd St., Rawlins, WY 82301, or Grant Petersen, Public Affairs Specialist, BLM Rawlins District, Rawlins, WY 82301, (307) 324–7171.

SUPPLEMENTARY INFORMATION: The meeting will begin at 10 a.m. at the Wolf Hotel, Saratoga, WY. A public comment period will be held at 10:30 a.m. The agenda items include: introductions, District Manager comments, threatened and endangered species issues, wilderness program update, wild horse issues, volunteer program, recreation management, energy related issues, rangeland management.

Dated: August 16, 1991.

Judith I. Reed,

Associate District Manager.

[FR Doc. 91–20175 Filed 8–22–91; 8:45 am]

BILLING CODE 4310–22–M

[AZ-920-01-4212-13; AZA-25033-A]

Exchange of Public and Private Minerals in Yavapai County, AZ

August 16, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange.

SUMMARY: Notice of mineral exchange.

FOR FURTHER INFORMATION CONTACT: Laura Wood, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 640-5534.

SUPPLEMENTARY INFORMATION: The United States issued Patent No. 02-91-0011 to Santa Fe Pacific Railroad Company on April 3, 1991, for the mineral estate beneath the following described lands, pursuant to section 206 of the Federal Land Policy and Management Act of 1976:

Gila and Salt River Meridian, Arizona

T. 10 N., R. 6 W.,
Sec. 9, lot 1, N½SE¼, SW¼SE¼, excluding M.S. 3523.
T. 10 N., R. 7 W.,
Sec. 23, S½NW¼.
T. 11 N., R. 8 W.,
Sec. 23, all;
Sec. 24, lots 1 to 4, incl. W½E½, W½;
Sec. 25, lots 1 to 4, incl., W½E½, W½;
Sec. 26, all.
T. 12 N., R. 6 W.,
Sec. 6, lots 2 and 3.
T. 12 N., R. 9 W.,
Sec. 10, W½NE¼.
T. 13 N., R. 8 W.,
Sec. 13, E½SE¼.
T. 14 N., R. 4 W.,
Sec. 11, lots 1 to 4, incl., W½NE¼, E½NW¼;
Sec. 25, NW¼NE¼, NE¼NW¼.
T. 14 N., R. 9 W.,
Sec. 21, W½NW¼, SE¼NW¼;
Sec. 26, E½W½, NW¼NW¼;
Sec. 27, N½NE¼;
Sec. 34, SE¼.
Aggregating 3,995.09 acres of public minerals.

In exchange for these minerals, the United States acquired the following described minerals from Santa Fe Pacific Railroad Company:

Gila and Salt River Meridian, Arizona

T. 16 N., R. 10 W.,
Sec. 1, SW¼, SW¼NW¼, W½SE¼;
Sec. 3, lots 3 and 4, SW¼, S½NW¼;
Sec. 9, all;
Sec. 11, S½, NE¼;
Sec. 15, all;
Sec. 21, E½;
Sec. 23, W½NE¼, W½;
Sec. 27, N½, SW¼, W½SE¼, NE¼SE¼,
Sec. 33, E½.
Aggregating 3,995.96 acres of private minerals.

The purpose of this exchange was to acquire the non-Federal minerals beneath and adjacent to the Upper Burro Creek Wilderness Area to prevent a Federal surface—private mineral situation in a wilderness area. The public interest was served through completion of this exchange.

The values of the Federal public minerals and the non-Federal minerals in the exchange were both determined as having very low value. They were traded acre for acre.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 91-20206 Filed 8-22-91; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On April 18 and July 3, 1991, notices were published in the **Federal Register**, Vol. 56, Nos. 75 & 128, pages 15929 and 30953, that an application had been filed with the Fish and Wildlife Service by The Fish and Wildlife Service (PRT-757159) for a permit to take (capture, blood and Tissue sample, flipper tag, subcutaneously implant with a transponder chip and release) up to 400 Alaskan sea otters and amendment to their original application to sedate sea otters.

Notice is hereby given that on July 9, 1991, as authorized by the provisions of the Marine Mammal Protection At of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein and amended the permit on August 2, 1991, to authorize sedation.

The permit documents themselves are available for public inspection by appointment during normal business hours (7:45-4:15) at the Fish and Wildlife Service's Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358-2104).

Other information in permit file is available under the Freedom of Information Act to any person who submits a written request to the Service's Office of Management Authority at the above address, in accordance with procedures set forth in Department of the Interior regulations, 43 CFR part 2.

Dated: August 20, 1991.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-20205 Filed 8-22-91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

North Carolina Environmental Sciences Review Panel; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law No. 92-463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised. The North Carolina Environmental Sciences Review Panel meeting scheduled for Tuesday, August 27 and Wednesday, August 28 at the Best Western Armada at Mile Post 17, Nags Head, North Carolina, has been rescheduled. The meeting will be Tuesday, October 8 at the same location. The meeting was announced on July 17, 1991, in the **Federal Register**, and the agenda has not been changed.

The meeting is open to the public. Upon request, interested parties may make oral or written presentations related to the purpose of the panel. Requests should be made to Dr. Andrew Robertson, Federal Coordinator, 301-443-8933.

Dated: August 19, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91-20202 Filed 8-22-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-319]

Certain Automotive Fuel Caps and Radiator Caps and Related Packaging and Promotional Materials; Issuance of Limited Exclusion Order and Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has issued a limited exclusion order and a cease and desist order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3098.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.58 of the

Commission's Interim Rules of Practice and Procedure (19 CFR 210.58).

On October 23, 1990, Stant, Inc. of Connersville, Indiana filed a complaint with the Commission alleging violations of section 337 in the importation and sale of certain automotive fuel caps and radiator caps and related packaging and promotional materials. The complaint alleged infringement of certain claims of U.S. Letters Patent Nos. 4,091,955, 4,177,931, 4,083,209, 4,765,505, 4,676,390, and 3,878,965; U.S. Trademark Reg. Nos. 1,507,054 and 814,666; and U.S. Copyright Reg. Nos. TX 1,783,598; TX 2,134,460, TX 2,344,359, TX 2,876,401, and TX 2,851,757.

The Commission instituted an investigation into the allegations of Stant's complaint and published a notice of investigation in the **Federal Register**. 55 FR 49434 (November 28, 1990).

On March 5, 1991, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding the respondents Gin Seng Industrial Co. ("Gin Seng") and Chieftain-Uniworld Co. ("Chieftain"), the last two respondents remaining in the investigation, in default.

On April 5, 1991, the Commission determined not to review the ID, and made an explicit finding that there had been a violation of section 337. The Commission solicited comments from the parties, interested government agencies, and other persons concerning the issues of remedy, the public interest, and bonding.

Complainant and the Commission investigative attorneys filed proposed remedial orders and addressed the issues of remedy, the public interest, and bonding. No comments were filed by interested government agencies or other persons.

Having determined that there is a violation of section 337, the Commission considered the questions of the appropriate remedy, whether the statutory public interest factors preclude the issuance of a remedy, and bonding during the Presidential review period. The Commission considered the submissions of the parties and the entire record in the investigation. The Commission determined that the appropriate form of relief is a cease and desist order directed to the U.S. respondent Chieftain, and a limited exclusion order excluding products manufactured abroad by Gin Seng that are covered by the claims at issue of U.S. patent Nos. 4,091,955, 4,177,931, 4,083,209, 4,765,505, 4,676,390, or 3,878,965; U.S. Trademark Reg. Nos. 1,507,054 or 814,866; and U.S. Copyright Reg. Nos. TX 1,783,598, TX 2,134,460, TX 2,344,359, TX 2,876,401, or TX 2,851,757.

The Commission further determined that the public interest factors enumerated in 19 U.S.C. 1337(d) do not preclude the issuance of the aforementioned relief, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles concerned.

Copies of the Commission's orders 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 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: August 16, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–20269 Filed 8–22–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–326]

Certain Scanning Multiple-Beam Equalization Systems for Chest Radiography and Components Thereof

Notice is hereby given that the prehearing conference in this proceeding scheduled for September 3, 1991, and the hearing scheduled to commence immediately thereafter are cancelled.

The prehearing conference is rescheduled to commence at 9 a.m. on December 2, 1991, in Courtroom C at the United States International Trade Commission, 500 E Street, SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: August 20, 1991.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 91–20270 Filed 8–22–91; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

Ashland Oil, Inc., 1000 Ashland Drive, Russell, KY 41114.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Subsidiary	Jurisdiction of Incorporation
Algonquin Pipe Line Co	Illinois.
APAC—Alabama, Inc	Delaware.
APAC—Arizona, Inc	Delaware.
APAC—Arkansas, Inc	Delaware.
APAC—Carolina, Inc	Delaware.
APAC—Florida, Inc	Delaware.
APAC—Georgia, Inc	Delaware.
APAC—Kentucky, Inc	Kentucky.
APAC, Inc	Delaware.
APAC—Kansas, Inc	Delaware.
APAC—Mississippi, Inc	Delaware.
APAC—Oklahoma, Inc	Delaware.
APAC—Tennessee, Inc	Delaware.
APAC—Texas, Inc	Delaware.
APAC—Virginia, Inc	Delaware.
Ashland Construction Communications Company.	Delaware.
Ashland Chemical, Inc	Ohio.
Ashland Development, Inc	Delaware.
Ashland Ethanol, Inc	Delaware.
Ashland Petroleum, Inc	Delaware.
Ashland Pipe Line Company	Ohio.
Inland Towing Company	Delaware.
Mid-Valley Supply Co	Kentucky.
Ohio River Pipe Line Company.	Delaware.
Owensboro-Ashland Company.	Delaware.
Nettles, Inc	South Carolina.
Reg X Condor, Inc	Delaware.
Tap-Co, Inc	North Carolina.
Tri-State Marketing Services, Inc.	Delaware.
ATA Construction Company	Delaware.
Ashland Branded Marketing, Inc.	Delaware.
Ashland Industrial Products, Inc.	Delaware.
Blanton Marine Corp	Texas.
Carrollton Petroleum, Inc	Delaware.
Drew Chemical Corporation	Delaware.
Ecogard, Inc	Delaware.
IG-LO, Inc	Delaware.
Ig-Lo Transportation, Inc	Delaware.
Lexington Coating Technology, Inc.	Delaware.
Mac's Oil & Chemicals, Inc	Delaware.
Rich Oil, Inc	Delaware.
RCT Co., Inc	Arizona.
Scurlock Permian Pipe Line Corporation.	Delaware.
Southwest Land & Development Co., Inc.	Arizona.
SuperAmerica Group, Inc	Kentucky.
SWL Realty, Inc	Arizona.
Tanner Land Company	Arizona.

Subsidiary	Jurisdiction of Incorporation
Tanner Southwest, Inc.	Arizona.
The Tanner Companies	Arizona.
Transport Supply Company, Inc.	Texas.
Valvoline, Inc.	Kentucky.
Valvoline Instant Oil Change, Inc.	Delaware.
Warren Brothers Hauling, Inc.	Delaware.
Western Equipment Co	Arizona.
Western Special Products	Arizona.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-20237 Filed 8-22-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-337X]

Dakota, Minnesota & Eastern Railroad Corp., Abandonment Exemption in Dickey County, ND, and Brown County, SD

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Dakota, Minnesota & Eastern Railroad Corporation of 18.30 miles of rail line between milepost 116.9, at Hecla, Brown County, SD, and milepost 135.2, at Oakes, Dickey County, ND, subject to the following conditions: (1) Standard labor protection; (2) historic preservation; and (3) sale of the line to Red River Valley & Western Railroad Company or another suitably qualified operator.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 22, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by September 3, 1991. Petitions to stay must be filed by September 9, 1991, and petitions for reconsideration must be filed by September 17, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-337X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(1) Petitioner's representative: Byron D. Olsen, Felhaber, Larson, Fenlon & Vogt, P.A., 1935 Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, MN 55402.

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 service (202) 275-1721.]

Decided: August 15, 1991.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-20235 Filed 8-22-91; 8:45 am]

BILLING CODE 7035-01-M

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of an established 1991 aggregate production quotas.

SUMMARY: This notice establishes revised 1991 aggregate production quotas for controlled substances in Schedule II, as required under the Controlled Substances Act of 1970.

DATES: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

On June 14, 1991, a notice of the proposed revised 1991 aggregate production quotas for certain controlled substances in Schedule II was published in the **Federal Register** (56 FR 27540). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before 30 days from the date of publication. No comments or objections were received. However, since the preparation of the proposed revised 1991 **Federal Register**, DEA has been notified by two manufacturers as to their additional 1991 requirements for codeine (for sale) and methylphenidate. After a review of the additional data submitted, the Administrator of DEA is revising the proposed revised aggregate production quotas for methylphenidate, codeine (for sale) and morphine (for conversion), from which codeine is derived.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations, the Administrator of the DEA hereby orders that the 1991 revised aggregate production quotas be established as follows:

BASIC CLASS—ESTABLISHED REVISED 1991 AGGREGATE PRODUCTION QUOTAS

[Expressed as grams of anhydrous acid or base]

Schedule II:	
Alfentanil	7,300
Amobarbital	159,000
Amphetamine	168,000
Cocaine	657,000
Codeine (for sale)	58,018,000
Codeine (for conversion)	7,313,000
Desoxyephedrine	1,184,000
Levodesoxyephedrine	1,184,000
Methamphetamine	0
Dextropropoxyphene	93,675,000

BASIC CLASS—ESTABLISHED REVISED 1991 AGGREGATE PRODUCTION QUOTAS—Continued

[Expressed as grams of anhydrous acid or base]

Dihydrocodeine	494,000
Diphenoxylate	728,000
Hydrocodone	4,582,000
Hydromorphone	234,000
Levorphanol	6,700
Meperidine	8,930,000
Methadone	2,672,000
Methadone Intermediate(4-Cyano-2-dimethylamino-4,4-diphenylbutane)	3,205,000
Methylphenidate	2,955,000
Mixed Alkaloids of Opium	0
Morphine (for sale)	7,672,000
Morphine (for conversion)	70,237,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,233,000
Oxycodone (for sale)	3,102,000
Oxycodone (for conversion)	7,300
Oxymorphone	2,900
Pentobarbital	16,424,000
Secobarbital	659,000

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-20210 Filed 8-22-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and House Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume II

Louisiana:
LA91-10 (Aug. 23, 1991).... P. 440a, pp. 440b-440d.
LA91-11 (Aug. 23, 1991).... P. 440e, pp. 440f-440h.
Wisconsin, WI91-18 (Aug. 23, 1991) p.1285, p. 1286.

Volume III

Wyoming:
WY91-5 (Aug. 23, 1991).... p. 536a, pp. 536b-536f.
WY91-6 (Aug. 23, 1991).... p. 536g, pp. 536h-536l.
WY91-7 (Aug. 23, 1991).... p. 536m, pp. 536n-536r.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York:
NY91-11 (Feb. 22, 1991).... p. 885, pp. 886, 888.
NY91-15 (Feb. 22, 1991).... p. 915, pp. 917-920a.
Pennsylvania:
PA91-4 (Feb. 22, 1991)..... p. 985, pp. 986-993.
PA91-23 (Feb. 22, 1991)..... p. 1123, pp. 1124.
Rhode Island, RI91-1 (Feb. 22, 1991). p. 1149, p. 1152.

Volume II

Iowa:
IA91-2 (Feb. 22, 1991)..... p. 29, p. 30.
IA91-4 (Feb. 22, 1991)..... p. 37, pp. 38-40b.
Illinois:
IL91-8 (Feb. 22, 1991) ..... p. 145, p. 147.
IL91-9 (Feb. 22, 1991) ..... p. 153, pp. 154-155.
IL91-11 (Feb. 22, 1991) ..... p. 163, pp. 164-169.
IL91-12 (Feb. 22, 1991) ..... p. 171, p. 172.
IL91-13 (Feb. 22, 1991) ..... p. 183, pp. 184-185.
IL91-14 (Feb. 22, 1991) ..... p. 195, p. 196.
IL91-15 (Feb. 22, 1991) ..... p. 205, p. 206.

IL91–18 (Feb. 22, 1991)	.....	p. 237, pp. 239–240a.
Indiana IN91–2 (Feb. 22, 1991).		p. 259, pp. 260–262.
Texas, TX91–12 (Feb. 22, 1991).		p. 1051, p. 1052.

Volume III

Hawaii, HI91–1 (Feb. 22, 1991).		p. 197, pp. 199–205.
Nevada, NV91–1 (Feb. 22, 1991).		p. 299, pp. 302–303.

Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscriptions(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 16th Day of August 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91–20030 Filed 8–22–91; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Application Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 25, 1991. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

Arthur L. DeVries, 524 Burrill Hall, University of Illinois, Urbana, Illinois 61801.

Activity for Which Permit Requested

Introduction of a non-indigenous species into Antarctica. The applicant requests permission to import specimens of the New Zealand black cod to McMurdo Station, Antarctica. The specimens are being used in a study of the role of antifreeze glycopeptides in freezing avoidance and for isolating DNA. Upon completion of the experiments, the black cod will be sacrificed and preserved in formalin.

Dates

October 1991—February 1994.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91–20238 Filed 8–22–91; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Biological and Critical Systems Committee of Visitors Review; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Committee of Visitors Review, Bioengineering & Aiding the Disabled Program.

Date/Time: September 10, 1991, 9 to 5.

Place: Room 1133, 1800 G Street, NW., Washington, DC 20550, Telephone: 202–357–9780.

Type of Meeting: Closed.

Contact Person: Dr. William A. Anderson, Acting Division Director, Biological & Critical Systems, room 1132, National Science Foundation, Washington, DC 20550 202–357–9780.

Purpose of Meeting: To provide oversight review of the Industry University.

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed.

Dated: August 19, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–20196 Filed 8–22–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC 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 of submission, new, revision or extension:* New.

2. *Title of the information collection:* Policy Statement, Cooperation With States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities.

3. *The form number if applicable:* Not Applicable.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* All States.

6. *An estimate of the number of responses:* 100.

7. *An estimate of the total number of hours annually needed to complete the requirement or request:* 2,000.

8. *The average burden per respondent:* 20 hours.

9. *An indication of whether Section 3504(h), Public Law 96–511 applies:* Not Applicable.

11. *Abstract:* All States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities are requested to exchange certain information with NRC related to nuclear activities and radiological health programs within their borders.

Copies of the submittals may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer:

Ronald Minsk, Office of Information and Regulatory Affairs, NEOB–3019, 3150—Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 16th day of August 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 91–20242 Filed 8–22–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–1007]

Pacific Sierra Nuclear Associates; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Pacific Sierra Nuclear Associates (PSN) located in Scotts Valley, California, to fabricate its Ventilated Storage Casks (VSC-24). These casks are intended to be used by Consumers Power Company to store spent fuels at its Palisades plant (Docket No. 50–255, License No. DPR-20) located in Covert, Michigan.

Environmental Assessment

Identification of Proposed Action: The request, proposed by PSN letter dated April 18, 1991, would exempt PSN from the requirements of 10 CFR 72.234(c) which states that "Fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask model." Specifically, PSN proposes to construct the first eight (8) casks prior to the Commission's issuance of the Certificate of Compliance.

The Need for the Proposed Action: PSN's letter stated that the request for exemption was to ensure full core discharge capability at Palisades plant for fuel cycle 10, which begins in April 1992. PSN further indicated that in order to meet this schedule, purchase of the cask components and materials must begin immediately and fabrication must commence thereafter. The application dated April 4, 1991, for a Certificate of Compliance for the VSC–24 is being considered by Commission. The administrative process for approval of the Certificate of Compliance is expected to be completed by April 1992.

Environmental Impacts of the Proposed Action: The Commission has evaluated the environmental impacts of the proposed action. The NRC has reviewed the VSC–24 Design Topical Safety Analysis Report (TSAR) and on March 29, 1991, issued a Safety Evaluation Report (SER) approving the TSAR for referencing in a site-specific application. As a result of this TSAR review and approval, PSN has an NRC approved fabrication specification and quality assurance program under which the VSCs will be fabricated. Based on the March 1991 SER for the VSC–24 TSAR, the Commission has determined that the proposed exemption does not affect the radiological protection or nuclear criticality safety for the VSC system. Environmental impact from the limited fabrication activities would be similar to small concrete construction activities at an existing facility and similar to the assembly of metal components at a large machine shop. The environmental assessment for the Proposed Rule (54 FR 19397) and Final Rule (55 FR 29181), "Storage of Spent Fuel in NRC-approved Storage Casks at Power Reactor Sites," considered the environmental impact associated with the construction and use of such certified casks. Accordingly, the Commission concludes that the exemption to fabricate (not use) the limited number of casks, will have no significant radiological or nonradiological environmental impacts.

Alternative to the Proposed Action: The alternative would be to deny the requested exemption. This would delay the availability of these casks to Consumer Power Company and cause the Palisades plant to operate without full core discharge capability at the start of the next fuel operating cycle in April of 1992. Lack of full core discharge would have adverse consequences on the licensee's operating schedule, should such a need arise.

Agencies and Persons Consulted: The Commission's staff reviewed PSN's request and did not consult other agencies or persons.

Finding of No Significant Impact: Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a signifcant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the application for exemption dated April 18, 1991, and other documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 7th day of August 1991.

For the Nuclear Regulatory Commission.

Richard E. Cunningham,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91–20243 Filed 8–22–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Transmittal of Sequestration Update Report to the President and Congress

August 20, 1991.

Pursuant to section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

Darrell A. Johnson,

Assistant Director for Administration.

[FR Doc. 91–20239 Filed 8–22–91; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Form RI 25–15 for Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C., chapter 35), this notice announces a request for clearance of an information collection. Form RI 25–15, Survey of Student's Eligibility to Receive Benefits, collects information from adult children of deceased Federal employees or annuitants to assure that the child continues to be eligible for payments from OPM.

Approximately 12,000 forms RI 25–15 will be completed per year. The form requires 15 minutes to fill out. The annual burden is 3,000 hours.

For copies of this proposal, contact C Ronald Trueworthy, on (703) 908–8550.

DATES: Comments on this proposal should be received on or before September 23, 1991.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer U.S. Office of Personnel Management, 1900 E Street, NW., CHP 500, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–20192 Filed 8–22–91; 8:45 am]

BILLING CODE 6325–01–M

Request for Clearance of Form OPM 1496 and OPM 1496A for Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1989 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of an information collection. Forms OPM 1496, Application for Deferred Retirement (Separations before October 1, 1956) and OPM 1496A, Application for Deferred Retirement (Separations on or after October 1, 1956) are used by eligible former Federal employees to apply for Civil Service annuity. The two forms are needed because there is a major revision in the law effective October 1, 1956; this affects the general information provided with the forms.

Approximately 3,000 deferred retirements are processed annually; 200 of these are submitted on OPM 1496 and 2,800 are on OMP 1496A. Both forms require up to 60 minutes to complete. The annual burden is 3000 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908–8550.

DATES: Comments on this proposal should be received on or before September 23, 1991.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., CHP 500, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–20193 Filed 8–22–91; 8:45 am]

BILLING CODE 6325–01–M

Request for Clearance of Form RI 30–1 for Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C., chapter 35), this notice announces a request for clearance of an information collection. Form RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, collects information as to whether the disabling condition has changed. Persons who are not yet age 60 and who are receiving disability annuity are subject to inquiry as to their medical condition as OPM deems reasonably necessary.

Approximately 8,000 forms RI 30–1 will be completed per year. The form requires 60 minutes to fill out. The annual burden is 8,000 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908–8550.

DATES: Comments on this proposal should be received on or before September, 23, 1991.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E. Street, NW., CHP 500, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey (202) 606–0623.

U.S. Office of Personnel Management

Constance Berry Newman,

Director.

[FR Doc. 91–20194 Filed 8–22–91; 8:45 am]

BILLING CODE 6325–01–M

Request for Clearance of Form SF 3106 for Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C., chapter 35), this notice announces a request for clearance of an information collection. Form SF 3106, Application for Refund of Retirement Deductions (which includes the SF 3106A, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions), is used by former Federal employees who contributed to the Federal Employees Retirement System to receive a refund of retirement deductions and any other monies to their credit in the retirement fund.

Approximately 81,000 forms SF 3106 will be completed per year. The form requires 30 minutes to fill out. The annual burden is 40,500 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908–8550.

DATES: Comments on this proposal should be received on or before September 23, 1991.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E. Street, NW., CHP 500, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–20195 Filed 8–22–91; 8:45 am]

BILLING CODE 6325–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program

August 12, 1991.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of availability of recommendations for amendments to the Columbia River Basin Fish and Wildlife Program, and opportunity to comment.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, *et seq.*) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then.

On May 13, 1991, the Council invited parties to submit, by August 9, 1991, recommendations to amend the salmon and steelhead provisions of the program. Those recommendations have been received, and are available for review and comment. The Council will receive public comment on the recommendations through September 12, 1991.

After considering comments received on the recommendations, the Council will issue a draft amendment document containing the recommendations and measures the Council proposes to adopt in November, 1991. The Council expects to issue the draft amendment document after its September 25–26 meeting and working session. Recommendations the Council does not include in the draft amendment document may be considered in later phases of the Council's amendment process. There will also be a thirty-day comment period on the draft amendment document, and hearings will be held in all four Northwest states. The Council expects to take final action on the draft amendment document, and related amendment recommendations, in November 1991.

After the Council takes final action decision on the draft amendment document, the Council may consider salmon and steelhead recommendations not addressed in earlier phases of the amendment process.

The Council will provide further notice of the availability of the draft amendment document, further opportunities to comment, and a schedule for pubic hearings in Idaho, Montana, Oregon, and Washington.

For a copy of the amendment recommendations, a fuller explanation of the Council's program amendment process, including instructions for submitting written comments, or for further information: Contact the Council's Public Affairs Division at 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222–5161; toll free 1–800–222–3355.

Bobbie Fendall,

Federal Register Liaison Officer.

[FR Doc. 91–20197 Filed 8–22–91; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29577; File No. SR–DTC–91–19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Establishing a Trade Adjustment System for Collateralized Mortgage Obligations

August 16, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 31, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes DTC's Trade Adjustment System ("TAS") for collateralized mortgage obligations ("CMOs"). When the new factor for a CMO CUSIP is received by DTC, TAS will retrieve all previous DTC deliveries in that CUSIP that might have involved a different factor. TAS will then compare the new factor for each transaction to the factor the parties used to calculate the sales price and accrued interest. If the new factor differs from the factor actually used, TAS will automatically calculate the cash adjustments and process them through the DTC settlement accounts of the deliverer and the receiver.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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 automate cash adjustments between sellers and buyers of CMOs when the actual factor used to calculate CMO interest and principal payments ("the true factor") differs from the factor the parties used on trade date to calculate the CMO price and accrued interest ("the trade factor"). DTC will receive new factors daily by electronic transmission from Trepp Information Services, Inc. ("Trepp"). To calculate the adjustments for each transaction, TAS will compare the trade factor to the true factor. TAS will use the trade factor supplied by the selling Participant in its Deliver Order instruction, or, if the seller does not supply any trade factor, TAS will use the Trepp factor on the trade settlement date as the trade factor. When the true factor is received from Trepp, DTC will compare the trade factor and the true factor. Usually, the true factor is less than the trade factor, and the buyer will therefore receive less principal and interest on payable date than the parties built into the purchase price. The seller must then compensate the buyer for the buyer's overpayment. Currently, adjustments are processed manually, either by the buyer's charging the seller through a DTC Payment Order instruction, or by the seller's sending the buyer a check in the amount of the adjustment, or otherwise. TAS will automatically perform this compensation by charging the deliverer's settlement account for the cash adjustment and crediting that amount to the receiver's DTC settlement

account on the payment date for the next income payment on the CUSIP. In the rare case where the true factor is greater than the trade factor, the seller will have been underpaid. TAS will then charge the receiver's DTC settlement account and credit the deliverer's settlement account for the cash adjustment.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act,[1] in that the proposed rule change promotes the prompt and accurate clearance and settlement of transactions in securities by automating a previously manual procedure.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change, Received From Members, Participants, or Others

DTC reported in its Program Agenda dated December, 1990, that automation was "In Progress" on a collateralized mortgage obligation service. DTC received no written comments from Participants or others. Interested Participants have collaborated with DTC in developing the service. The Public Securities Association, an industry organization, commented on TAS during its development, and DTC modified TAS specifications in response.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of DTC. All submissions should refer to File No. SR–DTC–91–19 and should be submitted by September 13, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–20245 Filed 8–22–91; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78q–1(b)(3)(F).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

August 20, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(91)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following security:

First Interstate Bancorp
Class A Common Stock, $.01 Par Value
(File No. 7–7158)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 11, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–20246 Filed 8–22–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–29576; File Nos. SR–OCC–88–03 and SR–ICC–90–02]

Self-Regulatory Organizations; The Options Clearing Corporation and The Intermarket Clearing Corporation; Order Approving Proposed Rule Changes Involving Value Securities Programs

August 16, 1991.

On March 7, 1988, and on March 14, 1990, respectively, The Options Clearing Corporation ("OCC") and the Intermarket Clearing Corporation ("ICC") filed proposed rule changes with the Securities and Exchange Commission ("Commission") under Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] OCC's proposal expands its valued securities program to include certain preferred stock and corporate debt issues.[2] ICC's proposal establishes a valued securities program analogous to OCC's proposed program that will be available to ICC clearing members that have elected to participate in the OCC/ICC cross-margin program. Notice of the OCC and ICC proposals appeared in the **Federal Register** on March 21, 1988,[3] and on May 11, 1990,[4] respectively. OCC amended its proposal on December 11, 1989 and July 5, 1991.[5] ICC amended its proposal

[1] 15 U.S.C. 19(b).

[2] Currently, the valued securities programs allows OCC clearing members to pledge certain equity securities to OCC to meet clearing margin requirement.

[3] Securities Exchange Act Release No. 25458 (March 14, 1988), 53 FR 9160.

[4] Securities Exchange Act Release No. 27995 (May 4, 1990), 55 FR 19819.

[5] Letters from James C. Yong, Deputy General Counsel, OCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation ("Division"), Commission (December 11, 1989 and July 3, 1991). See *infra* note 6 and accompanying text.

on August 13, 1991.[6] No comments have been received on the proposals. This order approves the OCC and ICC proposals, as amended.

I. Description of the Proposals

The proposed rule changes amend OCC Rule 604 and ICC Rule 502. Those rules set forth the forms of margin that OCC and ICC will accept from clearing members.[7] Specifically, OCC's proposal expands the valued securities program set out in OCC Rule 604(d)(1), and ICC's proposal establishes in ICC Rule 502(a)(4) a valued securities program for clearing members that have elected to participate in the OCC/ICC cross-margin program.[8] Under the terms of both proposals, OCC clearing members and cross-margin ICC clearing members will be permitted to deposit margin in the form of certain common stock,[9] preferred stock, and convertible and non-convertible corporate debt ("corporate bonds"). Preferred stock and corporate bonds, like common stock, will be valued at 50% of their current market value for margin purposes.[10]

Under the rule proposals, common stock, preferred stock and corporate bonds must meet certain eligibility standards to be acceptable by OCC and ICC as margin deposits. Preferred stock must meet the same standards currently in place in OCC rules for common stock. These standards require that stock (1) must have a market value greater than $10 per share and (2) either must be traded on a national securities exchange and have last sale reports collected and disseminated pursuant to a consolidated transaction reporting plan or must be traded in the over-the-counter market and designated as National Market System Securities pursuant to Rule 11Aa2–1 under the Act [11]. The proposals require corporate bonds (1) to be listed on a national securities exchange and not be in default, (2) to have a current market value that is readily determinable on a daily basis, and (3) to be rated in one of the four highest rating categories by a nationally recognized statistical rating organization.

II. Discussion

The Commission believes the proposed rule changes are consistent with Section 17A of the Act and, therefore, is approving the proposals. As discussed below, the Commission believes the proposals, while allowing clearing members greater flexibility in meeting their margin obligations to OCC and ICC, are consistent with OCC's and ICC's obligations to safeguard funds and securities and to maintain appropriate financial responsibility standards.

The Commission believes the proposals include adequate protection for the use of common and preferred stock and corporate bonds as allowable forms of margin. The proposals continue financial safeguards already approved by the Commission in connection with the valued securities program.[12]

Specifically, the Commission believes the eligibility standards for common and preferred stock and corporate bonds assure that OCC and ICC can monitor adequately the value of such margin deposits on a daily basis. Additionally, in case of a clearing member default, the standards are designed to ensure that there is a sufficiently active, liquid market in which to sell or pledge the securities deposited as margin under the programs. The Commission further believes that the margin value for such deposited securities is set at an appropriately safe level. In this regard, the Commission notes that OCC and ICC have taken a conservative approach with respect to non-convertible debt. Although Federal Reserve Board Regulations allows lenders to finance non-convertible debt on a good faith basis, with OCC and ICC have defined as 70% of current market value, OCC and ICC have prescribed a 50% valuation rate for both convertible and non-convertible debt. The Commission also notes OCC's and ICC's authority, under OCC Rule 609 and ICC Rule 511, to call for additional margin as required by market conditions.

The Commission agrees that it is appropriate to allow clearing members to secure their margin obligations to OCC and ICC with common and preferred stock and corporate bonds in addition to the other forms of acceptable margin. By expanding the types of assets that clearing members may deposit to satisfy their margin obligations, the proposal provides clearing members greater flexibility in meeting their OCC and ICC financial obligations.[13] The Commission notes that by allowing clearing members to use inventories of securities that can be hypothecated, they avoid the need to tie up cash or to obtain U.S. Government securities or letters of credit to meet their margin obligations.

III. Conclusion

On the basis of the foregoing, the Commission finds that OCC's and ICC's proposed rule changes are consistent with the act and, in particular, with section 17A of the Act.

Accordingly, *It is therefore ordered,* under section 19(b)(2) of the Act, that the proposals (File No. SR–OCC–88–03 and File No. SR–ICC–90–02) be, and hereby are, approved

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–20185 Filed 8–22–91; 8:45 am]

BILLING CODE 8010–01–M

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[6] Letter from James C. Yong, Deputy General Counsel, OCC, to Jonathan Kallman, Assistant Director, Division, Commission (August 12, 1991). Among other things, these amendments withdrew proposals whereby limits on the amount of any one issuer's valued securities that a clearing member could deposit for purposes of satisfying its margin requirement would be calculated on a per clearing member aggregate basis instead of on an account by account basis. Thus, for example, OCC's 10% concentration limit as currently specified in OCC Rule 604, Interpretations and Policies .09 will apply.

[7] Currently, margin may be deposited at OCC and ICC in the form of cash, certified or cashier's check, U.S. Government securities, or letters of credit. Certain common stock also may be deposited as margin at OCC. OCC Rule 604(a)–(d).

[8] The ICC valued securities program will be available only to ICC clearing members that have elected cross-margining pursuant to ICC Rule 513.

[9] Certain common stock is an acceptable form of margin under the existing OCC valued securities program. OCC Rule 604(d)(1).

[10] Both OCC Rule 604(d)(1) and ICC Rule 502(a)(4) state that deposited stocks and convertible bonds shall be valued on a daily basis at the then maximum loan value of such stocks or convertible bonds pursuant to the provisions of Regulation U of the Board of Governors of the Federal Reserve System or at such lower value as OCC's margin committee or ICC many prescribe. Deposited non-convertible bonds shall be valued on a daily basis at 70% of the current market value or such lower value as OCC's margin committee or ICC may prescribe. Currently, the maximum loan value under Regulation U for equity securities and convertible bonds is 50% of the current market value and for non-convertible bonds is good faith loan value. 12 CFR 221.8 (a) and (b).

OCC has established that no equity or debt issue, convertible or non-convertible, shall be valued in excess of 50% of its current market value. Interpretations and Policies .09 to OCC Rule 604. ICC has represented it also has established 50% of the current market value as the maximum valuation for equity and debt issues. Telephone conversation between Jim C. Yong, Deputy General Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (August 13, 1991).

[11] 17 C.F.R. 240.11Aa2–1.

[12] Securities Exchange Act Release No. 18994 (August 20, 1982), 47 FR 37731 and Securities Exchange Act Release No. 20558 (January 13, 1984), 49 FR 2163.

[13] Since the inception of OCC's the valued securities program, the percentage of total margin deposits comprised of deposited valued securities is as follows: 1982—1.67%; 1983—7.66%; 1984—6.49%; 1985—6.00%; 1986—7.13%; 1987—9.22%; 1988—12.50%; 1989—9.43%; Telephone conversation between James C. Young, Deputy General Counsel, OCC, and Ross Pazzol, Staff Attorney, Division, Commission (February 9, 1990).

[Release No. 34-29578, International Series Release No. 306, File No. SR-PSE-90-39]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Changes Relating Amendments to Exchange Rules to Provide for the Listing and Trading of Currency Warrants

August 16, 1991.

On October 31, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission"), a proposed rule change to permit the listing and trading of currency warrants on the Exchange.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 28644 (November 26, 1990), 55 FR 50069.[3] No comments were received on the proposed rule change.

The Commission previously approved a regulatory framework to permit the PSE to list and trade warrants based upon foreign and domestic stock market indexes.[4] The PSE proposes to broaden its warrant regulatory framework, similar to the warrant regulatory framework of the American Stock Exchange, Inc. ("Amex"),[5] to permit the listing and trading of currency warrants on the Exchange.

Specifically, the Exchange proposes to amend PSE Rule 3.2., "Warrants", to add "currency warrants", as a type of warrant issue that can be listed and traded on the Exchange.[6] In this regard, the PSE proposes to apply the same minimum listing and trading criteria to currency warrant issues that currently are applicable to index warrant issues. Moreover, the PSE proposes to clairfy the minimum listing and trading criteria for both currency and index warrants by specifying in its Rules (1) that these warrants shall have a term ranging from one to five years and (2) these warrants must be cash-settled.

The Exchange plans to list both American style currency warrants (*i.e.*, exercisable throughout their life) and European-style currency warrants (*i.e.*, exercisable only upon their expiration date). Upon exercise, or at the warrant's expiration date if not exercisable prior to such date, the holder of a warrant resembling a put option would receive payment in U.S. dollars to the extent that the underlying currency has declined below a pre-stated cash settlement value, while the holder of a warrant resembling a call option would receive payment in U.S. dollars to the extent that the currency has increased above the pre-stated cash settlement value. Warrants that are "out-of-the-money" at the end of the stated term will expire worthless.

The PSE will consider listing currency warrants on a case-by-case basis. Because the warrants will represent unsecured obligations of their issuer, only warrants issued by companies that exceed the Exchange's financial listing criteria and that have assets in excess of $100 million will be eligible for listing. The Exchange proposes to require a minimum public distribution of one million warrants together with a minimum of 400 public holders, and an aggregate market value of $4 million. In addition, warrants which have been approved for trading on another national securities exchange will be eligible for listing on the PSE.

The Exchange also proposes to amend PSE Rules 9.18(c) ("Suitability") and 9.18(e) ("Discretionary Accounts") in order to apply these provisions to currency warrant transactions. Specifically, as in the case of index warrants, the options suitability standard will apply to currency warrant recommendations made by members and member organizations and the Exchange will recommend that currency warrants only be sold to options-approved accounts. Moreover, as with index warrants, a Senior Registered Options Principal ("SROP") or Registered Options Principal ("ROP") will be required to approve and initial any discretionary currency warrant transaction on the day it is executed. In addition, the SROP shall review the acceptance of each discretionary account to determine that the ROP has a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transaction proposed, and he shall maintain a record of the basis for his determination.

In addition, prior to the commencement of trading of any currency warrants, the PSE will issue a circular to Exchange members and member organizations advising them of the risks involved in the trading of such warrants. The circular also will contain the PSE's recommendation that currency warrants be sold only to investors whose accounts have been approved for options trading.[7] Pursuant to the PSE's regulatory framework for warrants, the circular shall recommend that investors in currency warrants be afforded an explanation of the special characteristics and risks attendant to trading in currency warrants.[8]

Currency warrants represent another of the innovative methods of raising capital recently developed by business enterprises. Whereas corporations once raised capital solely through simple debt or equity offerings with the occasional sale of convertible debt or preferred stock, today a wide range of financing alternatives, such as commodity- or stock-index-linked debt and foreign currency-denominated debt are available. Currency warrants are yet another example of this phenomenon. These innovative financing techniques not only allow business entities to raise capital more easily and less expensively, but also provide investors with an opportunity to obtain differential rates of return on a small capital outlay if the underlying currency moves in a favorable direction within a specified time period. Of course, if the underlying currency moves in the wrong direction or fails to move in the right direction within the specified time period, the warrant will expire worthless and the investor will have lost his entire investment.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The PSE submitted an amendment to the Commission that specified: (1) Currency warrants traded on the Exchange will be cash-settled in U.S. dollars, and (2) prior to the commencement of trading of any currency warrants, Exchange members and member organizations will be advised by notice of the risks involving the trading of such warrants. See letter from David P. Semak, Vice President, Regulation, PSE, to William M. McNair, Staff Attorney, Division of Market Regulation, dated June 13, 1991 ("June 1991 PSE Letter"). Subsequently, the PSE further amended its proposal to specify that its proposal to list currency warrants included cross-rate currency warrants that are settled in U.S. dollars. See letter from David P. Semak, Vice President, Regulations, PSE to William M. McNair, Staff Attorney, Division of Market Regulations, SEC, dated August 5, 1991.

[4] See Securities Exchange Act Release No. 28034 (May 22, 1990), 55 FR 22001 ("Warrant Regulatory Framework").

[5] See Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832.

[6] As discussed *supra* note 3, the PSE proposal also includes cross-currency warrants. U.S. Dollar denominated cross currency or cross-rate currency warrants are warrants to purchase or sell a foreign currency at an exercise price that is denominated in another foreign currency, with settlement in U.S. dollars. The warrant exercise price, therefore, represents an exchange rate between two foreign currencies. For example, a Japanese Yen/Deutsche Mark cross-rate currency warrant could be structured to permit an investor to exercise the warrant if the Japanese Yen appreciates against the Deutsche Mark by a specified amount. Accordingly, cross-rate currency warrants allow investors to hedge against or speculate on exchange-rate movements between two foreign currencies.

[7] See June 1991 PSE letter, *supra* note 3.

[8] See Warrant Regulatory Framework, *supra* note 4, at 39833.

and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[9] More specifically, the Commission believes that currency warrants are an innovative financing technique designed to allow an issuer to offer debt at a lower rate than in straight debt offering in return for assuming some foreign currency risk. In addition, purchasers of the currency warrants can use them to hedge against or speculate on currency market fluctuations.

The Commission believes that the PSE has designed reasonable rules and procedures to address the special concerns attendant to the secondary trading of currency warrants. By imposing special suitability, disclosure, and compliance requirements on currency warrants, the PSE has adequately addressed potential public customer problems that could arise from the derivative nature of these products. For example, the distribution of Exchange Circulars regarding trading in currency warrants should ensure that the risks and characteristics of currency warrants are adquately disclosed to investors.

The Commission believes further that it is appropriate to apply the options suitability standard and special risk disclosure requirements to currency warrants. More specifically, currency warrants are derivative instruments with many of the same basic risks as currency options. The requirement that a circular be distributed to members describing the product, along with a recommendation that investors be afforded an explanation of the special characteristics and risk attendant to trading of currency warrants should help ensure that investors are informed about the risks on these products. Similarly, applying existing options suitability procedures to currency warrants should ensure that only customers with an understanding of options and the financial capacity to bear the risks attendant to options trading will be trading currency warrants on their broker's recommendations.

Moreover, a SROP or ROP will be required to review any discretionary currency warrant transaction on the day the transaction is executed. As with currency options, the Commission believes this procedure will ensure that appropriate supervisory personnel at member firms review these transactions promptly. In addition, the Commission notes that the PSE will recommend that currency warrants be sold only to options-approved account.

[9] 15 U.S.C. 78(f)((b)(5) (1982).

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR-PSE-90-39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-20244 Filed 8-22-91; 8:45 am]

BILLING CODE 8010-01-M

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30-3(a)(12) (1989).

[Release No. 34-29580, File No. SR-Phlx-91-17]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Options Floor Procedure Advice F-12—Responsibility for Assigning Participation on the Foreign Currency Floor

August 16, 1991.

On May 24, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission"), a proposed rule change to establish procedures for assisting participation in a trade on the foreign currency options floor.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 29343 (June 19, 1991), 56 FR 29519. No comments were received on the proposed rule change.

The PHLX proposes to add a new Options Floor Procedure Advice ("OFPA") F-12 that establishes procedures for assigning participation for orders executed on the foreign currency options floor. In general, the proposed OFPA F-12 places responsibility on all participants in a trade to take certain steps to ensure that their participation in the trade is recognized. On the foreign currency options floor, often many market participants are involved in a single trade, and, accordingly, the PHLX believes it is important to establish specific obligations for each participant in the trade.

First, where there is more than one contra-side in a transaction, each contra-side participant must immediately make known to the largest participant his understanding as to his respective level of participation in the trade. Second, any individual who believes that he participated in the trade is required to remain in the crowd until the largest participant has confirmed his level of interest. Additionally, the PHLX proposal provides that: (1) No person in the crowd shall submit a ticket for matching on a trade when that person has, or should have, grounds to believe that he is not due participation in the trade, and (2) disputes as to participation in a trade shall be resolved by a majority vote of those persons in the crowd during the relevant time or, if not so settled, then by a floor official. A fine schedule has been proposed to ensure compliance with these procedures.[3]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[4] More specifically, the Commission believes that the PHLX proposal will facilitate the orderly operation of the foreign currency options floor where transactions occur that sometimes involve a number of market participants. The Commission believes in such instances that it is reasonable for the Exchange to require each participant to a large trade to take steps to ensure that the other parties to the transactions are aware of the level of his participation. Moreover, the Commission believes that it is appropriate for the parties to the transaction to resolve their respective levels of interest in the transaction at that time. Any such resolution, of course, would be subject to the oversight and review by the Exchange.

It therefore Is ordered, Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-Phlx-91-17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-20183 Filed 8-22-90; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The fine for the first, second, and third occurrence is $100.00, $250.00, and $500.00, respectively. The sanction for the fourth occurrence is discretionary with the Business Conduct Committee.

[4] 15 U.S.C. 76(f)(b)(5) (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1989).

[Release No. 34-29579, File No. SR-Phlx-91-15]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Options Floor Procedure Advice C-9—Floor Brokers Trading in their Customer Accounts

August 16, 1991.

On May 24, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission"), a proposed rule change to place restrictions on the handling of floor broker and clerk customer orders by their member firms.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 29342 (June 19, 1991), 56 FR 29518. No comments were received on the proposed rule change.

Currently, Phlx Options Floor Procedure Advice ("OFPA") C-9 regulates trading in Phlx options by floor brokers and clerks trading for their customer accounts. In general, OFPA C-9 prohibits all employees of member/participant firms, other than Registered Options Traders ("ROTs") and specialists, from placing orders for execution in their customer accounts while on the floor. Moreover, this Advice stipulates the manner in which the orders of floor brokers and clerks trading for their customer accounts may be handled by their firm when received off-floor. Specifically, these orders must be handled in the same manner as all other customer orders that a member firm handles, except that such orders cannot be handled by any person with a beneficial interest in the account. The Phlx proposes to place additional restrictions on the handling of floor broker and clerk customer orders by their firms by providing that such orders may not be handled by any person with the knowledge that such order is for the account of an associate. The existing fine schedule of OFPA C-9 will apply to violations of the proposed rule change.[3]

The PHLX recognizes that member firms generally require their employees to place their personal orders with them in order to monitor the trading activities of their employees. The PHLX proposal will not require these member firms to change this policy. Instead, as a consequence of the PHLX proposal, the member/participant firms will need to establish procedures to ensure that the customer orders of persons associated with their firm are handled on an anonymous basis.

The Phlx believe that its proposal will serve to decrease the opportunity for advantages to be afforded to customer orders of floor brokers and their co-employees. Additionally, the PHLX believes that the proposal will provide member firms added protection in monitoring the trading activities of their employees.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[4] More specifically, the Commission believes that the PHLX proposal is designed to protect investors and the public interest by ensuring that all customer orders are handled on an equal basis without special preference being given to orders of persons associate with member firms. The PHLX proposal recognizes that potential for preferential treatment that could result if members knowingly handle customer orders of their co-employees, and the Commission believes that the PHLX proposal should prevent this potential conflict of interest. The Commission notes that for similar reasons, the current PHLX rules do not permit a person, acting as a floor broker, to handle an order for an account with which he has a beneficial interest.

Moreover, the Commission notes that the proposed rule change will permit those firms that require their employees to place all their personal orders through their employer to continue this practice. The Commission recognizes that these requirements are helpful to member firms and the Exchange in performing their surveillance activities.

It therefore is ordered, Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-Phlx-91-15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-20184 Filed 8-22-91; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] Specifically, the fine for the first occurrence is $100.00 and the sanction for subsequent occurrences is discretionary with the PHLX's Business Conduct Committee.

[4] 15 U.S.C. 78(f)(b)(5) (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. IC-18277; 812-6876]

General American Investors Company, Inc. and General American Advisers, Inc.; Application

August 19, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application under the Investment Company Act of 1940 ("Act").

APPLICANTS: General American Investors Company, Inc. (the "Fund") and General American Advisers, Inc. ("Advisers").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) to exempt certain transactions from section 17(a); under section 6(c) and rule 17d-1(b) to permit certain joint transactions otherwise prohibited by section 17(d) and rule 17d-1(a); under section 6(c) to exempt the Fund from section 12(d)(3) to the extent necessary to amend a prior order; and under section 6(c) to exempt certain directors of the Fund from the definition of "interested person" contained in section 2(a)(19).

SUMMARY OF APPLICATION: Applicants seek an order to permit a closed-end management investment company to transfer its internal advisory business to a subsidiary that will issue stock options to management and to permit a future offering of the subsidiary's stock in which the investment company and management stockholders may participate.

FILING DATE: The application was filed on September 16, 1987 and amended on July 6, 1988, October 13, 1989, January 14, 1991, and August 16, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 16, 1991, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester'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. Applicants, 330 Madison Avenue, New

York, NY 10017, with a copy to John E. Baumgardner, Jr., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or Jeremy N. Rubenstein, Assistant Director, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund is a registered closed-end management investment company incorporated under the laws of Delaware. Since its inception in 1928, the Fund has been managed internally by its officers and directors, rather than by an external investment adviser. Since 1974, the Fund has been a registered investment adviser and has conducted an advisory business for third party accounts.

2. By order dated October 10, 1980 (Investment Company Act Release No. 11396) (the "1980 Order"), the Fund was granted an exemption under section 6(c) from section 12(d)(3) of the Act to permit the Fund to organize Advisers, a registered investment adviser, and acquire all of its outstanding stock. Advisers was organized to enable the Fund to expand its advisory business while maintaining its federal tax status under Subchapter M of the Internal Revenue Code, which limits the income an investment company can receive from sources other than investment securities. Whenever the advisory fee income from client accounts reaches an amount that would jeopardize the Fund's tax status, the Fund transfers the management of certain assets to Advisers, thereby reducing the Fund's advisory fee income and permitting the Fund to remain a regulated investment company for federal income tax purposes.

3. As the holder of all outstanding shares of Advisers, the Fund receives all the net income of Advisers in the form of dividends, elects the directors of Advisers, determines the compensation of its officers, and generally supervises and controls its activities. The board of directors of Advisers is composed entirely of officers of the Fund.

4. Applicants now propose that the Fund transfer its remaining advisory business, including both third party accounts and management of the Fund itself, to Advisers. All of the officers and employees of the Fund will become officers and employees of Advisers and will have an opportunity, as will future officers and employees of Advisers, to acquire a minority, non-voting equity interest in Advisers. The Fund will continue to hold all the outstanding voting shares of Advisers and to control its activities. If the Fund eventually causes Advisers to engage in a public or private offering of its stock, and/or if the Fund determines to sell some or all of its holdings in Advisers, the management shareholders may be allowed to participate in the sale. Applicants' proposal is referred to below as the "Limited Externalization."

5. The Limited Externalization is designed to accomplish three goals: (a) To allow the Fund, through establishment of an employee stock option plan, to better compete for and retain highly qualified investment management and administrative personnel; (b) to facilitate the expansion of the Fund's investment advisory business; and (c) to increase the visibility of the Fund's investment advisory business in the investment management community, and thereby enhance the value of such business to the Fund and its stockholders.

6. The board of the Fund, including a majority of the "non-interested" directors, approved the Limited Externalization proposal after lengthy consideration.[1] Before doing so, the board considered and rejected various alternatives, including a spin-off of Advisers' stock to the shareholders of the Fund, a complete externalization, the solicitation of bids from other investment company managers, and a merger with other closed-end investment companies. The board engaged an independent financial consultant to evaluate the fairness of the transactions to the Fund and independent counsel to advise them of their responsibilities during their deliberations.

7. The Limited Externalization will not be implemented until Advisers generates or anticipates generating an operating profit after giving effect to the fee waiver described in the following paragraph, *i.e.*, until revenues from third party advisory accounts equal or exceed the expenses of Advisers, with revenues and expenses calculated as if the Limited Externalization proposal were in effect.

8. Under applicant's proposal, the Fund and Advisers will enter into an investment management agreement pursuant to which Advisers will provide the Fund with advisory and administrative services and the Fund will pay Advisers a fee equal to 0.50% (annualized) of the average weekly net assets of the Fund. Advisers will waive the fee for a period of three years. The Fund may forgo the waiver, in whole or in part, if payment of the fee is appropriate in view of changes in the financial condition of Advisers or changes in the federal tax provisions applicable to the Fund.

9. Concurrent with the execution of the investment management agreement, the Fund will assign to Advisers its advisory contracts with third party accounts, with the consent of the other party to each such contract. The Fund also will transfer to Advisers its non-investment assets and liabilities, such as office furniture and supplies, leases, obligations under pension and employee benefit plans, accounts payable, and accounts receivable.

10. On the effective date of the Limited Externalization, all of the officers and employees of the Fund will become officers and employees of Advisers. Certain officers of Advisers will remain as officers of the Fund. The Fund's certificate of incorporation will not be amended to provide that at least 60% of the members of the board will be "interested persons" of Advisers (as defined in section 2(a)(19) of the Act, modified as described under "Applicants' Legal Analysis"). This amendment will not necessitate a change in the current composition of the board. The board of the Fund also will designate a committee composed of all the non-interested directors that will control the agenda of the board and the proxy machinery, and will create audit and other committees.

11. At present, Advisers has one class of common stock, all of which is held by the Fund. The proposal calls for conversion of the outstanding shares of common stock into shares of Class A common stock. A second class of common stock, denominated Class B, will be created. Class B shares initially will not be entitled to vote or to receive dividends, but will have the same liquidation rights as Class A shares.

[1] Approval was not unanimous. One of the Independent Directors did not consider the expansion of the Fund's advisory business to be a desirable corporate objective in itself, nor did he believe that a reorganization of the Fund is necessary in order to attract and retain highly qualified personnel. He also was concerned that the expansion may divert the attention of management from the investment objectives of the Fund and lead to conflicts of interest between the shareholders of the Fund and the management shareholders of Advisers. According to the application, the other Independent Directors considered the views of this director at length and concluded that the Limited Externalization is in the interest of Fund shareholders.

12. As of the effective date, the board of the Fund, in consultation with the Fund's independent accountants and an independent appraiser, will determine the initial "book value" per share of the Class A and Class B shares (book value is the same for the two classes) and the initial "market value" per share of the Class A shares. Both values will be redetermined at the end of each fiscal year and reported to shareholders of the Fund in its annual report. Applicants expect that the market value of the Class A shares will substantially exceed the book value. The board will not attempt to value Advisers' Class B shares at other than book value. The Fund's financial consultant has advised the board that, in the absence of dividend and voting rights, the Class B shares have no substantial fair market value.

13. On or after the effective date of the Limited Externalization, officers and key employees of Advisers ("Managers") may be granted options to purchase Class B shares of Advisers. Such options will be granted only upon the affirmative vote of a majority of the Fund's directors, including a majority of the non-interested directors. So long as a Manager is employed by Advisers, his options generally will be exercisable at any time during a period of ten years after the date of grant. The exercise price will be the book value of the Class B shares as most recently determined before the data of grant; provided, however, that a different option exercise price, discussed below, will apply if and when there is a public or private offering of Advisers' Class A shares.

14. The number of outstanding Class B shares owned by Managers may not exceed 40% of the total number of outstanding shares of both classes. In addition, for five years after the effective date of the Limited Externalization, the number of Class B shares owned by individuals who are Managers on that date may not exceed 25% of the total number of outstanding shares of both classes.

15. The board of the Fund, including a majority of the noninterested directors, will establish a dividend policy annually for the Class A shares. In doing so, the Board will be guided by the following principles: The uncertainties of the future business expansion of Advisers and related capital requirements; the level of retained earnings in other publicly traded management firms; the need to establish a minimum rate of accumulation of retained earnings of Advisers; the level of dividends historically paid to the Fund by Advisers; and the pretax effect on the Fund's operating income of the advisory revenues from the third party accounts to be transferred to Advisers.

16. Managers who acquire Advisers' Class B shares or options to purchase such shares will be required to enter into a "Stockholder Agreement" with Advisers and the Fund. Among other things, the agreement governs the disposition of Class B options and shares.

17. One set of provisions in the Stockholder Agreement will govern the disposition of a Manager's Class B options and shares upon his or her retirement, death, or incapacity prior to retirement. These provisions are intended to prevent a distribution of Class B shares beyond current and retired Managers and to allow Class B stock-option holders or their estates in the foregoing circumstances to realize increases in the book value of their Class B shares. Within seven months after retirement, death, or incapacity, a Class B stockholder or his estate may elect to sell the Class B shares (in whole, but not in part) to Advisers. If this election is not made, the shares (in whole, but not in part) may thereafter be resold to Advisers only upon three months' notice at the end of each of the four fiscal years following the triggering event. At the end of the fifth fiscal year, the former Manager or his estate would be required to sell his Class B shares to Advisers. In each instance, all shares would be sold to Advisers at the most recently determined book value. In the event of a public offering of Advisers' stock, the right of a Manager to require Advisers to repurchase Class B shares will terminate.

18. Options remaining unexercised at the end of a specified period, as yet undetermined, following the retirement, death, or incapacity of a Manager, or the termination of his or her employment for any reason, would expire, and the shares subject thereto would again be available for the grant of options.

19. Upon termination of an employee's employment other than by retirement, death, or incapacity, Advisers would have the right, but would not be obligated, at any time thereafter to repurchase all of the employee's Class B shares at the most recently determined book value.

20. Another set of provisions in the Stockholder Agreement will address the disposition of Class B shares and options thereon by Managers upon a public or private offering of Advisers' Class A shares. In the event of a public offering, all Class B shares that are outstanding or subject to option will be granted rights identical to the Class A shares. The rights of Class B options and shares after a private offering will depend on negotiations among the parties. Applicants anticipate that Class B shares will be granted dividend rights identical or similar to Class A shares but, in order for the board of the Fund to retain power and control over Advisers, lesser voting rights. In no event will Class B shares be granted greater rights than Class A shares.

21. If Advisers' Class A shares are sold in a public or private offering, the holder of options to purchase Class B shares will have the right to sell his options to Advisers for the difference between the most recently determined book value of Class B shares and the exercise price of the options, *i.e.*, the book value of the Class B shares when the options were granted. The Manager would thus profit from the increase in book value of Class B shares during the time the options were held. After a public offering, the right of a Manager to sell options to Advisers will terminate.

22. Alternatively, concurrent with or subsequent to a public or private offering of Class A shares, an option holder could exercise some or all of his options for Class B shares. To reflect the fact that the options would be exercised in these circumstances for stock with rights equal or similar to Class A stock, the option exercise price during or after an offering of the Class A shares would be the market value of the Class A shares at the time the option was granted.

23. Upon a public or private offering of Class A shares, a Manager who previously had exercised his options to obtain Class B shares would be required to pay Advisers the difference between the market value of the Class A shares when the options were granted and the price previously paid for such Class B shares (*i.e.*, the book value of Class B shares when the options were granted). Applicants proposed this requirement because they believe that, so long as the Class B shares lack voting or dividend rights, an employee exercising an option should be required to pay no more than the book value of the shares as of the date of grant. However, applicants believe that the employee should be required to pay the market value as of the date of grant (less prior payments) upon obtaining such rights.

24. Managers will be given an opportunity to participate in a public offering of Advisers' Class A shares as selling shareholders. The upper limit on such participation will be the number of shares that, as a percentage of the total number of shares to be offered to the public, equals the percentage of all

outstanding shares (both Class A and Class B) owned by Managers immediately prior to the consummation of the offering. In the event of a private offering, the rights of Class B share and option holders to participate in the offering as selling shareholders will depend on the negotiations among the parties.

25. The Stockholder Agreement will provide that during a period of three years following implementation of the Limited Externalization, the board of the Fund (including a majority of the non-interested directors) and the Fund's shareholders must approve any sale of a control block of Advisers' shares that would produce consideration to any seller, other than the Fund, in excess of the fair market value of such shares as most recently determined by the board of the Fund ("Sale Profit"). During the same period, any seller of Advisers' stock, other than the Fund, who receives, Sale Profit, whether or not as part of a sale of a control block, will be required to remit to the Fund a percentage of such Sale Profit (after reducing such profit by any cumulative operating loss incurred by Advisers since implementation of the Limited Externalization) equal to 50% in the first year, 30% in the second year, and 10% in the third year.

26. General American also seeks authority to be permitted without seeking additional relief to sell all of its Class A shares unless the sale is to (a) any person which at the time of sale owns 25% or more of the Class A shares or any person which is an affiliated person of any such person within the meaning of section 2(a)(3)(C) of the Act or (b) any person who is, or any group of persons which includes, officers or Class B stock or option holders of the Contract Adviser or any person which is an affiliated person of any such person within the meaning of section 2(a)(3)(C) of the Act.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides that it shall be unlawful for an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, to purchase from or sell to such registered company, or any company controlled by such registered company, any security or other property. The transfer of items of value from the Fund to Advisers involve transactions of the types prohibited by section 17(a). Such items include the Fund's personal property (furniture, equipment, etc.), the Fund's contracts with outside accounts, and the right to manage the Fund. Advisers' sales to and repurchases from Managers of Class B options and shares also would be prohibited by section 17(a).

2. Section 17(b) of the Act authorizes the SEC to exempt any transaction from the provisions of section 17(a) if (a) the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, (b) the transaction is consistent with the policy of the registered investment companies concerned, and (c) the transaction is consistent with the general purposes of the Act. In addition, section 6(c) relief may be necessary to approve in advance the possible sale of the Fund's interest in Advisers to affiliated persons. Applicants contend that the Limited Externalization proposal meets all of the standards necessary for an exemption from section 17(a) pursuant to sections 17(b) and 6(c).

3. Section 17(d) and rule 17d–1(a), taken together, prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or joint arrangement in which such registered investment company, or a company controlled by such investment company, is a participant, unless an application relating thereto has been filed with the Commission and an order entered. The transactions contemplated under the Limited Externalization proposal, including the joint sale of Class A shares by the fund and Advisers and Class B shares by Advisers' employees as part of a public or private offering, are thus prohibited absent a Commission order.

4. Rule 17d-1(b) provides that in determining whether to grant relief from section 17(d), the SEC must consider whether the relevant transactions are consistent with the provisions, policies and purposes of the Act, and the extent to which the Fund's participation in such transactions is on a basis different from or less advantageous than that of the affiliated persons. As discussed above, certain details of the Limited Externalization, such as the terms of future offerings of Advisers' stock, have not been specifically determined. Accordingly, applicants have requested relief from section 17(d) under section 6(c) of the Act as well as under rule 17d-1.

5. Applicants contend that they should be granted the relief requested from section 17(d) and rule 17d-1(a). Applicants emphasis that in contrast to the typical investment company/investment adviser structure, the Fund will control the activities of Advisers, the grant of stock options, and the negotiations, if any, for the sale of all or any part of Advisers' stock. Managers will not be permitted to dispose of their options or shares or to realize their economic value except in accordance with certain pre-established formulae (discussed above) developed by the board of the Fund or as otherwise approved by such board. Applicants contend that the control by the Fund over the price and terms of disposition of Advisers' stock, the basic fairness of the pre-established formulae in apportioning the benefit between the Fund and the affiliated persons, and the mechanical application of such formulae to the results of the Fund's negotiations with potential purchasers of Advisers' stock establish a firm basis for the conclusion that the proposal is beneficial and fair to the Fund and its stockholders.

6. Applicants request an exemption under section 6(c) from section 12(d)(3) of the Act. Section 12(d)(3), among other things, prohibits a registered investment company, such as the Fund, from acquiring an interest in an investment adviser, such as Advisers. Applicants' proposal does not involve the acquisition by the Fund of an interest in Advisers, since the Fund already owns 100% of Advisers. However, applicants request an amendment of the 1980 Order that granted the Fund an exemption from section 12(d)(3) and enabled it to organize Advisers and acquire all of its outstanding stock. The 1980 Order was conditioned on certain undertakings, including that the Fund would retain complete ownership of Advisers unless it sold all of its interest in Advisers to unaffiliated persons. Applicants now seek to remove the bar on the Fund's ownership of a partial interest in Advisers. Because applicants could not have obtained an interest in Advisers absent the 1980 Order, and because applicants now seek to eliminate a key condition of that order, the policy concerns of section 12(d)(3) should be addressed, even though no acquisition is occurring.

7. Applicants' proposal includes a condition (see condition 2 *infra*) that, unless the Fund disposes of its entire holdings of Advisers' voting stock, the Fund will retain more than 50% of Advisers' outstanding voting stock. This condition is designed to ensure that the Fund will retain unfettered control over Advisers, including the power to control any activities or policies of Advisers that affect the Fund. It provides the Fund with the flexibility to implement an employee stock program, while

protecting the Fund from potential conflicts of interest and reciprocal practices by making it impossible for the Fund to become a minority shareholder of Advisers.

8. Finally, applicants request a determination under section 6(c) of the Act that the non-interested directors of the Fund will not be deemed to be "interested persons" of Advisers under section 2(a)(19) solely by reason of the Fund's stock ownership of Advisers. If these persons were deemed to be interested persons of Advisers, they would, by virtue of section 2(a)(19)(A)(iii), be considered interested persons of the Fund, and the Fund would be unable to comply with section 10(a) of the Act, which requires at least 40% of an investment company's directors to be non-interested persons of the investment company.

9. Section 2(a)(19)(B)(i) provides that a person is an interested person of an investment adviser if he is an "affiliated person" of the adviser. An "affiliated person" of another person includes, among other things, a person who controls such other person. Applicants are concerned that under the terms of the Limited Externalization proposal, particularly the authority vested in the board of the Fund and the non-interested directors thereof over the business and affairs of Advisers, the non-interested directors of the Fund could be deemed, at least collectively, to control Advisers. Accordingly, applicants seek exemptive relief under section 6(c) from section 2(a)(19). Applicants assert that this relief is necessary and appropriate and is merely incidental to the relief requested under section 17 and section 12(d)(3).

Applicants' Conditions

If the requested order is granted, applicants expressly consent to the following conditions:

1. Unless the Fund disposes of all of Advisers' Class A common stock, the board of the Fund, including a majority of the non-interested directors, will: (a) Retain power to elect a majority of the directors of Advisers; (b) appoint (or cause Advisers' board to appoint) the officers of Advisers; (c) oversee the salary and compensation benefits of the officers and employees of Advisers; (d) be responsible for considering and authorizing the granting of options on Advisers' Class B common stock, and the terms and conditions thereof; and (e) control the issue and sale of newly issued common stock of Advisers.

2. Unless the Fund disposes of all of Advisers' Class A common stock, the Fund will retain more than 50% of the outstanding voting securities of Advisers.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-20248 Filed 8-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25362]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 16, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 9, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70-7869)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its wholly owned nonutility subsidiary, Southern Electric International, Inc. ("SEI"), 100 Ashford Center North, Suite 400, Atlanta, Georgia 30338, have filed an application-declaration under sections 3(b), 6(a), 7, 9, 10, and 12(b) of the Act and rules 45 and 50(a)(5) thereunder.

SEI has formed a consortium ("Consortium") with RWE Energie Aktiengesellschaft ("RWE"), an investor-owned German utility company, and HLC Trading, Lda. ("HLC"), an investor-owned Portuguese company. On June 21, 1991, the Consortium submitted to the Portuguese national power agency, Electricidade de Portugal ("EdP"), a bid to purchase and operate the Peog Thermal Power Plant ("Project") an electric generation facility located in Pego, Portugal.

The Project will initially consist of two 300 megawatt ("MW") coal-fired electric generating units ("Unit 1" and "Unit 2"), together with the associated common facilities and real property. Unit 1 is currently under construction and principal contracts have been awarded for the construction of Unit 2. Commercial operation of Units 1 and 2 is scheduled for 1993 and 1995, respectively. One or more additional generating units may be constructed with an expected total capacity of approximately 600 MW. The total cost of the Project is estimated to be between $1.3 and $1.8 billion. The Project, when operational, will be an electric utility company within the meaning of section 2(a)(3) of the Act.

If its bid is accepted, the Consortium intends to form ETLA, Lda ("ETLA"), a Portuguese limitada, to purchase and operate the Project. It is expected that SEI, REW and HLC will acquire equity interests (quotas) in ETLA of 68%, 27% and 5%, respectively, as set forth in ETLA's articles of association. Each quotaholder is entitled to one vote for each 250 Escudos contributed by it to the limitada.[1] SEI proposes to acquire its 68% equity interest through a newly organized foreign subsidiary, described below. ETLA will enter into a power purchase agreement with EdP having a term of at least 28 years.

The applicants anticipate that ETLA will be required to maintain a debt-to-equity ratio of approximately 85% to 15%.[2] At the time ETLA is formed, its quotaholders will have to commit to capitalize the limitada with at least 15% of the cost of the Project. Because Portuguese law requires that each quotaholder be jointly and severally liable for ETLA's entire equity requirement, SEI seeks authorization to make an equity contribution of up to $270 million to ETLA. SEI also proposes to provide ETLA with additional working capital in an amount not to exceed $5 million in the form of loans or advances ("Notes"). Such Notes will be

[1] Using the July 31, 1991 exchange rate of .006713 quoted in *The Wall Street Journal*, 250 Escudos is equal to U.S. $1.68.

[2] Southern and SEI calculate that a total Project cost of $1.8 billion would require a maximum equity contribution to ETLA of $270 million, while a total cost of $1.3 billion would result in a maximum contribution of $195 million.

repayable to SEI upon demand and, while outstanding, such bear interest at a rate not to exceed periodic LIBOR plus 2½%.

Primary project financing for the acquisition and completion of construction of the Project is expected to be provided by a syndicate of banking and other financial institutions ("Financing Syndicate"). The debt will be evidenced by notes ("Project Notes") to be issued by ETLA as payor in favor of the members of the Financing Syndicate. These Project Notes will be nonrecourse to ETLA and the quotaholders and will be secured by the Project and its related contracts. Based upon the required debt-to-equity ratio of 85% to 15%, the Project Notes are not expected to exceed $1.53 billion.

The Project Notes are expected to have a term of not less than 12 and not more than 25 years. Interest is not expected to exceed a rate of periodic LIBOR plus 2½%, excluding commitment, participation and underwriting fees. SEI requests, on behalf of ETLA, that the issuance and sale of the Project Notes be excepted from the competitive bidding requirements of rule 50 pursuant to subsection 50(a)(5) under the Act to negotiate these arrangements. It may do so.

For tax reasons, SEI proposes to acquire its 68% equity interest in ETLA through a new wholly owned foreign subsidiary, to be established under the laws of the Netherlands ("Netherlands Subsidiary"). The Netherlands Subsidiary will not engage in any business other than its ownership of the equity interest in ETLA. The Netherlands Subsidiary will be established with the minimum amount of capital required by law, which amount is not expected to exceed $25,000. In addition, costs associated with the formation of the Netherlands Subsidiary are not expected to exceed $25,000.

Initially ETLA will be capitalized to the minimum extent required by the invitation to bid and the Netherlands Subsidiary will be capitalized to the minimum extent required by applicable law. Prior to financial closing of ETLA's acquisition of the Project, the Netherlands Subsidiary will issue, and SEI will acquire, additional allotments in the Netherlands Subsidiary with funds contributed to SEI by Southern. Subsequent thereto, ETLA will increase the nominal value of its quotas and the ETLA Subsidiary and each of the other Consortium members will acquire the added nominal value of their respective quotas. To acquire the added nominal value of its quota, the Netherlands Subsidiary will use the capital it receives from SEI as a result of the sale of additional allotments. After giving effect to the above transactions, ETLA will have available to it the funds necessary to acquire the Project.

Southern proposes to make capital contributions to SEI of up to $275.5 million to provide SEI necessary capital to fund Netherlands Subsidiary which will, in turn, own ETLA.

As a result of the proposed transactions, the Netherlands Subsidiary and ETLA will be subsidiaries of Southern and SEI within the meaning of section 2(a)(8) of the Act, and SEI and the Netherlands Subsidiary will be holding companies within the meaning of section 2(a)(7) of the Act. Southern and SEI request an order under section 3(b) of the Act exempting ETLA and the Netherlands Subsidiary, as subsidiaries, from all provisions of the Act. Southern and SEI state that ETLA and the Netherlands Subsidiary will not derive any material part of their income, directly or indirectly, from sources within the United States. Further, neither ETLA, the Netherlands Subsidiary, nor any of their respective subsidiaries, will be a public-utility company operating in the United States.

Energy Initiatives, Inc. (70–7870)

Energy Initiatives, Inc. ("EII"), One Gatehall Drive , Parsippany, New Jersey 07054, an indirect subsidiary of General Public Utilities Corporation ("GPU"), a registered holding company, has filed an application under Sections 9(a) and 10 of the Act.

By order dated June 26, 1990 (HCAR No. 25108) ("1990 Order"), the Commission, among other things, authorized: (1) GPU to capitalize EII in amounts of up to $60 million through December 31, 1992; (2) EII to engage in preliminary project development and administrative activities in connection with its investments in (a) qualifying cogeneration facilities located anywhere in the United States and qualifying small power production facilities located within the service territories of the companies party of the Pennsylvania-New Jersey-Maryland Interconnection Agreement, both as defined by the Public Utility Regulatory Policies Act of 1978 and (b) load management and energy storage system projects; and (3) EII to provide engineering, consulting, management and other project development and operating services for a fee.

The 1990 Order further provided that such preliminary project development activities would include, but would not be limited to, site investigations, feasibility studies, preliminary design and engineering, licensing and permitting, acquisition, power sales, fuel supply, steam sales, engineering and other related contracts, development of financing programs and preparation of bids and other proposals in response to requests for proposals and other solicitations for development of such projects and facilities. Administrative activities would include, among other things, accounting, engineering, financial, contract administration and other activities.

EII now proposes to provide preliminary project development and administrative services of the type authorized in the 1990 Order with respect to cogeneration facilities to be located in Canada. EII would not acquire any ownership interest in such projects, but would furnish such preliminary project development and administrative services under negotiated compensation arrangements. In order to provide for the joint development of such cogeneration projects, EII may enter into joint venture or other similar contractual arrangements with other project developers, which will not involve the acquisition of any ownership interests.

Central and South West Corporation, et al. (70–7872)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, a registered holding company, and its wholly owned subsidiary, Transok, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma 74101 (collectively, the "Applicants") have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45, and 50(a)(5) thereunder.

CSW requests authorization, through December 31, 1993, to make a term loan to Transok, with a maturity of not later than December 31, 1993, and in an aggregate principal amount not exceeding $300 million. The loan will be evidenced by a promissory note and will be prepayable, in whole at any time or in part from time to time, without premium or penalty. The interest rate applicable on any day to the then outstanding principal balance of the loan will be the composite weighted average daily effective cost incurred by CSW for short-term borrowings through the issuance of commercial paper used to fund the loan.

CSW also requests authorization, through December 31, 1993, to fund the loan to Transok through the issuance of commercial paper ("Commercial Paper") in the form of physical or book-entry

unsecured promissory notes. The Commercial Paper will have varying maturities of not more than nine months from the date of issue and will bear a rate not to exceed the rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity sold by issuers thereof to commercial paper dealers. CSW requests that the issuance and sale of its Commercial Paper be exempted from the competitive bidding requirements of Rule 50 under paragraph (a)(5) thereunder.

Transok requests authorization to use the proceeds of the loan from CSW to acquire the natural gas gathering, transmission and marketing ("GTM") business of TEX/CON Oil and Gas Company ("TEX/CON"), a Delaware corporation and wholly owned subsidiary of BP Exploration, Inc. TEX/CON's GTM business: (1) Provides gas gathering and transportation services through interests in three major regional intrastate natural gas pipeline systems; (2) bundles and markets third-party gas production to markets across the United States; and (3) processes natural gas and extracts and markets natural gas liquids.

Transok proposes to acquire TEX/CON's GTM business by forming a wholly owned subsidiary ("Acquisition Sub") which will purchase, for cash, all of the outstanding shares of common stock of Lear Petroleum Corporation ("Lear"), a Delaware corporation and wholly owned subsidiary of TEX/CON. The Applicants state that TEX/CON, which operates its GTM business through assets owned directly by TEX/CON as well as assets owned by Lear, will transfer all of its GTM related assets to Lear prior to its acquisition by Acquisition Sub. Lear will be merged into Acquisition Sub and Acquisition Sub will continue to be held by Transok as a wholly owned non-utility subsidiary. Acquisition Sub will be incorporated in Delaware and will have authorized capital of 1,000 shares of common stock without par value. Transok requests authorization to subscribe to all of Acquisition Sub's common stock at a subscription price of $1.00 per share. Transok also requests authorization to provide a loan to Acquisition Sub, for purposes of acquiring Lear, at the same rate and on the same terms and conditions as the loan from CSW to Transok.

Entergy Services, Inc. (70–7874)

Entergy Services, Inc. ("Services"), a subsidiary service company of Entergy Corporation ("Entergy"), a registered holding company, both of 225 Baronne Street, New Orleans, Louisiana 70112, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By order dated December 29, 1989 (HCAR No. 25018) ("December 1989 Order"), Services was authorized to borrow up to an aggregate principal amount of $35 million through December 31, 1991 at any one time outstanding under loan agreements entered into with Entergy ("Entergy Loan Agreement") or with one or more banks. The bank borrowings would correspondingly reduce the amount of Entergy's commitment to Services under the Entergy's commitment to Services under the Entergy Loan Agreement.

Services now requests authorization through December 31, 1993 to effect such unsecured borrowing in an aggregate amount of up to $90 million at any one time outstanding under a new loan agreement with Entergy ("New Entergy Loan Agreement") and with one or more banks ("New Bank Loan Agreements"). Services' borrowings under the New Bank Loan Agreements would correspondingly reduce the amount of Entergy's commitment to Services under the New Entergy Loan Agreement.

Services' proposed borrowings under the New Loan Agreements will be in addition to Service's borrowings from time-to-time through the Entergy system money pool ("Money Pool"), as authorized by order of the Commission dated December 20, 1990 (HCAR No. 25223). However, the aggregate principal amount of borrowings by Services outstanding at any one time pursuant to the New Loan Agreements, through the Money Pool, and through such other borrowing arrangements as may hereafter be entered into by Services pursuant to Commission authorization shall not exceed $90 million. Further, the aggregate principal amount of borrowings by Services outstanding at any one time through the Money Pool shall not exceed an amount equal to the aggregate unused portion of the line(s) of credit then available to Services pursuant to the New Loan Agreements and/or such other borrowing arrangements as may hereafter be entered into by Services and authorized by the Commission.

Borrowings under the New Entergy Loan Agreement will be evidenced by the issuance of a note ("Entergy Note") by Services to Entergy. The Entergy Note will represent Services' obligations to pay the aggregate unpaid principal amount of all loans made under the New Entergy Loan Agreement up to $90 million, plus accrued interest. The Entergy Note will mature on December 31, 1993 and will bear interest, payable quarterly, on the unpaid principal amount, at the prime rate of interest publicly announced from time-to-time by Chemical Banking Corporation in New York, New York. The Entergy Note may be prepaid at any time in whole or in part without premium or penalty.

Borrowings under the New York Loan Agreements will be evidenced by the issuance of unsecured promissory notes ("Bank Notes") by Services to one or more banks in an aggregate principal amount of up to $90 million at any one time outstanding. The Bank Notes will be payable not later than December 31, 1993 and may be prepayable, in whole or in part, at any time without premium or penalty. The Bank Notes will bear interest at a maximum rate per annum not greater than 1.5 percentage points over the prime commercial bank rate in effect at the date of issuance or renewal from time-to-time ("Maximum Rate"). The Bank Notes may bear interest at a rate based on other market rates or indices which may fluctuate and cause the rate to exceed the Maximum Rate. However, the effective interest rate for any 30 day period on an annualized basis may not exceed the Maximum Rate. The selected rate of interest will be the most favorable effective borrowing rate to Services, taking into account compensating balances and/or commitment or other similar fees and the proposed amount and maturity of each borrowing. Compensating balances or the payment of equivalent commitment or other similar fees are not expected to exceed 10%. Services states that the effective interest cost for borrowings under the New Bank Loan Agreements will be approximately 11.1% per annum.

Entergy requests authorization to guarantee Services' obligations under the New Bank Loan Agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–20247 Filed 8–22–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 12–D (Revision 1)]

Delegation of Authority; Redelegation of Disaster Assistance; Correction

On August 2, 1991, the Small Business Administration (SBA) published a notice in the **Federal Register** (56 FR 37118) setting forth the authority delegated by the Administrator to the Assistant Administrator for Disaster Assistance

for the purpose of administering SBA's Disaster Assistance program. The delegation reflected organizational changes made by a reorganization of the Finance and Investment Activities of the SBA. This document corrects an inadvertent error in such delegation as follows: In SBA's notice of August 2, 1991 (56 FR 37118), on page 37119, in the second column, in paragraph II.C.2, insert the word "temporary" after the word "disaster".

Dated: August 16, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-20178 Filed 8-22-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. P-91-2W; Notice 3]

ANR Pipeline Co.; Transportation of Natural and Other Gas by Pipeline; Grant of Waiver

This notice corrects a misstatement contained in the Grant of Waiver published in the **Federal Register** on August 14, 1991 (56 FR 40356). The corrected statement should read "Absent a waiver, ANR would be required, on December 14, 1991, to either (1) reduce MAOP on the lines from 850 psig to 709 psig and 715 psig for the 22-inch and 30-inch lines, respectively, or (2) replace the lines with pipe designed and constructed according to Class 3 standards. ANR seeks a waiver of this requirement for a 10½ month period ending November 1, 1992."

Issued in Washington, DC on August 16, 1991.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 91-20176 Filed 8-22-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Amigo Federal Savings and Loan Association; Brownsville, TX; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Amigo Federal Savings and Loan Association, Brownsville, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 27, 1991.

Dated: August 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-20211 Filed 8-22-91; 8:45 am]

BILLING CODE 6720-01-M

Certified Federal Savings Association, Georgetown, TX; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Certified Federal Savings Association, Georgetown, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 19, 1991.

Dated: August 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-20212 Filed 8-22-91; 8:45 am]

BILLING CODE 6720-01-M

Commerce Federal Savings Association; San Antonio, TX; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Commerce Federal Savings Association, San Antonio, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 11, 1991.

Dated: August 19, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-20213 Filed 8-22-91; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Samantha Smith Memorial Exchange Program—Youth Exchanges

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of youth under the age 21 with Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Romania, the Soviet Union (including the Baltic States), and Yugoslavia. These exchanges represent part of the activities of the Samantha Smith Memorial Exchange Program and are subject to the availability of funding for the Fiscal Year 1992 program. A request for proposals in support of exchanges of undergraduate students under the aegis of the Samantha Smith program will be published separately.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EDT on Monday, September 30, 1991. Faxed documents will not be accepted, nor will documents postmarked on September 30 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin May 1. It is the responsibility of each grant applicant to ensure that their proposal is received after April 1, 1992 in support of projects that may begin in May.

ADDRESSES: The original and 12 copies of the completed application (stapled, not bound), including required forms, should be submitted to: U.S. Information Agency, Ref: Samantha Smith Program—Youth Exchange, Office of the Executive Director, E/X room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Bruce B. Brown, Youth Programs Division, E/VY, room 357, (202) 619-6299; FAX (202) 619-5311, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of

American political, social and cultural life.

Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchanges Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with all Agency requirements and guidelines and are subject to the requirements of the USIA contracting officer.

Grant funding is intended to promote the exchange of young people 21 years of age or younger between the U.S. and Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Romania, the Soviet Union (including the Baltic States), and Yugoslavia. The Agency's main objective is to foster interaction between American and foreign youth. Consequently, extensive interaction is a requirement. Proposals should demonstrate how American and foreign youth will interact in a way that encourages the exchange of ideas, values and information.

Grants are awarded to expand or enhance existing exchange programs or to encourage the development of new exchanges. Programs may involve the U.S. organization in a partnership with organizations in one or more countries. The minimum length of stay in country for any project is three weeks. Three categories of grants are being offered.

Category A—School-to-School Exchanges

School-to-school exchanges involving direct linkages between two elementary, middle, or high schools are eligible for grants of no more than $10,000, with preference for high school level programs. The exchange should be reciprocal and should take place during the academic year when schools are in session. The proposal should provide detailed information on the activities in both the U.S. and the partner country. Projects may be year-long, semester or short-term (generally understood to mean three to eight weeks). High schools currently participating in the US-USSR High School Academic Partnership Program are not eligible under this initiative to apply directly to USIA for grants in support of their Partnership Program linkage.

Category B—US-USSR High School Academic Partnership Program

One organization will be awarded a grant of approximately $150,000 in support of a program of exchanges between the U.S. and the USSR based on school linkages. At its most basic level the paired schools annually exchanged groups of 10–15 students plus 1–2 teachers in each direction for periods of 4 weeks. Semester and year-long exchanges of individual students and teachers are also possible. The program will be funded on the American side primarily by contributions from the participating students, their schools and communities. Applicants for this grant should provide written evidence of a commitment from a Soviet entity that it will provide all necessary funding on the Soviet side, support for visa applications, and adequate logistical support for approximately 1,000 American and 1,000 Soviet students and teachers. Consortia will also be eligible for this grant.

Category C—General Youth Exchanges

This category includes all other projects, which will be eligible for grants of up to $50,000. Semester and year-long high school study programs conducted by exchange organizations fall within this category. For short-term (3–8 weeks) exchanges, preference is given for projects with a thematic focus. Eligible foci may include, but are not limited to: The arts (theater, dance, music, literature, fine arts, folklore, and film/video); language and culture; science and mathematics; conservation and the environment; historic preservation; museum training; political, social and economic issues; business and administration/management (including enterprise promotion); math and science; and agriculture. Projects requesting support for tours of performing arts groups or sports teams are eligible if the primary purpose of the program is interaction between international participants and their hosts. Tours of performing arts groups or sports groups where the primary activity is performance or competition are not eligible. Organizations other than schools that seek funds for an academic high school exchange of six months duration or more must be designated by USIA as a Teenager Exchange-Visitor Program Sponsor and must demonstrate an official connection with a high school or high schools in the United States.

Reciprocity is not a requirement for this category, but in general USIA gives preference to proposals for reciprocal exchanges, and the proposal should provide detailed information on the activities in both the U.S. and the partner country. The number of U.S. and foreign participants should be roughly equal. Such proposals should provide written evidence that the U.S. organization has the commitment of a counterpart organization in the Soviet Union or Eastern Europe willing and able to engage in the proposed activities. In most cases the counterpart organization should assume responsibility for the cost of hosting the American participants in the reciprocal portion of the program.

All categories of proposals must include:

—Participant selection criteria and a description of the selection process. All participants must be under age 21. Participants should be chosen for their actual or potential leadership qualities. The proposal should describe the selection process on both sides. The ratio of adult escorts to youth participants should be reasonable.

—Description of orientation programs. There should be ample introduction to the program theme, administrative procedures, basic historical, cultural and social information, and substantive issues likely to be raised by their U.S. or foreign counterparts.

—Information concerning stays in the host country—Preference is generally given to longer stays in country. Consideration will be given to those projects which for reasons or requirements of the partner country or countries are of short duration, but the length of stay in country must be no less than three weeks.

—Information concerning language qualifications—Speaking ability in the language of the host country for both American and foreign participants is desirable, but not required. Ideally some participants in each incoming delegation should be conversant in English, and some participants in each outgoing delegation should be conversant in the host country language.

—Details on planning. Adequate lead/planning time to ensure a successful exchange.

—Allowable costs—Grant-funded expenditures will generally be limit to the following categories:

—In country travel and per diem or stipends.

—Orientation, honoraria, or preparation costs; briefing materials. Honoria is limited to $150/day/speaker.

—Educational and cultural enrichment activities at a limited of $150 per each program participant.
—Tuitions, conference/seminar registration fees, and other program admission fees.
—International travel, normally limited to partial support for Americans traveling to the USSR or East Europe, and East Europeans traveling to the U.S.; it is assumed that the travel of Soviet participants will be paid from Soviet sources.
—Administration (salaries, benefits, other direct and indirect costs) may not exceed 20% of the total funds requested.
—Applications should demonstrate substantial cost sharing in both program and administrative expenses.

Application Procedure

Issuance of this request for proposals does not constitute an award commitment on the part of the government. The government reserves the right to reject any or all applications received. Final award cannot be made until funds have been fully appropriated, allocated and committed through internal USIA procedures. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense.

Review Process

USIA acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review in conformity with the criteria set forth herein and in the guidelines for preparing proposals prior to funding decisions by delegated officials. All proposals will also be reviewed by the Agency's Office of the General Counsel as well as other Agency offices. The Associate Director for Educational and Cultural Affairs identifies and approves potential grant recipients. Final technical authority for grant awards resides with the Agency's Office of Contracts.

Review Criteria: Completed applications will be reviewed according to the following criteria:

1. Quality of the program plan and adherence of proposed activities to the criteria and conditions described above.

2. Reasonable, Feasible, and Flexible Objectives. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier Effect/Impact. Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Value the U.S.-Partner Country Relations. Assessments by USIA's geographic area desk, and overseas officers of the need, potential, impact and significance in the partner country(ies).

5. Cost Effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. Institutional Capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Proposals should demonstrate potential for program excellence and/or track record of applicant institution. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. Follow-on Activities. Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Evaluation Plan. Proposals should provide a plan for evaluation by the grantee institution.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about April 1, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 16, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91–20277 Filed 8–22–91; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 23, 1991.

Dated: August 16, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Reinstatement

1. Request for Estate Information, VA Form Letter 27–439.

2. The form letter provides the information necessary to determine whether size of estate is within legal

boundaries for discontinuance of benefits to incompetent veterans when specific conditions exist.

3. Individuals or households; State or local governments; Federal agencies or employees.
4. 2,333 hours.
5. 10 minutes.
6. On occasion.
7. 14,000 respondents.

[FR Doc. 91–20204 Filed 8–22–91; 8:45 am]
BILLING CODE 8320–01–M

Career Development Committee; Meeting

The Department of Veterans Affairs gives notice that under Public Law 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 7401, will be held at the Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20027, October 28 and 29, 1991, starting at 8 a.m., October 28. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Department of Veterans Affairs. The committee advises the Director, Medical Research Service, on selection and appointment of Associate Investigators, Research Associates, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 8:30 a.m. on October 28, 1991, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. Robert E. Meci, Executive Secretary of the Career Development Committee (12A3), Department of Veterans Affairs, Washington, DC 20420, (202) 523–6876, prior to October 21, 1991. The meeting will be closed from 8:30 a.m. to 5:30 p.m. on October 28 and 8 a.m. to 5:30 p.m. on October 29 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Public Law 92–463 as amended, in accordance with subsection (c) (6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Robert E. Meci, Chief, Career Development Program, Medical Research Service (12A3), Department of Veterans Affairs, Washington, DC 20420, (phone 202–523–6876).

Dated: August 16, 1991.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 91–20274 Filed 8–22–91; 8:45 am]
BILLING CODE 8320–01–M

Geriatrics and Gerontology Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held September 23–24, 1991 by the Department of Veterans Affairs, at 650 Massachusetts Avenue NW., Washington, DC in the second floor conference room. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Secretary of Veterans Affairs and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers. The meeting will convene at 8:30 a.m. and adjourn at 5 p.m. on September 23 and will reconvene at 8:30 a.m. on September 24 and adjourn at 12 noon. The meeting is open to the public up to the seating capacity of the room. For those wishing to attend contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care (phone 202/535–7164) prior to September 16, 1991.

The care of mentally ill in VA Nursing Home Care Units and finalization of the report on Rural Health Care for Veterans will be the primary topics for discussion.

Dated: August 16, 1991.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 91–20275 Filed 8–22–91; 8:45 am]
BILLING CODE 8320–01–M

Medical Research Service Merit Review Boards; Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the meetings of the following Federal Advisory Committees.

Merit review board for	Date	Time	Location
Hematology	Sept. 30, 1991	8 a.m. to 5 p.m.	Holiday Inn.[1]
Alcoholism and drug dependence	Oct. 1, 1991	do	Holiday Inn.
Cardiovascular studies	Oct. 1, 1991	do	Holiday Inn.
Oncology	Oct. 10, 1991	do	Holiday Inn.
Do	Oct. 11, 1991	do	
Endocrinology	Oct. 10, 1991	do	Holiday Inn.
Do	Oct. 11, 1991	do	
Basic sciences	Oct. 11, 1991	do	Holiday Inn.
Do	Oct. 12, 1991	do	
Gastroenterology	Oct. 17, 1991	do	Holiday Inn.
Do	Oct. 18, 1991	do	
Mental Health and	Oct. 17, 1991	do	Holiday Inn.
Behavioral studies	Oct. 18, 1991	do	
Surgery	Oct. 20, 1991	do	Chicago Hilton.[2]
Respiration	Oct. 22, 1991	do	Ramada.[3]
Do	Oct. 23, 1991	do	
Infectious diseases	Oct. 24, 1991	do	Ramada.
Do	Oct. 25, 1991	do	
Immunology	Oct. 24, 1991	do	Ramada.
Do	Oct. 25, 1991	do	
Neurobiology	Oct. 30, 1991	do	Ramada.
Do	Oct. 31, 1991	do	
Do	Nov. 1, 1991	do	
Nephrology	Oct. 31, 1991	do	Ramada.
Do	Nov. 1, 1991	do	

[1] Holiday Inn, The Governor's House, Rhode Island Avenue at 17th Street NW., Washington, DC 20036.
[2] Chicago Hilton and Towers, 720 S. Michigan Avenue, Chicago, IL 60616.
[3] Ramada Renaissance Techworld, 999 9th Street, NW., Washington, DC 20001-9000.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial and renewal projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, closing portions of these meetings are in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 532-5942 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: August 16, 1991.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 91-20276 Filed 8-22-91; 8:45 am]

BILLING CODE 8320-01-M

Secretary's Educational Assistance Advisory Committee; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Secretary's Educational Assistance Advisory Committee, authorized by 38 U.S.C. 1792, will be held on September 16, 1991, from 8:30 a.m. to 4 p.m. and on September 17, 1991, from 8:30 a.m. to 12 noon. The meeting will take place in room 675 of the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The purpose of the meeting will be to observe a session of the Army Career Alumni Program (ACAP) and to discuss the various transition assistance programs as they related to VA education benefits.

The meeting will be open to the public up to the seating capacity of the conference room. Due to the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Celia Dollarhide, Executive Secretary, Veterans' Advisory Committee on Education (phone 202-233-2152) prior to September 3, 1991.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 3 p.m. on September 16, 1991.

Dated: August 9, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91-20263 Filed 8-22-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 164
Friday, August 23, 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).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., August 28, 1991.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573–0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED:

Portion Open to the Public

1. Docket No. 91–01—*Bonding of Non-Vessel-Operating Common Carriers.*
2. Petition for Exemption from the NVOCC Tariff Filing Requirements of the Shipping Act of 1984.

Portion Closed to the Public

1. Laws, Rules, Regulations, Policies and Practices of Taiwan Authorities Affecting Shipping in the United States/Taiwan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91–20444 Filed 8–21–91; 3:33 pm]

BILLING CODE 6730–01–M

NATIONAL WOMEN'S BUSINESS COUNCIL

TIME AND DATE: 12:00 pm–6:00 pm, September 5, 1991
9:00 am–12:30 pm, September 6, 1991

PLACE: National Women's Business Council Office, 2100 Pennsylvania Avenue, NW., Suite 690, Washington, DC 20037.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: In accordance with the Women's Business Ownership Act, Public Law 100–533 as amended, the National Women's Business Council announces a forthcoming meeting. Issues to be discussed are the new federal ethics guidelines, staff report, Council budget, FY '91 work plan, annual report, and various Council office administrative issues.

CONTACT PERSON FOR MORE INFORMATION: Wilma Goldstein, Executive Director, National Women's Business Council, 2100 Pennsylvania Avenue, NW., Suite 690, Washington, DC 20037, (202) 254–3850.

Wilma Goldstein,

Executive Director, National Women's Business Council.

[FR Doc. 91–20414 Filed 8–21–91; 12:53 pm]

BILLING CODE 6820–AB–M

Corrections

Federal Register
Vol. 56, No. 164
Friday, August 23, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-083]

Witchweed Regulated Areas

Correction

In the issue of Wednesday, August 7, 1991, on page 37606, in the first column, in the correction of rule document 91-15592, in correction paragraph number 1., "page 28991" should read "page 29891".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; University of California, San Diego, et al.

Correction

In notice document 91-17814 beginning on page 34187 in the issue of Friday, July 26, 1991, make the following correction:

On page 34187, in the third column, in the second full paragraph, in the 10th line "(XeC1)" should read "(XeCl)".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-506]

Final Results of Antidumping Duty Administrative Reviews Oil Country Tubular Goods From Canada

Correction

In notice document 91-19235 beginning on page 38408 in the issue of Tuesday, August 13, 1991, make the following correction:

On page 38416, in the first column, under the second *Department's Position* insert "We agree with petitioners and have changed the method of calculating the credit expense in both the Canadian and U.S. markets accordingly."

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Louisiana State University, et al.; Notice of Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 91-18302 appearing on page 36776 in the issue of Thursday, August 1, 1991, make the following corrections:

On page 36776:

1. In the first column, in the second complete paragraph, in the ninth line "145th" should read "14th".

2. In the second column, in the 13th line "Em 900" should read "EM 900".

3. In the third column, five lines from the bottom, "*Customs*: Dated: July 17" should read "*Customs:* July 17".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 10

[Docket No. 910764-1164]

RIN 0651-AA27

Duty of Disclosure

Correction

In proposed rule document 91-18588 beginning on page 37321 in the issue of Tuesday, August 6, 1991, make the following corrections:

1. On page 37321, in the third column, in the heading, the RIN number was incorrect and should read as set forth above.

2. On page 37322, in the third column, in the first line, "is" should read "if". In the last paragraph, in the fourth line, "applications" should read "applicants"

3. On page 37323, in the first column, in the second complete paragraph, in the first line, after "for", delete "the".

4. On the same page, in the second column, in the first complete paragraph, in the fifth line from the bottom, delete "by". In the fourth line from the bottom "of" should read "or".

5. On page 37325, in the second column, in the first complete paragraph, in the seventh line, "of" should read "or".

6. On the same page, in the third column, in the second complete paragraph, in the fourth line from the bottom, insert "that" before "do".

7. On page 37326, in the 2nd column, in the 13th line, "§ 1.55(c)" should read "§ 1.56(c)".

8. On page 37327, in the 3rd column, in the 2nd complete paragraph, in the 18th line "choose" should read "chose".

9. On page 37329, in the second line, in amendatory instruction 7, "Section 1.62" should read "Section 1.63".

§ 1.67 [Corrected]

10. On the same page, in the third column, in § 1.67(c), in the fifth line, "it" should read "if".

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[Notice 1991-12]

Use of Excess Funds

Correction

In rule document 91-17612 beginning on page 34124, in the issue of Thursday, July 25, 1991, make the following corrections:

1. On page 34124, in the second column, in the first complete paragraph, in the second line, "Amendment" should read "Amendments".

2. On page 34126, in the first column, in the third complete paragraph, in the sixth line "of that" should read "that of".

§ 113.1 [Corrected]

3. On the same page, in the third column, in amendatory instruction 5, in the third line, "section 1132" should read "§ 113.2".

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

[Notice 1991-13]

11 CFR Part 9036

Matching Fund Submission and Certification Procedures for Presidential Primary Candidates

Correction

In rule document 91-17611 beginning on page 34130 in the issue of Thursday, July 25, 1991, make the following corrections:

1. On page 34130, under **SUPPLEMENTARY INFORMATION**, in the fourth line from the end of the paragraph "three" should read "these".

§ 9036.2 [Corrected]

2. On page 34133, in the first column, in § 9036.2(d)(2), in the seventh line "and" should read "an".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-01-5410-10-B004; CACA 27443]

Conveyance of Mineral Interests in California

Correction

In notice document 90-29194 appearing on page 51353 in the issue of Thursday, December 13, 1990, make the following corrections:

1. In the first column, in the land description, in the fifth line from the bottom of the page, delete the last "S" and correct the fourth line to read, "SW¼SW¼, W½NW¼SW¼SW¼, SW¼SW¼SW¼,"

2. In the same column, the last line should read up to the comma, "W½NW¼SW¼SE¼,".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Computer Programming, Data Process and Other Computer Related Services

Correction

In proposed rule document 91-19077 beginning on page 38364 in the issue of Tuesday, August 13, 1991, make the following corrections:

1. On page 38371, in the third column, in the first line "7371-7397" should read "7371-7379".

2. On the same page, in the same column, in the table titled "Alternative 2", in the first entry, in the third column, "$150" should read "150".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-34-91]

RIN 1545-AP69

Conclusive Presumption of Worthlessness of Debts Held by Banks

Correction

In proposed rule document 91-12644 beginning on page 24154 in the issue of Wednesday, May 29, 1991, make the following corrections:

1. On page 24155, in the second column, in the second full paragraph, in the eighth line insert "a" between "from" and "specific".

§ 1.166-2 [Corrected]

2. On page 24156, in the 2nd column, in § 1.166-2(d)(3)(ii), in the 14th line "As" should read "An".

3. On the same page, in the third column, in § 1.166-2(d)(3)(iv)(B), in the penultimate line "418(a)" should read "481(a)".

BILLING CODE 1505-01-D

federal register

Friday,
August 23, 1991

Part II

Department of the Interior

National Park Service

36 CFR Part 51

Concession Contracts and Permits; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN. 1024-AB98

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to amend the regulations which describe National Park Service procedures for award of concession contracts and permits under the authority of 16 U.S.C. 3 and 16 U.S.C. 20 *et seq.* to clarify certain of the original intentions of the regulations and to make more competitive, within the scope of existing law, the renewal of concession contracts and permits.

DATES: Written comments, suggestions, or objections will be accepted until October 22, 1991.

ADDRESSES: Comments should be addressed to: Director, National Park Service, Washington, DC. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Lee Davis, Chief, Concessions Division, National Park Service, Washington, DC 20013–7127. Tele. (202) 343–3784.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior has directed the implementation of certain policy and budgetary changes and actions to increase the return from fees paid by National Park Service concessionaires, to enhance competition in the award and renewal of concession contracts, and to improve National Park Service concessions management. The franchise fee will be set high enough to reflect a fair return for the taxpayer and the Government for the concessionaire's privilege of operating in a park unit. This proposed regulation should be viewed as one component of the Secretary's overall concession reform initiative. This proposed rulemaking addresses specific revisions and clarifications intended to enhance competition within existing contract procedures (it does not by itself raise franchise fees). The National Park Service solicits comments on the following provisions:

1. The right of preference in the renewal of concessions contracts will continue with procedures that provide for expanded opportunity in concession contracting:

a. Concession contract opportunities, including renewals, will be more effectively and widely disseminated in such publications as the "Commerce Business Daily".

b. Upon contract renewal the incumbent concessioner must submit an offer that meets at least the minimal requirements of the National Park Service.

c. The right of preference will be based on performance to enhance competition in permit and contract renewals and to maintain a high quality of service provided to the park visitor. For example, there would be no automatic right of preference for a concessioner receiving an unsatisfactory performance rating by the National Park Service during the previous contract period.

d. Solicitation Documents will specify the probable cost to a new concessioner to purchase the assets of the incumbent and provide financial information regarding the ongoing service operation sufficient to permit a valid assessment of the concession by a third party.

2. No future contract will grant a preferential right to additional services unless a specific finding is made by the Director of the National Park Service that it is in the public's interest to grant such a right.

3. Sales and transfers of concession operations will continue as follows:

a. The National Park Service will only approve transfers that are in the best interest of the visiting public.

b. Where the terms of the transfer give reason to believe that the terms of the existing contract are less equitable than the National Park Service may fairly obtain, the National Park Service shall renegotiate the contract to improve the Government's position.

In addition to these proposed revisions and clarifications, the Secretary has directed other significant policy changes to the National Park Service concessions management program. Certain of these initiatives will be reflected in revised standard concession contract language, which will be published for public comment in the **Federal Register** at a later date, separate and apart from this proposed rulemaking. Issues to be addressed concerning standard contract language will be:

1. Setting franchise fees at more equitable levels that increase the monetary return to the Government.

2. Requiring fair payment by the concessioner for the use of Government-owned facilities.

The remaining initiatives directed by the Secretary concern National Park Service administrative revisions that will be the subject of revised procedural guidelines, including contract length, definition, transfer, and purchase of possessory interest; enhancement of opportunities for minority and women-owned businesses; elevation/delegation of responsibility for negotiation of concessions contracts; accountability and internal controls, improvement of National Park Service training and educational requirements; and improvement of organizational resources devoted to concessions operations as articulated by the President's Fiscal Year 1992 Budget.

Background

On November 1, 1979, the National Park Service (NPS) issued 36 CFR Part 51, "Concession Contracts and Permits," regulations which describe NPS procedures for award of NPS concession contracts and permits under authority of 16 U.S.C. 3 and 16 U.S.C. 20 *et seq.* These regulations have not been amended and NPS is now proposing to amend them in several respects particularly to clarify certain of the regulations original intentions and to make more competitive, within the scope of existing law, the renewal of concession contracts and permits.

Section by Section Analysis

Section 51.1—Authority

Section 51.1 is proposed to be amended to make clear that NPS concession contracts and permits are not subject to statutory and regulatory requirements applicable only to federal procurement contracts, and, to make clear that commercial use licenses as issued by NPS are not subject to the requirements of part 51.

Section 51.3—Definitions

Section 51.3(b), the definition of the "right of preference" held by an existing satisfactory concessioner pursuant to 16 U.S.C. 20d, is proposed to be amended to make clear that NPS may choose to renew all or part of the activities authorized under a concession contract or permit, and to establish that the determination as to whether an existing concessioner is "satisfactory" within the meaning of the right of preference shall be based on the concessioner's overall performance as evaluated by NPS over the term of the contract or permit, provided that a concessioner which is rated unsatisfactory in the last year of the contract or permit term or marginal for the last two years shall be considered to have performed unsatisfactorily for the purposes of the right of preference. In addition, the definition is proposed to be amended to provide that a concessioner who has operated less than two consecutive years as a result of a change in ownership will not be entitled to a right of preference in renewal.

Section 51.3(c), the definition of "preferential right" to additional services, is proposed to be expanded to incorporate existing policy to the effect that such preferential rights shall not be granted by NPS unless a specific written determination is made that it is in the public interest to do so.

Section 51.4—Solicitation and Award of Concession Contracts and Permits Where no Right of Preference exists

Section 51.4, "Solicitation and award of concession contracts and permits where no right of preference exists," is proposed to be amended to call for advertising of concession opportunities in the "Commerce Business Daily" in addition to the **Federal Register**. A provision has also been added encouraging the participation of minority and women-owned businesses to compete to be concessioners.

Subsection (d) is proposed to be changed to clarify that modifications which improve the proposed terms and conditions of a contract for the benefit of an offeror must be readvertised, but changes that benefit the Government will not require readvertising.

Section 51.5—Solicitation and Award of Concession Contracts and Permits or Extensions or Renewal of Concession Contracts and Permits, Where a Right of Preference Exists

Section 51.5, "Solicitation and award of concession contracts and permits where a right of preference exists," is proposed to be amended in several respects:

Subsection (a) is proposed to be amended to substitute the term "prospectus" for the term "fact sheet" as it is considered that the term "fact sheet" concerning a renewal does not make it clear to prospective offerors that there is a possibility that a third party may obtain a concession contract or permit upon its renewal.

Subsection (b) is proposed to be amended to clarify that under Part 51 as currently constituted an existing satisfactory concessioner, although enjoying a right of preference to the renewal of the concession contract or permit, is nonetheless required to submit a responsive offer (a timely offer which fully meets the terms and conditions of the fact sheet) to NPS in response to the fact sheet (proposed to be "prospectus") issued as part of the renewal process. If the existing concessioner fails to do so, the right of preference no longer applies to the concession opportunity and NPS may award the new or renewal contract or permit to the party submitting the best offer, or, if no other offers were received, readvertise the concession opportunity on the basis of a prospectus where no right of preference applies.

Subsection (b) is proposed to be further amended to describe in a new subsection (c) the application of the right of preference where the existing satisfactory concessioner submits a responsive offer. Three alternatives are presented for the new subsection (c) with varying degrees of competitive consequences. Alternative 1 tracks the existing regulations to the effect that the concessioner with a right of preference which submits a responsive offer will be awarded the contract or permit renewal (or new contract) if the concessioner submits the best responsive offer, or, if a better responsive offer is received, agrees to meet the terms and conditions of the better offer. Alternative 2 calls for numerical evaluation of all responsive offers received pursuant to a prospectus and award of the contract or permit to the party which receives the best numerical score, provided, that a concessioner with a right of preference will be awarded the contract or permit if its score is not more than five percent (5%) lower than the highest scored offer. Alternative 3 calls for the contract or permit to be awarded to the party submitting the best offer, provided that in the event the responsive offer of a concessioner with a right of preference is substantially equal to the best offer, the contract or permit will be awarded to the concessioner with the right of preference.

Comments are sought on all three alternatives. After consideration of public comments, the National Park Service will select an alternative that it considers is within existing legal authority and presents the best balance between the desire to provide competition in the contract renewal process and the objective of encouraging continuity of operations.

Section 51.7—Sale, Assignment, or Encumbrance of Concession Contracts, Permits, and Assets

Section 51.7, "Sale, assignment, or encumbrance of concession contracts, permits and assets," is proposd to be amended to allow a sale, transfer, assignment or encumbrance only in those instances where the concessioner has acquired a possessory interest. This provision will apply prospectively only, i.e., to new contracts or to renewals of existing contracts. Subsection (e) is proposed to be amended to make clear the NPS under Part 51 may choose to approve or disapprove the sale, transfer, assignment, or encumbrance of a concession contract or permit or assets connected with the concession in its discretion and that NPS may condition the approval of such a transaction, among other matters, upon modification of the terms of the contract or permit to reflect the current probable value of the privileges granted by the contract or permit. In addition, the proposed amendments are intended to clarify that NPS will not approve such a transaction when it may result in decreased quality of service to the public, the lack of a reasonable opportunity for profit over the remaining term of the contract or permit, rates in excess of existing approved rates to the public, or where any portion of the purchase price can be attributed to intangible assets belonging to the Government, such as contract rights, right of preference in contract renewal, user days, entry or trip allocations, and low fees and charges.

Section 51.8—Public Availability of Concessions Information

A new § 51.8, "Public Availability of Concessions Information", is proposed to be included to describe certain types of information provided by concessioners to NPS which are available to be released to the general public. Other information may also be made available to the extent permitted by 43 CFR, part 2.

General

Other editorial and technical changes are proposed to part 51 to improve its clarity.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amended rule to the address noted earlier in the rulemaking.

Drafting Information

The primary authors of these proposed amended regulations are Wendelin M. Mann, Chief, Contracts Branch, Concessions Division, National Park Service, and Lars A. Hanslin, Senior Attorney, Office of the Solicitor, Department of the Interior.

Paperwork Reduction Act

The collections of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Compliance With Other Laws

The Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health, and safety, because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM 6, (49 Federal Register 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been proposed.

The Service has determined that this rulemaking is not a "major rule" under Executive Order 12291 (46 FR 13193; February 19, 1981). The planned rulemaking would serve no more than to continue the "usual and customary use and occupancy" of federal lands.

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) which became effective January 1, 1981, (and 43 CFR part 14), the Service has determined that these proposed regulations will not have a significant economic effect on a substantial number of small entities, nor will they require the preparation of a regulatory analysis. It is estimated that 95 percent of all concession operations are conducted by small entities. The proposed regulations would impose no significant costs on any class or group of small entities, and will give more small entities an opportunity to compete for concession opportunities, particularly in contract renewal situations.

The Service has reviewed this rule as directed by Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" to determine if this rule has policies that have taking implications. The Service has determined that there are no taking implications because the regulations only describe the means by which the National Park Service awards and administers concession contracts and permits. The proposed rules do not affect private property interests within the meaning of the Executive Order.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts.

In consideration of the foregoing, it is proposed to revise the regulations at 36 CFR part 51 to read as follows:

PART 51—CONCESSION CONTRACTS AND PERMITS

Sec.

51.1 Authority.
51.2 Policy.
51.3 Definitions.
51.4 Solicitation and award of concession contracts and permits where no right of preference exists.
51.5 Solicitation and award of concession contracts and permits or extensions or renewal of concession contracts and permits, where a right of preference exists.
51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.
51.7 Sale, assignment, or encumbrance of concession contracts, permits, and assets.
51.8 Public availability of concessions information prospectuses.

Authority: The Act of August 25, 1916 as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly the Concessional Policy Act of 1965, 16 U.S.C. 20 *et seq.*, and 16 U.S.C. 3.

§ 51.1 Authority.

Concession contracts and permits are awarded by the Director on behalf of the Secretary pursuant to the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, the Concessions Policies Act of 1965, 16 U.S.C. 20 *et seq.*, and 16 U.S.C. 3. All concession contracts and permits are subject to the requirements of this Part 51. They are not federal procurement contracts or permits within the meaning of statutory or regulatory requirements applicable solely to federal procurement actions. Commercial use licenses are not concession contracts or permits, and, particularly, a licensee has no right of preference in the renewal of a commercial use license.

§ 51.2 Policy.

It is the policy of the Secretary, as mandated by law, to permit concessions in park areas only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair park values and resources. Concession activities in park areas shall be limited to those that are necessary and appropriate for public use and enjoyment of the park areas in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the park areas.

§ 51.3 Definitions.

The following definitions shall apply to this Part 51:

(a) *Concession contracts* and "concession permits" (or "contracts" and "permits") are agreements between the Director and a concessioner whereby the concessioner agrees to provide certain visitor accommodations, facilities or services within a park area under the administration of the Director. The National Park Service authorizes concession operations by both contracts and permits. Contracts are used for larger operations and permits for those of less complexity. Throughout this document, wherever the term contracts is used, it shall, unless otherwise specified, refer to both types of authorization documents.

(b) *Right of Preference* refers to the right of an existing satisfactory concessioner to a preference in the renewal or negotiation of a new contract or permit concerning all or part of substantially the same accommodations, facilities and services as provided by the concessioner under the terms of its existing contract or permit if the Director chooses to continue to authorize all or part of such accommodations, facilities and services in a new or renewed contract or permit.

(1) Prior to the expiration or termination of a contract or permit, a determination shall be made based on annual evaluations conducted during the

term of the contract or permit, as to whether or not the concessioner has performed in a satisfactory manner over the term of the contract or permit, provided that, if the concessioner is rated unsatisfactory in the last year of its contract or permit or marginal during the last two years of its contract or permit, the concessioner's overall performance shall not be considered satisfactory. If the concessioner's overall performance is determined to have been satisfactory, it is entitled to the preference in the renewal of its contract or permit as described herein.

(2) A concessioner whose overall performance has been less than satisfactory as determined by the Director is not entitled to a right of preference. Additionally, if upon expiration of its contract, a concessioner has operated less than 2 consecutive years as a result of a change in ownership, the concessioner shall not be entitled to a right of preference in the renewal of its contract or permit as described herein.

(c) *Preferential Right* refers to a contractual right which may be included in concession contracts (not permits) in the discretion of the Director to provide new or additional visitor accommodations, facilities and services of the same character as authorized under the concessioner's contract if the Director considers such new or additional concession activities necessary and appropriate for the accommodation and convenience of the public. A preferential right to additional services shall be granted only upon a specific written finding by the Director that the granting of such a contractual right is in the public interest.

(d) The term *Director* refers to the Director of the National Park Service or his authorized representatives.

(e) The term *Secretary* refers to the Secretary of the Interior or his authorized representatives.

51.4 Solicitation and award of concession contracts and permits where no right of preference exists.

(a) Where no right of preference exists, the Director shall issue a prospectus soliciting proposals describing the concession operation to be authorized, the material terms and conditions of the proposed concession contract or permit, and the principal factors considered in selection. Advertisement of the availability of the concession opportunity shall be published in the Commerce Business Daily and, for contracts or permits requiring Congressional review pursuant to 16 U.S.C. 1a–7(c), in the **Federal Register**. Notices may also be published, if appropriate, in local or national newspapers or trade magazines. The notice will be distributed to interested parties and organizations. In order to encourage minority and women-owned business to compete to be potential concessioners, the National Park Service shall provide maximum allowable information and assistance to minority and women-owned businesses. The prospectus will be made available upon request to all interested parties and will allow a reasonable period of time for submission of offers with a minimum of 60 days unless a written determination is made that a shorter period is necessary because of exceptional circumstances. All offers received shall be evaluated by the Director, and the offeror submitting the offer considered best by the Director on an overall basis shall be awarded the contract or permit.

(b) The principal factors to be considered in selection of the best offer shall be

(1) The experience and related background of the offeror,

(2) The offeror's financial capability, and

(3) Conformance to the terms and conditions of the prospectus in relation to quality of service to the visitor.

Secondary factors shall include franchise fee offered and other factors as may be specified.

(c) The Director may solicit from any offeror additional written information or clarification of an offer, and may extend the solicitation period in his discretion. The Director may choose to reject all offers received at any time and resolicit or cancel the solicitation altogether in his discretion. Any material information made available to any offeror or other party by the Director must be made available to all offerors, and will be available to the public upon request.

(d) The execution of the final contract or permit by the selected offeror shall occur promptly upon award. Material amendments which improve the proposed terms and conditions of the contract or permit for the offeror, as compared to those advertised in the prospectus, may be permitted only after readvertisement of the amended concession opportunity for an appropriate period of time. Changes benefitting only the Government do not require readvertising. Concession contracts or permits with anticipated annual gross receipts in excess of $100,000 or of five (5) years or more in duration, shall be forwarded to the Congress pursuant to 16 U.S.C. 1a–7(c) prior to execution by the Director. The Director may, in his discretion, terminate the award of a concession contract or permit at any time prior to execution by the Government and resolicit or cancel the solicitation.

(e) The terms and conditions of the solicitation must represent the requirements of the National Park Service and not be developed to accommodate the capabilities or limitations of any particular party.

(f) Upon a written determination that exceptional circumstances warrant waiver of the procedures described in this subsection and/or that it is in the public interest to protect visitor or park resources or otherwise, the Director may negotiate a concession contract or permit with any qualified party without public notice or advertising.

§ 51.5 Solicitation and award of concession contracts and permits or extensions or renewal of concession contracts and permits, where a right of preference exists.

The procedures described in § 51.4 shall apply to the solicitation and award of extensions, renewals or replacement of contracts or permits by a new contract or permit where an existing satisfactory concessioner is entitled to a right of preference, except as follows:

(a) A prospectus will be developed by the Director and will describe the existing satisfactory concessioner's right of preference as well as the material terms and conditions under which the Director proposes to award the new, renewed or extended contract or permit.

(b) The concessioner with the right of preference shall be required to submit a responsive offer (a timely offer which fully meets the terms and conditions of the prospectus) pursuant to the prospectus. If the concessioner fails to do so, the right of preference shall be considered to have been waived and the contract or permit shall be awarded to the party submitting the best responsive offer, or, if no other responsive offers were received, the concession opportunity will be readvertised upon substantially the same terms and conditions except no right of preference will apply to the readvertised concession opportunity.

(c) (Alternative 1). All responsive offers received pursuant to a prospectus where a right of preference is applicable to the concession opportunity and the existing satisfactory concessioner has submitted a responsive offer, shall be evaluated on an equal basis. If an offer other than that of the existing satisfactory concessioner is determined to be the best offer, the party submitting the best offer will be awarded the contract or permit, provided that the existing satisfactory concessioner shall

be given an opportunity to amend its offer to meet the terms and conditions of the best offer. If the existing satisfactory concessioner does so within the period of time allowed by the Director, and its offer, as amended, is, in the judgment of the Director, at least substantially equal to the best offer, the existing concessioner shall be selected for award of the contract or permit upon the amended terms and conditions.

(c) (Alternative 2). All responsive offers received pursuant to a prospectus where a right of preference is applicable to the concession opportunity and the existing satisfactory concessioner has submitted a responsive offer shall be numerically evaluated on an equal basis. The offeror receiving the highest score as a result of the evaluation will be awarded the contract or permit, provided that the existing satisfactory concessioner will be awarded the contract or permit if its score is not more than five percent (5%) lower than the highest scored offer.

(c) (Alternative 3). All responsive offers received pursuant to a prospectus where a right of preference is applicable and the existing satisfactory concessioner has submitted a responsive offer shall be evaluated on an equal basis and the contract or permit shall be awarded to the party submitting the best offer as determined by the Director, provided, however, that if, after evaluation of responsive offers the offer of the existing satisfactory concessioner and the best other offer are determined to be substantially equal on all factors (both primary and secondary), the existing concessioner shall be selected for the award of the contract or permit.

(d) The requirement for public notice and evaluation of offers received may not be waived.

§ 51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.

Where the Director seeks to authorize new or additional accommodations, facilities and services of generally the same character as provided by an existing satisfactory concessioner in a park area, and such concessioner by concession contract has a right to provide such additional services, the Director independently shall develop a description of the new or additional services and the terms and conditions upon which they are to be provided without reference to any private party, including the existing concessioner, and give the existing concessioner a reasonable opportunity to review such descriptions to determine if it wishes to provide the services. If so, the Director shall authorize the additional services by amendment to the concessioner's contract. If the existing concessioner does not agree to provide the additional services upon the terms and conditions described, the Director shall authorize the additional services to be provided by a new concessioner under substantially the same terms and conditions and pursuant to the procedures of Section 51.4 hereof.

§ 51.7 Sale, assignment or encumbrance of concession contracts, permits, and assets.

(a) Concession contracts and permits entered into or renewed after the effective date of these regulations under which the concessioner has not acquired a possessory interest may not be transferred, sold, assigned or encumbered.

(b) Concession contracts and permits under which the concessioner has acquired a possessory interest, or operations authorized thereby, controlling interests therein, or assets of a concessioner may not be transferred, sold, assigned, or encumbered in any manner, including, but not limited to, stock purchases, mergers, consolidations, reorganizations, mortgages, liens or collateralization, except with the prior written approval of the Director. Such approval is not a matter of right to the concessioner. Transfers, sales, assignments, or encumbrances consummated in violation of this requirement shall be considered null and void by the Director and a material breach of the contract or permit resulting in termination of the contract or permit for cause.

(c) The term *controlling interest* as used herein means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities so as to permit exercise of managerial authority over the actions and operations of the concessioner or election of a majority of the Board of Directors of the concessioner, and, in the instance of a partnership, limited partnership, joint venture or individual entrepreneurship, beneficial ownership of the capital assets of the concessioner so as to permit exercise of managerial authority over the actions and operations of the concessioner.

(d) Prior to consummating any transaction which may constitute the type of transaction described in subsection (b) hereof, the concessioner will request the Director in writing to review the transaction and provide the Director the following information:

(1) All instruments proposed to implement the transaction;

(2) An opinion of counsel from the buyer to the effect that the proposed transaction is lawful under all applicable Federal and State laws;

(3) A narrative description of the proposed transaction and the operational plans for conducting the operation;

(4) A statement as to the existence of any litigation questioning the validity of the proposed transaction;

(5) A description of the management qualifications and financial background of the proposed transferee, if any;

(6) A statement as to whether the proposed transaction constitutes the sale, assignment or transfer of a controlling interest as described herein and the particulars thereof;

(7) A detailed description of the financial aspects of the proposed transaction including but not limited to prospective financial statements (forecast) that have been examined by an independent accounting firm and that demonstrate to the satisfaction of the Director that the purchase price is reasonable based on the objective of having a satisfactory concession operation that will generate a reasonable profit over the remaining term of the contract or permit, with rates to the public not exceeding existing approved rates;

(8) A schedule which allocates in detail the purchase price to the assets acquired, together with the basis for the allocation;

(9) If the transaction may result in an encumbrance on the concessioner's assets, full particulars of the terms and conditions of the encumbrance; and

(10) Such other information as the Director may require.

(e) The Director may choose to disapprove a transaction as described herein in his discretion or may place appropriate conditions on any approval, including modification of the terms and conditions of the concession contract or permit, as a condition of approval. Among other circumstances, the Director may choose not to approve a transaction if the concessioner refuses to accept appropriate modifications intended to assure that consideration flowing to the Government from the contract or permit is consistent with the probable value of the privileges granted by the contract or permit, and shall not approve a transaction that the Director considers may result in decreased quality of service to the public, the lack of a reasonable opportunity for profit over the remaining term of the contract or permit, or in rates in excess of

existing approved rates to the public. Further, because the value of rights for intangible assets such as the concession contract, a right of preference in contract renewal, user days, allocated entries or trips, and low fees and charges belong to the Government, the Director shall not approve a transaction if any portion of the purchase price is attributable either directly or indirectly to such assets. 16 U.S.C. 3, concession contracts and certain concession permits contain provisions which limit the purposes for which contracts and permits may be encumbered. Such limitations are an element of the Director's review of such transactions.

§ 51.8 Public availability of concessions information.

The following information contained in the financial statements submitted to the National Park Service by a concessioner shall be available to the public: Gross receipts broken out by department for the 3 most recent years, franchise fees charged broken out by building use fee and percentage fee for the 3 most recent years, merchandise inventories for the 3 most recent years, and the depreciable fixed assets and net depreciable fixed assets reported by the concessioner, if available. Other information may also be made available to the public to the extent permitted by 43 CFR, part 2.

Dated: May 30, 1991.

S. Scott Sewell,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91-20024 Filed 8-22-91; 8:45 am]

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federal register

Friday
August 23, 1991

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 510 and 558

Nitrofurans; Withdrawal of Approval of New Animal Drug Applications; Final Rule; Final Decision Following a Formal Evidentiary Public Hearing

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

[Docket Nos. 76N-0172 and 76N-0232]

Nitrofurans; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; final decision following a formal evidentiary public hearing.

SUMMARY: The Commissioner of Food and Drugs is issuing his final decision on the proposal to withdraw approval of the new animal drug applications (NADAs) for two nitrofuran animal drugs: furazolidone (NADAs 11-698, 9-073, 12-061, 9-393, 13-805) and nitrofurazone (NADAs 6-395, 8-142, 9-415, 8-989, 10-741). The drugs are labeled and approved for antiprotozoal use for a wide variety of conditions in poultry and swine.

The Commissioner has determined that nitrofurazone and furazolidone are not shown to be safe under the conditions of use for which they were approved under 21 U.S.C. 360b(e)(1)(B).[1] Additionally, the Commissioner finds that furazolidone and its metabolites have by substantial new evidence been shown to induce cancer in man or animals within the meaning of 21 U.S.C. 360b(d)(1)(I). Thus, he is withdrawing approval for the drugs and is revoking the regulations codifying the approval of these applications in 21 CFR 510.515, 558.4, 558.15, and 558.262, and 558.370. Also, he is affirming with modifications the initial decision of the Administrative Law Judge, who made similar findings.

EFFECTIVE DATE: September 23, 1991.

ADDRESSES: The transcript of the hearing, evidence submitted, and all other documents cited in this decision may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert L. Spencer, Division of Regulations Policy (HFC-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: The purpose of this proceeding is to determine whether the Food and Drug Administration (FDA) should withdraw approval of the NADAs for use in food-producing animals. The effect of this decision is that these two drugs may no longer be marketed in the United States, nor may they be exported except as allowed by law.

I. Introduction

The history of this hearing is set forth in the initial decision (I.D.) and in the notice of hearing (49 FR 34965, September 4, 1984). That entire history will not be repeated here. Briefly, this consolidated proceeding involves two animal drugs that have been used in this country since the 1940's, in the case of one of the drugs, and since the 1950's, in the case of the other drug. The two drugs, furazolidone and nitrofurazone, are part of a chemical class referred to as nitrofurans. In the 1960's, evidence first surfaced that furazolidone caused tumors in laboratory animals. As evidence began to mount, FDA issued a notice of opportunity for hearing on March 31, 1971 (36 FR 5927), proposing to withdraw the NADAs for nitrofurazone on the grounds that it was no longer shown to be safe. A similar notice for furazolidone was issued on August 4, 1971 (36 FR 14343).

Since that time, the sponsors of these drugs (Hess and Clark and SmithKline, sponsors) have brought new data before the agency, which has reviewed the data. A full evidentiary hearing has been held to determine whether the NADAs of these two drugs should be withdrawn on the grounds that the drugs are no longer shown to be safe, and, in the case of furazolidone, whether its NADA should be withdrawn under the Delaney anticancer clause as well.

The Administrative Law Judge (ALJ) issued his I.D. on November 12, 1986, finding that the NADAs should be withdrawn. The ALJ found that furazolidone was an animal carcinogen that should be withdrawn under both the Delaney clause (21 U.S.C. 360b(d)(1)(I), as incorporated in 21 U.S.C. 360b(e)(1)(B)) and the general safety clause (21 U.S.C. 360b(e)(1)(B)). He also found that nitrofurazone, including its metabolites, is an animal tumorigen, and, therefore, a suspect carcinogen that should be withdrawn under the general safety clause. The ALJ also found that the sponsors had failed to provide a reliable method of residue detection for either drug and that the residues of neither drug have been shown to be safe. In addition, he determined that the concentrations of residues of furazolidone were not shown to be below the level of carcinogenic or toxicological concern.

Since the issuance of the I.D., the sponsors have filed briefs and exceptions totalling over 350 pages that take exception to virtually every ultimate and supporting conclusion of the ALJ, and that raise several legal and procedural exceptions as well.[2] Following the filing of exceptions, on August 25, 1987, the Center for Veterinary Medicine (Center) moved to reopen the evidentiary record in order to receive National Toxicology Program (NTP) draft reports of bioassays involving nitrofurazone, one of the drugs at issue here, and nitrofurantoin, another nitrofuran but one not directly at issue here.[3] See GF-1700. On September 21, 1987, the two sponsors of the NADAs also filed motions requesting that these materials be admitted in the record, and in addition requesting that the case be remanded to the ALJ for further testimony regarding the issues raised by the NTP reports.

By an order dated November 2, 1987, then Commissioner Frank Young granted the motions by all parties to reopen the record to admit the draft NTP reports. In response to the sponsors' motion to remand the matter for further testimony, Dr. Young permitted a limited remand to the ALJ. Under the terms of the remand, each party was allowed to submit written testimony concerning the NTP reports from one expert witness who had already testified in the proceeding. The remand order also allowed 1 day of cross-examination to be conducted before the ALJ. Finally, the order allowed each party to submit a supplemental brief following the hearing on the NTP reports. Each party filed its expert's supplemental testimony on January 6, 1988. The hearing on remand was held on February 3, 1988, and supplemental briefs were filed on March 8, 1988. Since that time, the record in this hearing has been officially closed.

After fully reviewing the evidence in the administrative record and the exceptions to the I.D. raised by the sponsors, I find that there is clearly enough evidence in the record to justify the ALJ's conclusion that furazolidone and nitrofurazone are no longer shown to be safe.

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[1] Section 360b(e)(1)(B) contains a reference to "subparagraph (H) of paragraph (1) of subsection (d) * * *." Because, in Pub. L. 100-670, Congress redesignated subparagraph (H) as subparagraph (I), the reference should read "subparagraph (I) of paragraph (1) of subsection (d) * * *." For purposes of this final decision, FDA is interpreting the act as if Congress had made this necessary conforming change.

[2] The exceptions filed by the sponsors in this proceeding exceeded in volume those filed in any other hearing before FDA. Many exceptions were frivolous or trivial.

[3] The final version of this report has been published, but it does not differ from the draft as to any conclusions pertinent to this hearing.

I also find overwhelming evidence in the record to support the ALJ's conclusion that the sponsors have failed to provide a reliable means for detecting residues of these drugs and their breakdown products in animal tissue. Such a detection method is necessary to enable FDA to ensure that no dangerous residues enter the human food supply.

On the basis of the administrative record, I find that I am unable to ensure that foods derived from animals treated with these drugs will contain no more than safe levels of residues of furazolidone, nitrofurazone, and their breakdown products (metabolites). Therefore, I am by this notice withdrawing all NADAs for furazolidone and nitrofurazone.

In doing so, pursuant to 21 CFR 12.130(d), I am adopting the I.D. as issued with some modifications as stated below. As to exceptions filed by the parties, I am herein addressing only those that I consider significant. I am not required by law or regulation to address *every* exception made—only those raising "significant" issues. *Simpson* v. *Young*, 854 F.2d 1429, 1434 (D.C. Cir., 1988); 21 CFR 12.120(b) and 12.130(c). Where I do not specifically address an exception of Hess and Clark (H&C) or SmithKline (SK), their exceptions are overruled for reasons stated in the Center's Reply to Exceptions.

I am expressly not ruling on any exception filed by the Center because I believe that doing so is not essential to a decision on the issues in this proceeding. As a result, my failure to address a particular exception by the Center should not be construed as either an affirmance or an overruling of that exception.

II. Initial Findings

1. I reaffirm the statement of the allocation and formulation of the burden of proof in the Commissioner's diethylstilbestrol (DES) decision (44 FR 54852), September 21, 1979) and apply that to this proceeding. Under both the Delaney and general safety clauses, approval may be withdrawn if "new evidence," evaluated together with previously existing evidence, shows that the drug is not shown to be safe. "New evidence" includes any evidence not available at the time the application was approved, tests by new methods, and tests by methods not originally considered applicable. There does not appear to be an issue about the "newness" of the evidence upon which the Center relies. The evidence concerning the nitrofurans was not available at the time they were originally approved.

The proponent of withdrawal, the Center, has the burden of making the first showing (i.e., that the drug is no longer shown to be safe). *Hess and Clark, Division of Rhodia, Inc.* v. *Food and Drug Administration*, 495 F.2d 975, 992 (D.C. Cir. 1974).[4] In *Hess and Clark I*, the court found that FDA has "an initial burden of coming forward with some evidence of the relationship between the residue and safety to warrant shifting to the manufacturer the burden of showing safety." Id. at 993. In the Commissioner's DES decision, Commissioner Kennedy adopted the following formulation of the Center's threshold burden:

> "* * * [the Center] must provide a reasonable basis from which serious questions about the ultimate safety of DES and the residues that may result from its use may be inferred."

44 FR 54861.

Once the limited threshold burden has been satisfied, of course, the burden passes to the sponsors to demonstrate safety. *Id.*

There does not appear to be a significant difference between the parties on the subject of the burden of proof. In any case, I find that the ALJ applied the correct standard.

2. I find that cost/benefit considerations are irrelevant under both the Delaney clause and the general safety clause. I agree with the Center's view that *American Textiles Manufacturers Institute* v. *Donovan*, 452 U.S. 490 (1981) is ample authority for the proposition that clauses like the Federal Food, Drug, and Cosmetic Act's (the act) general safety clause do not permit, much less invite, cost/benefit analysis.[5] The sponsors do not seriously argue that such an analysis would be applicable where the Delaney clause applies.

3. The sponsors argue that the rodent studies that indicted nitrofurans as carcinogens did not satisfy good laboratory practice (GLP) standards and, thus, cannot satisfy even the Center's limited threshold burden of proof. I disagree. No one argues that these studies were very good studies by today's standards. However, despite their faults, as explained below, the data that they generated constitute substantial evidence of carcinogenicity—evidence which is sufficient to satisfy the Center's threshold burden.

I should note that FDA's GLP regulations were not even proposed until several years after the nitrofuran bioassays were completed. Even more important, by the terms of the preamble to the GLP regulations, "valid data and information in an otherwise unacceptable study which are adverse to the product * * * may serve as the basis for regulatory action. This disparity in treatment merely reflects the fact that a technically bad study can never establish the absence of a safety risk but may establish the presence of a previously unsuspected hazard." (November 19, 1976, 41 FR 51206 and 51212). To the same effect, see FDA's similar statement in the preamble to the final rule (43 FR 59990).

The report of the NTP ad hoc panel on chemical carcinogenesis testing and evaluation (HF–104) cannot be cited to the contrary: "All studies must serve as an adequate basis for regulatory decisions even though they have protocol deficiencies in number of animals per group, number of dose levels, absent clinical observations, etc." HF–104, 12–4. The panel added that "our intent is *not* to imply that previous studies would or should be judged inadequate on the basis of modern criteria [emphasis added]." Id. at 13.

4. I need not and do not address the question of whether hormonally mediated carcinogens are subject to the Delaney clause. This is because the sponsors have not proven that any compound that is the subject of this hearing is a hormonally mediated carcinogen. See, e.g., Denial of Petition for Listing of FD&C Red No. 3 (February 1, 1990, 55 FR 3520, 3537, and 3541). See also *infra*, pp. 37 ff. In addition, as discussed elsewhere (i.e., see pp. 48 ff), I find that none of the compounds that are the subject of this hearing has been shown to be safe within the meaning of the general safety clause. 21 U.S.C. 360b(e)(1)(B).

5. I agree with the Center (main brief at 82, n. 67) that 10^{-6} is an appropriate risk standard by which to judge nitrofurans and their metabolites. The sponsors, while not directly attacking this standard, did suggest that FDA has in the past allowed greater levels of risk, but they have cited no FDA-approved new animal drug for which higher levels of risk from residue were found.

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[4] There are two *Hess and Clark* cases: *Hess and Clark, Division of Rhodia, Inc.* v. *Food and Drug Administration*, 495 F.2d 975 (D.C. Cir. 1974) (hereafter *Hess and Clark I*); and *Rhone-Poulenc, Inc., Hess and Clark Division* v. *Food and Drug Administration*, 636 F.2d 750 (D.C. Cir. 1980) (hereafter, *Hess and Clark II*).

[5] In the Commissioner's DES decision, 44 FR at 54883, FDA said: "The law is clear that FDA may not consider socio-economic benefits in the determination of the safety to human beings of a new animal drug, and I am not prepared to conclude that it permits consideration of human health benefits."

III. "New Evidence That Furazolidone Causes Cancer in Man or Animals"

I will proceed now to consider in some detail the adequacy of the Center's "new evidence that furazolidone causes cancer in man or animals."

A. Evidence of Carcinogenicity—The Four Norwich Studies

The Center's new evidence that furazolidone causes cancer consists of four animal bioassays performed under the auspices of Norwich-Eaton, the original furazolidone NADA sponsor, in 1973 and 1974. GF–195a, GF–195b, GF–196, and GF–197 (collectively referred to as "the Norwich studies"). These studies are summarized in the I.D. at pp. 19–23. In addition to the Norwich studies, the Center relies on mutagenicity studies to demonstrate that furazolidone is a mutagen. If furazolidone is demonstrated to be a mutagen, that fact would lend support to the contention that furazolidone is a carcinogen.

The sponsors contend that the Norwich bioassays are not reliable indicators of cancer for a host of reasons. The most important deficiencies cited by the sponsors include the allegation that the maximum tolerated dose (MTD) was exceeded in several of the tests, so that tumors attributed to the carcinogenic affect of furazolidone were, in fact, the result of toxic stress. The sponsors also contend that the incidence of neoplasms in treated test animals was not statistically significant or was within the historical range for spontaneous tumor generation in the test animals. The sponsors further argue that positive indications of carcinogenicity were based on improper groupings of benign and malignant tumors, or of different tumor types. The sponsors also fault the Norwich studies for failing to comply with GLP regulations that were adopted by FDA after these studies were completed. Among the GLP deficiencies cited by the sponsors were illness in the test animals or impurities in the test substance, which should invalidate the results of the Swiss Mouse Study, according to the sponsors.

To the extent that the Norwich studies do indicate that furazolidone causes benign or malignant tumors, the sponsors argue that furazolidone does not act as a "direct" carcinogen. Rather, they contend, the evidence demonstrates that furazolidone causes cancer only in doses high enough to distort hormone levels in the test animals. It is the change in hormone levels, the argument runs, that actually "causes" cancer in the test animals. The sponsors also claim that the Norwich test data demonstrate that, at low enough levels, the ingestion of furazolidone will have no carcinogenic effect. The sponsors also claim that, because humans and rodents have different hormones, it is unlikely that ingestion of furazolidone-treated animals could cause cancer in humans.

Regarding the mutagenicity tests, the sponsors' strongest argument is that furazolidone was only weakly mutagenic or was shown to be mutagenic only under conditions that are unlikely to be duplicated in mammals. Thus, they argue, these mutagenicity studies are not a reliable indicator of furazolidone's carcinogenic potential.

After a thorough review of the evidence and the arguments in the record, I find, for the reasons stated below, that the Norwich bioassays, while imperfect, satisfy the Center's initial burden of adducing new evidence raising questions about the safety and carcinogenicity of furazolidone that are sufficiently serious to require the manufacturers to demonstrate furazolidone's safety.

I also find that the mutagenicity tests, when considered together with the Norwich studies, add further evidence that furazolidone is, at the very least, a suspect carcinogen, and at worst, is a proven animal carcinogen. I also find that the Norwich studies and the mutagenicity tests, considered together, are inconsistent with the sponsors' claims of a hormonal theory of cancer induction.

1. Maximum Tolerated Dose

I agree with the sponsors that the MTD was exceeded in certain dosage groups of two of the studies. Specifically, I find that the MTD was exceeded in the high- and mid-dose groups in the Sprague-Dawley High Dose Study (GF–195b) and in the high-dose group in the Fischer 344 Rat Study (GF–196). HF–310, p. 21; HF–309, p. 9; GF–1617.1, pp. 9–10; GF–1623.1, p. 21a. The MTD may also have been exceeded in the mid-dose group in the Fischer study (GF–196). HF–309, p. 9; HF–310, p. 21; GF–1617.1, pp. 9–10; Transcript ("Tr.") III, pp. 39, 45–6, 50.

However, in the low-dose Sprague-Dawley Study (GF–195a), I find that the MTD was not exceeded in any test group. HF–310, p. 14; GF–1617.1, p. 9. The sponsors do not contend otherwise. As to the Swiss Mouse Study, the fact that there were no early deaths in males is evidence that the MTD was not exceeded in males. G–1617.1, p. 12. The MTD may have been exceeded in females. However, the weight gain noted in treated animals was comparable to that noted in control animals, suggesting that the toxicity was not due to overdosing. G–1617.1, p. 12; GF–1623.1, p. 22. Even if the MTD was exceeded in the mid- and high-dose females, the results would just confirm the effect seen in lower doses. The results in these mid- and high-dose animals, although not demonstrating relevant carcinogenicity, will not have shown safety either. GF–1623.1, pp. 21–2.

Moreover, neither SK nor H&C argues that the MTD was exceeded in the low-dose group of test animals in either the High-Dose Sprague-Dawley Study (GF–195b) or the Fischer Rat Study (GF–196). I agree that the MTD was not exceeded, based on evidence in the record demonstrating that the test animals in the low-dose groups in both the High-Dose Sprague-Dawley Study and the Fischer Rat Study did not suffer a weight decrement exceeding 10 percent and did not exhibit other characteristics usually associated with toxic dosing. GF–1623.1; Bryan, Tr. XII–67–8; GF–1617.1, pp. 9–10.

After reviewing the evidence concerning every group of test animals whose dosage did not exceed the MTD, I find that, in every case, the animals dosed with furazolidone developed neoplasms that exceeded the controls' rate of neoplasms, and that the difference was statistically significant in most cases.

Specifically, I find that mammary tumors in female rats in the Low-Dose Sprague-Dawley Study (GF–195a) exhibited a statistically significant dose response that is indicative of the carcinogenicity of furazolidone. GF–1615.1, p. 11. I also find that, in the Swiss Mouse Study (GF–197), statistically significant dose-response trends were exhibited respecting bronchial adenocarcinomas or adenomas in both sexes and for lymphosarcomas in males. GF–1613.1, p. 8; GF–1615.1, p. 10.

In the Fischer Rat Study, I find that the incidence of mammary tumors exhibited by rats in the low-dose group was statistically significant when compared to the controls. GF–1617.1, p. 10. I also find that the low-dose Fischer rats exhibited not only increases in mammary tumors but also decreased onset time, increased multiplicity and increased malignancy, all of which indicate that furazolidone is a carcinogen at doses below the MTD. GF–1617.1, pp. 9–10; GF–1623.1, pp. 21–2.

In the High-Dose Sprague-Dawley Study (GF–195b), I find that, even in the low-dose group, whose dose did not exceed the MTD, the evidence demonstrates that 41 out of the 50 treated rats developed mammary

tumors, while only 29 out of 50 control rats developed mammary tumors. GF–195b, p. 32; GF–1623.1, p. 22. Where so large a number of low-dose females developed mammary neoplasms in comparison with the controls, I doubt that acute toxic stress, rather than furazolidone, is the cause. The toxic stress argument is also inconsistent with the clear dose-response relationships generated by this study. GF–1623.1, pp. 11–12; GF–1612.1, pp. 6–7, 10; GF–1617.1, pp. 6, 9, 11; HF–309, p. 16; Tr. X, p. 93; Tr. IV, p. 153.

The fact that test animals in the low-dose groups in the Norwich studies developed neoplasms at rates higher than the controls did demonstrate that findings of carcinogenicity in these studies cannot be dismissed as a byproduct of overdosing. In addition, the types of tumors and neoplasms developed by rodents in groups where the MTD was exceeded do not differ in type or locus from those found in groups where the MTD was not exceeded. GF–1617.1, pp. 9–12; GF–1623.1, pp. 21–2. This continuity of tumor type across dosage groups suggests that not all the neoplasms observed in animals whose doses exceeded the MTD can be attributed to acute toxic stress. See GF–1617.1, p. 11. While I would not rely solely on test data from dosage groups where the MTD was exceeded, I find that the similarity of tumor types between dosage groups above and below the MTD provides additional support for the finding that furazolidone itself, rather than any overdosing, caused neoplasms in the test animals that are indicative of carcinogenicity.

2. Statistical and Biological Significance

The sponsors challenge findings in the I.D. that the incidence of neoplasms in treated test animals are statistically and biologically significant. Statistical significance is concerned with the probability that a given test result occurred by chance, rather than because of the effect that the test is designed to study. Biological significance is concerned with whether the animal harboring a lesion will ultimately become diseased as a result of the lesion. GF–1612.1, p. 2.

The ALJ found that statistical analysis of the tumor data from the four Norwich studies was insufficient to evaluate the effects of furazolidone, and that an evaluation of their biological significance was necessary. I.D., p. 42. The ALJ found the Norwich data to provide ample evidence of biological significance. I.D., pp. 42–6. The sponsors challenge findings of biological significance, arguing that mammary tumors occur spontaneously at a high rate in Sprague-Dawley and Fischer 344 rats (HF–309, pp. 5, 22; HF–310, pp. 15, 18, 26; Tr. III, pp. 57–8). The sponsors also assert that important factors that can affect the incidence, multiplicity, and onset time of mammary tumors—such as age, diet, environment, physical stress, hormonal status, and immunologic competence—were not adequately controlled in the Norwich studies. The sponsors further assert that the mammary tumors found in treated test animals were in fact the result of hormonal disruption and generalized physiological stress in aging animals caused by toxic doses of furazolidone that far exceeded the MTD. HF–309, pp. 22–3; HF–310, pp. 3, 18, 22.

For the reasons stated below, I find that the incidence of neoplasms in test groups whose dosage did not exceed the MTD was, for the most part, statistically significant. Since toxic stress cannot explain away these tumors, which were the same types of tumors found in the higher dose groups, I find that the Norwich bioassays provide ample evidence that furazolidone is an animal carcinogen. Moreover, the increased multiplicity of tumors, decreased onset time, and increased malignancy of tumors in all groups of test animals fed furazolidone are additional evidence that the tumor findings generated by these studies are biologically significant—i.e., that the findings are indicative of the actual or potential carcinogenicity of furazolidone. See p. 20, *supra*.

While I agree with the sponsors that age, hormonal status, physical stress and immunologic competence may have some effect on cancer rate, I am concerned that these factors cannot be controlled in either the target animal population that is fed furazolidone or in the human population that eats food products derived from these animals. Therefore, I reject the sponsors' invitation to ignore test findings raising safety questions where these factors were not controlled.

Accordingly, where, as here, four different animal bioassays involving two different species of rat and one species of mouse all demonstrate that treated test animals have an increased rate of neoplasms even at doses below the MTD, I find this to be biologically significant evidence that the test substance is an animal carcinogen. The bioassays are treated individually below.

a. *The Low-Dose Sprague-Dawley Study.*—Regarding the Low-Dose Sprague-Dawley Rat Study (GF–195a), the sponsors assert that the incidence of mammary tumors in treated females was not statistically significant. G–195a, p. 9; GF–1631.1, p. 9; GF–1616.1, p. 11; HF–310, p. 28. However, the sponsors failed to consider time-to-tumor information or to adjust for differential mortality among dose groups. GF–1623.1, pp. 10–11; GF–1612.1, p. 10; GF–195a, p. 6; HF–310, p. 28; HF–309, p. 16; GF–1617.1, p. 9; GF–1615.1, p. 11; GF–1280, p. 17. Proper statistical analyses of tumor data adjust for different mortality among dose groups. See HF–104, pp. 210–14. Also, the sponsors failed to test for dose-response trends, which make more efficient use of the data and are generally more sensitive in detecting effects than are individual comparisons of each dosage group with the control group. GF–1613.1, p. 2; HF–104, pp. 209–10.

In reviewing the results of the Low-Dose Sprague-Dawley Rat Study, I find a statistically significant increase in mammary neoplasms in females with increasing doses of furazolidone, with $P=0.006$ when using a trend test and incorporating corrections for differential mortality among the dose groups. GF–1615.1, p. 11; GF–1280, p. 17. I find that the statistical analyses conducted by the Center are valid and in accord with analyses conducted by the NTP (HF–104). I also find that the results in the Low-Dose Sprague-Dawley Study are biologically significant. In addition to showing a statistically significant increase in mammary tumors in dosed females, the test results show increased multiplicity of mammary tumors in female rats as the dosage of furazolidone increased. GF–195a, p. 6. When the multiplicity is expressed as a percentage, the rate is monotonic (i.e., goes in one direction only), ascending, dose-related, and significant. GF–1623.1, pp. 11–12; Tr. IV, p. 153.

A witness for the sponsors testified that the NTP rejects multiplicity of mammary neoplasms in rats as an indication of carcinogenic potential. Tr. XV, pp. 72–3; GF–195a, p. 56. I find that, to the contrary, the NTP draft reports on nitrofurazone (GF–1700, p. 11) and nitrofurantoin (GF–1701, p. 7) list "multiplicity in site-specific neoplasia" as one of the several "key factors" to be considered when evaluating bioassay test data for findings of carcinogenicity. The same witness observed that the incidence of rats in the study with single mammary tumors went down as the dosage of furazolidone increased. Tr. XV, pp. 72–3; GF–195a, p. 56. This statement is misleading. The test results in the Low-Dose Sprague-Dawley study demonstrate that the proportion of animals with mammary tumors increased with dose and that the

proportion of animals with multiple mammary tumors increased with dose. GF–195a, pp. 6, 56; Tr. IX–47; IV–150–3. Obviously, all that has happened is that the proportion of animals in the study with the more severe condition—multiple mammary tumors—has increased with dose, decreasing the proportion of animals with the less severe condition of only a single mammary tumor.

In addition, Norwich, the original study sponsor, conceded that two of the three doses in the study significantly increased tumor multiplicity and "caused significantly earlier onset time of mammary neoplasms and caused significantly decreased survival rates when compared to control female rats." GF–195a, pp. 9–10, 50. The sponsors assert that the decrease in mean time-to-palpable-tumor was only marginally significant in the mid- and high-dose females and was not significant in the low-dose group. However, I find that, after adjusting for the differences in tumor onset times between control and treated animals, there was an increased evidence of benign and malignant mammary gland neoplasms in treated females. GF–1623.1, pp. 10–11; GF–1612.1, p. 10. These were biologically significant. GF–1623.1, pp. 11–12; Tr. XII–55–6; HF–104, p. 167. Also, I find that when the decrease in onset time in the mid-dose and high-dose groups is considered in conjunction with the statistically significant increases in mammary tumors and with the dose-related increase in multiplicity, it provides additional evidence of the carcinogenicity of furazolidone. GF–1612.1, p. 8; GF–1617.1, p. 5; GF–1623.1, pp. 11–12; HF–104, pp. 167, 200–14; Tr. IV, p. 153.

I also find that males in the mid-dose and high-dose groups in the Low-Dose Sprague-Dawley Rat Study exhibited an increase in thyroid follicular adenomas that increased with dose level. GF–195a, p. 24. There is no evidence in the record that a statistical analysis was conducted on these data. Notwithstanding the lack of statistical analysis, the dose-related increase in thyroid follicular adenomas in the mid- and high-dose males is still noteworthy. The same tumor was found in dosed males in the High-Dose Sprague-Dawley Study (GF–195b, pp. 28, 36–64; GF–1623.1, p. 11; GF–1612.1, p. 10; Tr. IX–135; Tr. X–41–2 and in the Fischer Rat Study GF–196, pp. 4, 9–11, 26–7, 34–64; GF–1623.1, p. 10; GF–1612.1, p. 11; HF–309, p. 8; HF–310, pp. 21, 23). I find that: (1) the increased incidence of thyroid follicular adenomas in male rats in three different studies; and (2) the findings of mammary adenomas in females in all four studies combine to provide significant evidence that furazolidone is an animal carcinogen.

b. *The High-Dose Sprague-Dawley Rat Study.* The sponsors' main attack on this study is that the dosage levels exceeded the MTD and that the tumors seen in this study were the result of acute toxic stress. However, although the MTD was exceeded in the high- and mid-dose groups, this finding does not explain away the results generated by this study.

First, I note that, in the low-dose group alone, where the dose did not exceed the MTD, 41 out of the 50 treated female rats developed mammary tumors, while only 29 out of 50 female control rats developed such tumors. GF–195b, p. 24. Unfortunately, I can find no evidence in the record that this comparison was analyzed for statistical significance.

However, when a statistical analysis was performed using only the low- and mid-level dose groups in this study, the incidence of mammary tumors was found to be statistically significant after adjusting for differential mortality. GF–1613.1, pp. 3, 4, 6, 9. Because the same types of tumors were observed in the mid-dose group as in the low-dose group, it is clear that not all the tumors in the mid-dose group can be explained away as the result of overdosing. GF–1617.1, pp. 6, 9; GF–1623.1, p. 11; GF–1612.1, p. 10. Therefore, I find that the statistical significance of the incidence of mammary tumors in treated female rats in the low- and mid-dose groups in the High-Dose Sprague-Dawley Study is evidence of the carcinogenic property of furazolidone.

The evidence demonstrates a statistically significant increase in thyroid follicular adenomas in treated male rats, with $P=0.0003$ when using a trend test and incorporating corrections for differential mortality among the dose groups. GF–195b, pp. 28, 36–64; GF–1615.1, p. 6; Tr. IX, p. 135; Tr. X, pp. 41–2. Because this calculation includes dosage groups that exceeded the MTD, I would not base a finding of furazolidone's carcinogenicity on this fact alone. However, when this fact is considered together with other relevant evidence in the record, I find that it is further evidence of the carcinogenic potential of furazolidone. The fact that treated male rats in all three of the Norwich studies that used rats developed the identical tumor, including rats in the Low-Dose Sprague-Dawley Study, suggests that this finding is not the result of overdosing. GF–195a, p. 24; GF–195b, pp. 28, 36–64; GF–196, pp. 4, 9–11, 26–7, 34–64; GF–1623.1, pp. 10–11.

The High-Dose Sprague-Dawley Study contained much the same evidence of biological significance as did the Fischer Rat Study and the Low-Dose Sprague-Dawley Study. For example, the High-Dose Sprague-Dawley showed a dose-related increase in multiplicity of mammary tumors and a decreased onset time in treated females. GF–195b, pp. 3, 8, 14–15, 26, 32–3, 36–64; GF–1623.1, p. 11, GF–1617.1, p. 9; HF–309, p. 16. I find substantial credible evidence in the record that both of these factors are biologically significant evidence of carcinogenicity. GF–1623.1, pp. 11–12; HF–104, pp. 167, 210–214; GF 1615.1, p. 4; GF–1612.1, pp. 6–7; Tr. IV, p. 153; Tr. X, p. 93.

In addition to this evidence, the data also showed a statistically significant increase in neural astrocytomas in males, both in all dosage groups and in just the two lower dosage groups, when the data were adjusted for differential mortality rates among the groups. GF–195b, pp. 28, 36–64; GF–1623.1, p. 11; GF–1612.1, p. 10; GF–1613.1, pp. 3–4, 6–9; HF–309, p. 16; HF–310, pp. 19–20. While I would not base a judgment of furazolidone's carcinogenic potential on this fact alone, I find that, when weighed with the other evidence in the record, the increased incidence of neural astrocytomas in males is additional evidence pointing to the ultimate finding of carcinogenicity. Tr. IV–121; Tr. X–36–38, 44.

When all of the above evidence is considered, i.e., the dose-related, statistically significant generation of the tumors reported in this study; the large increase in tumors in the low-dose group; the additional factors evidencing biological significance; and the similarity of these findings with similar studies, as a whole, the evidence from this study is inconsistent with the sponsors' assertions that the tumors reported in this study were the result of overdosing.

c. *The Fischer Rat Study.* In the Fischer Rat Study (GF–196), as noted earlier, even if we limit our review to the low-dose group, which received a dose of furazolidone that was below the MTD, a statistically significant increase in mammary neoplasms in treated animals was demonstrated. GF–1617.1, pp. 9–10.

The sponsors complain that benign and malignant tumors should not have been grouped together for the purposes of analysis. While I disagree with the sponsors for reasons that will be detailed in a separate section, I note that, even without combining benign and malignant tumors, mammary adenocarcinomas (malignant tumors)

alone exhibited a statistically significant dose-related increase in the three dosage groups in this study. GF–1615.1, p. 10. I find that the two factors listed above—the statistically significant increase in mammary adenocarcinomas in females in the low-dose group (which were not dosed above the MTD, GF–1617.1, p. 9) and the statistically significant increase in malignant mammary neoplasms in all dosage groups—are biologically significant evidence that furazolidone is an animal carcinogen. GF–1617.1, pp. 6, 9–10.

In addition several other indicators of furazolidone's carcinogenicity were found in the Fischer Rat Study. When all three dosage groups were considered, test animals fed furazolidone exhibited increases in mammary neoplasms with decreased onset time, increased multiplicity, and increased malignancy. GF–1617.1, pp. 9–10; GF–1623.1, pp. 21–2. While the sponsors complain that data from the mid- and high-dose groups should not be considered because the dose exceeded the MTD, I find that the continuity of tumor type as the dosage increased allows us to consider these findings as additional indications that furazolidone is an animal carcinogen.

As noted earlier, I also find it biologically significant that males in this study developed the same type of tumor—adrenal follicular adenomas—as did the male rats in the Low-Dose Sprague-Dawley Study (in which no dosage group exceeded the MTD) and the High-Dose Sprague-Dawley Study. GF–1623.1, pp. 10, 14–15; GF–1617.1, p. 10; GF–1612.1, p. 11; HF–309, p. 8; HF–310, pp. 21, 23; GF–196, pp. 4, 9–11, 26–7, 34–64. Moreover, furazolidone demonstrated a dose response as to these tumors in this study. GF–1615.1, p. 9; GF–1280, p. 11; GF–1613.1, p. 9. I find this to be additional evidence that furazolidone is an animal carcinogen.

d. *The Swiss Mouse Study.* The sponsors argue that the data in the Swiss Mouse Study (GF–197) are not biologically significant because, after the treatment period ended, the mid- and high-dose females and the high-dose males suffered a high mortality rate that is indicative of severe toxic stress. The sponsors argue that, whether this high mortality was due to environmental factors, intercurrent infection, or doses exceeding the MTD, the study is too flawed to provide evidence on the issue of whether furazolidone causes lung cancer.

I disagree. First, statistically significant dose-response trends for bronchial adenocarcinomas and/or adenomas in both sexes and for lymphosarcomas in males were reported. GF–1613.1, p. 8; GF–1615.1, p. 10. If the tumors were produced by environmental factors or from doses exceeding the MTD, I would not expect to find the clear dose-response relationship that this study evidences. In addition, I agree with the Center that the Swiss Mouse Study may actually understate the incidence of tumors expected from a lifetime exposure to furazolidone. GF–1623.1, pp. 23–4; GF–1617.1, pp. 7–8. This understatement may have occurred because test animals should be exposed to the test substance for 24 months in the standard bioassay (HF–104, p. 188). In the Swiss Mouse Study, by contrast, the test animals were dosed for only 13 months (GF–197, p. 5; HF–309, p. 19) but nevertheless produced positive results. Thus, I find that the data are at least as likely to understate the carcinogenic effect of furazolidone as they are to overstate it.

3. Combination of Tumor Type

The sponsors assert that benign tumors should not be considered in assessing the carcinogenicity of furazolidone, and that benign tumors should not be grouped together with malignant tumors for the purpose of statistical analysis. The sponsors also complain that different types of skin tumors were improperly grouped together for the purposes of analysis.

Benign neoplasms are considered to be indicative of cancer because benign and malignant tumors often arise in the same tissue and may represent a spectrum of tumor development and progression. GF–1623.1, pp. 13–14. In the Fischer Study (GF–196) and in the Low-Dose and High-Dose Sprague-Dawley studies (GF–196a and GF–196b, respectively), benign and malignant mammary tumors were grouped together because benign mammary tumors can progress to malignancy, because they arise in common tissue (mammary epithelium), and because of differences in diagnosis from one pathologist to another. GF–1623.1, pp. 13, 16; Tr. III, p. 84. I find that the grouping of benign and malignant mammary tumors was proper in these circumstances.

I also note that, while the sponsors rely on a finding of the International Agency for Research on Cancer that only malignant neoplasms provide evidence of cancer (see HF–104, p. 279), the NTP, an arm of the Department of Health and Human Services that was set up to conduct toxicology studies, does consider the increase in benign tumors and an increase in a combination of benign and malignant tumors, under appropriate conditions, when evaluating carcinogenicity. HF–104, pp. 228–229, 232; GF–1700, p. 11; GF–1701, p. 7.

I find that, based on the common organ and tissue site and the known tendency of mammary neoplasms to progress to cancer, the consideration of benign mammary neoplasms and their combination with malignant mammary tumors for the purpose of analysis were appropriate in the Norwich studies. I also find that there is no credible or sufficient evidence in the record to the effect that any known tumorigen causes only benign tumors. I also find that, because the decision to withdraw the NADAs for furazolidone rests on the general safety clause as well as the Delaney clause, the evidence in the record that furazolidone causes an increased incidence of benign mammary neoplasms in treated test animals which received doses below the MTD is evidence that, when considered in conjunction with evidence of mutagenicity, supports the conclusion that furazolidone is no longer shown to be safe.

I further find that the combination of various types of skin tumors for the purposes of analysis was proper to determine that carcinogenicity or tumorigenicity of furazolidone. Combining skin carcinomas and epitheliomas is acceptable under the NTP guidelines (HF–104, p. 232). These types of tumors gave statistically significant dose-response relationships in Fisher 344 rats. GF–1613.1, p. 8. While I would not base a finding of furazolidone's carcinogenicity or tumorigenicity on skin tumor data alone, I find that it is additional relevant evidence that, when considered with the other evidence in the record, helps demonstrate the carcinogenic and tumorigenic properties of furazolidone.

In summary, I find that the four Norwich studies, taken as a whole, provide enough evidence of furazolidone's carcinogenic potential to meet the Center's burden of demonstrating new evidence raising questions about the safety of furazolidone that are sufficiently serious to require the sponsors to demonstrate furazolidone's safety, which they have not done. In each of the four studies, the tumor types were biologically significant because each of them has the potential to affect adversely the health of the animal in which they were observed. Moreover, feeding furazolidone to rodents significantly increased the incidence of each type of tumor, and, where mammary neoplasms occurred, it increased their multiplicity and decreased the time to tumor when compared to rodents that were not fed furazolidone. GF–1623.1, pp. 11–2.

4. Historical Range of Tumor Development

The sponsors claim that the rates of mammary, skin and thyroid tumors observed in treated animals in the rodent studies were within the range of historical variation in spontaneous incidence for these tumors. HF–310, p. 22; HF–309, pp. 22, 25. However, the evidence of record does not support the sponsors' claim. I find that the incidence of mammary tumors in the control female Fischer rats of 20 percent (10/49) is below the historical range reported in the record of 31 percent to 46 percent. GF–1413.1, p. 1451; HF–257, p. 10. The incidence of mammary tumors in the low-dose group alone is 28/50, or 56 percent. GF–196, p. 26. I therefore find that the incidence of mammary tumors in treated females in the low-dose group alone in the Fischer Rat Study exceeds the historical range, providing additional evidence of furazolidone's carcinogenic properties.

The record also contains several reasons why tumor incidence may vary from study to study. HF–310, p. 22. This is the reason why valid scientific test protocols require that concurrent control animals be compared with a test group of treated subjects. This concept of concurrently controlled studies is basic to scientific investigation, and FDA cannot allow historical data to contradict concurrently controlled studies.

5. Hormonal Induction

The sponsors argue that, to the extent that furazolidone and nitrofurazone cause tumors, they do so through a hormonal mechanism which occurs only at dose levels over a threshold and, therefore, are not subject to the Delaney clause because the threshold is above any likely human consumption levels.

Based on the record, I draw three scientific conclusions that militate strongly against the argument that furazolidone's tumorigenicity is based solely or even primarily on a hormonal mechanism. First, the increase in non-endocrine tumors discussed in GF–1623.1, GF–1613.1, p. 8, and GF–1615.1, p. 10 is important in showing that a genotoxic (i.e., damaging to deoxyribonucleic acid, thus causing mutations or cancer) mechanism is almost certainly responsible.

Second, the positive results of mutagenicity tests on furazolidone contradict the hypothesis that hormonal induction is the sole mechanism by which the substance induces cancer. GF–709; GF–710; GF–829; GF–833; GF–834; GF–849; GF–850; GF–1620.1, p. 9.

Third, the failure to demonstrate increased plasma progesterone levels in orally dosed animals means that the target organs for carcinogenic action were not exposed to increased progesterone levels. GF–1018, table 8; HF–310, pp. 4–11. Thus, the hormone hypothesis is clearly refuted by the sponsors' own data.

Against these facts, the sponsors cite what they believe is evidence to the contrary. I will consider their contentions.

The sponsors contend that the Low-Dose Sprague-Dawley Rat Study (GF–195a) demonstrates that furazolidone, unlike direct acting carcinogens, causes tumors only at dose levels that cause hormonal disruption. HF–309, p. 29. However, as stated above the rats in this study did develop tumors, demonstrating a dose response, including tumors at doses below those that would cause "hormonal disruption." Thus, the sponsors' entire argument about a hormonal mechanism based on this study has a false premise.

The sponsors cite as "compelling evidence" supporting their hormonal theory (H&C exceptions, p. 114) studies showing that ovariectomy has been shown essentially to eliminate the occurrence of mammary tumors in furazolidone-treated rats, while significant numbers of tumors occurred in nonovariectomized rats.

However, ovariectomy of rats also reduces the incidence of mammary tumors induced by known carcinogens such as 3-methylchloranthrene (3MC) and *N*-nitrosomethylurea. GF–1417; GF–1616.1, p. 12. Both of these compounds are known to be potent genotoxic and carcinogenic substances. GF–1616.1, p. 12. Ovariectomy also reduced the control incidence of mammary tumors from 20 percent to 0 percent in female rats. GF–430, p. 13. Therefore, the diminution of tumors after ovariectomy is not evidence of the absence of a genotoxic mechanism.

The sponsors suggest that furazolidone blocks the synthesis of corticosterone, leading to enhanced production of progesterone and other corticosteroids, which in turn results in mammary hyperplasia. HF–310, pp. 3–11. This the sponsors consider to be further evidence of the existence of a hormonal mechanism.

On the contrary, a feeding study of the effect of furazolidone on plasma steroid levels, GF–1018, Table 8, showed that there was no increase in the plasma levels of progesterone at the highest dosage level. Thus, the thesis that increased progesterone levels caused by furazolidone are responsible for mammary tumors gains no support. The sponsors attempt to explain away the fact of decreased plasma progesterone levels at the high furazolidone dose by invoking a complex "adrenal adaption" theory, but their "evidence" acknowledges that "weather [adrenal adaption] could lead to mammary tumor formation remains obscure." GF–1011, p. 8. Hence, the sponsors have adduced no evidence for this theory.

I find that the data support the proposition that furazolidone can act as a direct carcinogen: in intact rats, no plasma progesterone increases were seen (GF–1018, Table 8); no change in progesterone-sensitive organs was seen (GF–195b); and mammary tumors were induced. GF–195b, pp. 32–3.

The sponsors also argue that the patterns of tumorigenesis in the four Norwich studies are "characteristic" of hormonal disruption (SX–187, pp. 6–7; Tr. IX–20A; HF–309, pp. 8–9), but their theory fails to explain the statistically significant increase in nonendocrine tumors found in these studies. See *supra*, pp. 19 and 30 and GF–1613.1, p. 8; GF–1615, p. 10; GF–1623.

Further, the sponsors argue that the hormonal mechanism in the rat is not duplicated in human physiology because the function of corticosterone in the rat is performed by cortisol in humans. Because of this difference, they say, the hormonal derangements caused by blocking the synthesis of corticosterone in the rat is less likely to occur in humans. Tr. X–63, 73. According to the sponsors, the evidence shows the rat to be a poor model for predicting the effects of furazolidone in humans because corticosterone is not the primary messenger regulating human hormonal balance. HF–309, pp. 3–4, 6–8, 15–9; HF–310, pp. 4–11, 27–30.

However, my examination of the evidence has revealed that the hormonal mechanism of tumor induction is not unique to the rate but has a physiological analog in man. Tr. X–61–65; Tr. IV–108–111. Hence, the difference between cortisol and corticosterone does not constitute a reason why furazolidone would not have a similar effect in humans.

To conclude, whether or not hormonal changes may occur as a result of acute treatment with furazolidone, as argued by the sponsors, such a mechanism cannot be invoked as the only tumor-inducing mechanism given the evidence of the presence of (1) nonendocrine tumors (GF–1613.1, p. 8, GF–1615.1, p. 10, GF–1623), (2) mutagenic activity (GF–849; GF–850), and (3) the failure of furazolidone to elevate plasma progesterone in any long-term feeding study. GF–1011, pp. 7–8; GF–1018, p. 18.

In fact, the sponsors have not proven that the tumors in the Norwich studies were induced solely by hormonal imbalance. Hence, I reject the sponsors' argument that furazolidone tumors were hormonally medicated.

B. Residue Detection

Having determined that furazolidone is an animal carcinogen at worst, and a tumorigen and suspected carcinogen at best, I now must determine whether residues of furazolidone would remain in animal food products after furazolidone had been given to the animal under the current labeling instructions and whether those residues raise concerns about safety. This determination is necessary under the DES proviso to the Delaney clause (21 U.S.C. 360b(d)(1)(I)(ii)) and is also necessary under the general safety clause. Section 360b(d)(2)(A) states that, in assessing the safety of a drug, I must consider "the probable consumption of such drug, and of any substance formed in or on food because of the use of such drug * * *."

The sponsors have attempted to demonstrate that, under the method of analysis they have proposed, no residues of furazolidone are found in test animals that are 0.5 ppm or greater. H&C exceptions at 132 ff. The sponsors further assert that only furazolidone, and not its metabolites, is covered by the Delaney clause. The argument is based on FDA's regulatory treatment of other chemicals. SK exceptions at 30–33. According to the sponsors, the phrase, "such drug," as used in the "DES Proviso" to the Delaney clause, 21 U.S.C. 360b(d)(1)(I)), refers only to the new animal drug which is the subject of the NADA and which has been shown to induce cancer under the Delaney clause. The sponsors contend that the term, "such drug," does not include the metabolites or degradation products of the drug and charge that the ALJ erred in his interpretation of the Delaney clause by stating, on pages 8, 9, and 13 of the I.D., that the residue includes both the parent drug and its metabolites. SK exceptions at 30 ff. The sponsors further argue that, to the extent the metabolites of furazolidone are in question, the metabolites are incapable of harming consumers of food products that may contain these metabolites. H&C exceptions at 127 ff.

After reviewing the evidence and the relevant portions of the statute, I must disagree with the sponsors on every point. First, I find credible evidence in the record that residues of furazolidone as high as 3.62 ppm were recovered in animals fed furazolidone under conditions of use specified in the label (GF–1618.1, pp. 5, 7; GF–883; GF–884; GF–1078, p. 39; GF–1007, p. 33). These residue levels far exceed the 0.5 ppm level claimed by the sponsors to be of no carcinogenic concern. SX–182, p. 7; HF–307, pp. 5–6; SX–183, p. 15; Tr. X–17–19.

I also find that both the general safety clause and the Delaney clause require the agency to consider the effect that the consumption of drug residues, including metabolites, will have on human consumers. As noted above, the general safety clause, 21 U.S.C. 360b(d)(2)(A), specifically requires the agency to consider this factor when reviewing an original application for an NADA. When the agency considers whether to withdraw an NADA for safety reasons under section 360b(e)(1) of the act, the agency certainly may consider the safety factors mandated by Congress in section 360b(d). See DES Commissioner's Decision, 44 FR 54652. To hold otherwise would be inconsistent with the clear intent of Congress in passing safety legislation intended to protect the American public from ingesting potentially harmful drug residues in food products.

These sponsors' arguments that nitrofurans' metabolites are not of carcinogenic concern are both contrary to principles acknowledged by the parties (Combined Critique of Center for Veterinary Medicine's Allegations of Facts, ¶¶ 208–9) and the law of this proceeding (49 FR 34971 and 34973, September 4, 1984).[6]

More importantly, interpreting the Delaney clause so as not to defeat its purpose requires that FDA find that the clause comprehends metabolites as well as parent drugs. The Center reminds us (Replies to Exceptions, pp. 26–7) that animal drugs may (1) be less carcinogenic than their metabolites, (2) leave no trace of parent compound in the edible tissue of the treated animals, and (3) cause no adverse effects to the treated animals. Hence, the sponsors' interpretation would compel FDA to conclude that dangerous human carcinogens could not be banned under the Delaney Clause. I reject this interpretation.

H&C claims that the court in *Hess and Clark I* accepted its interpretation of the term "residue." However, the language to which H&C refers, 495 F.2d at 991, was, in context, a reference to H&C's argument that the residues were actually attributable to the impurity, "pseudo-DES," not DES residues themselves. Neither is H&C's reliance on *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984) apt. There, the court found that a food additive containing a carcinogenic impurity is not subject to the Delaney clause if the additive, when tested as a whole, does not cause cancer. Here, furazolidone and its metabolites have been shown to cause cancer.

Alleged examples of FDA actions contrary to this position do not form a basis for a contrary conclusion. The sponsors have cited no published FDA document, much less a binding policy statement, in which FDA concluded that the Delaney clause does not apply to metabolites. Nor have they cited a single chemical regulated in a contrary manner.

For the reasons stated above, I find that the Delaney clause does apply to carcinogenic metabolite residues. Therefore, it becomes clear that the sponsors' proposed method of residue detection fails to meet the standards derived from the statute. The sponsors concede that their chosen method of residue detection—the Winterlin method—does not measure total residues, but only residues of the parent compound. HF–260; SX–183, pp. 4–5; Tr. X–11. The Winterlin method of analysis would still be acceptable if the sponsors had provided data demonstrating that the depletion of the measured entity (the "marker") from the measured animal tissue (the "target tissue") bore a known relationship to the depletion of all drug residues of toxicological or carcinogenic concern (December 31, 1987, 52 FR 49582 and 49583); GF–1610.1, p. 4. However, the sponsors have failed to do so. Hence, they have failed to adduce an acceptable method of residue detection that would permit FDA to determine that furazolidone residues remaining in treated animals would be safe to consumers.

The sponsors claim that the evidence demonstrates that none of the metabolites of furazolidone remaining in treated animals would be harmful to consumers. SX–180, p. 3; SX–181, pp. 3–4; SX–182, p. 4. For example, the sponsors claim that the presence of the 5-nitro group in nitrofuran compounds is essential for any mutagenic or carcinogenic activity resulting from its partial reduction into reactive intermediates. SX–182; SX–181; SX–182; HF–308; SF–36.

However, my review shows that the evidence indicates that metabolites of furazolidone without the 5-nitro group do have some mutagenic activity. Aminofuran and acetamidofuran, for example, tested both with and without

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[6] "* * * in the absence of information to the contrary, all drug-related residues including metabolites are presumed to be potential carcinogens, and must be taken into account in determining if there is 'no residue.'" 49 FR 34973.

activation, are mutagenic. HF–97, Table 10. Thus, I find that nitroreduction does not necessarily preclude subsequent toxicity.

The evidence shows that there are a number of different metabolic pathways for the breakdown of furazolidone. GF–1621.3. Depending on the pathway, metabolites that still retain the furan ring with the 5-nitro group may be formed. Further, metabolites having the 5-nitro group were detected in the urine of animals treated with furazolidone. GF–712; GF–751. These metabolites included the "415" metabolite, of which the sponsors provide only unsupported speculation concerning nonmutagenicity, but which does not seem to have been investigated. HF–307, p. 18. Hence, I find that this metabolite has not been proven safe.

I also find that at least two metabolites of furazolidone are mutagenic. The sponsors have cited SF 36 to demonstrate to the contrary. However, after examining SF 36 (pp. 9–10), I find that two of the acknowledged metabolites of furazolidone—specifically, aminofuran and acetamidofuran—are mutagenic. For the reasons stated at p. 57, *infra*, I find that mutagenicity is an indication of carcinogenicity as well as a separate health hazard.

The sponsors contend that all the metabolites in the tissues after the required 5-day withdrawal period are harmless because the free metabolites are water soluble and excreted. Tr. XI–72. They claim that the remaining residues are in the form of adducts, which are covalently bound forms of metabolites that are not reactive, and, therefore, are not of carcinogenic concern. SX–182; pp. 4, 6–7, 10; SX–180, pp. 3, 10; SX–181, pp. 4–5, 7–10; HF–307, pp. 8–10, 12–14. However, my examination of the evidence contradicts this position, indicating that not all of the drug is excreted, and that there are significant amounts of extractable residue of furazolidone present in animal tissue, even 14 days after drug withdrawal. GF–556; GF–1618.1, p. 11; GF–1079, pp. 1, 14. This implies that there are unbound residues in the tissue or that the bound residues are unstable. Protein adducts may pose a toxicological hazard if they are not stable, according to the evidence. GF–1459, pp. 2–3; GF–1545, p. 45. Since the nature of these residues and their toxicity were not evaluated, they cannot be regarded as safe.

The sponsors cite further evidence to show that, even if the potential adducts were consumed in treated tissue by humans, and subsequently hydrolyzed, no threat would be posed to human health or safety. HF–307, p. 10. However, after reviewing the evidence, I find that hydrolysis in the human digestive system can free adducts, including semicarbizide, which has been shown to be carcinogenic. Tr. XI–30, 92–4. Residues of furazolidone are clearly bioavailable. HF–76. Inasmuch as the identity of all of these residues is not known, toxicity and carcinogenicity of these compounds cannot be determined, and they cannot be considered safe. GF–1618.

I also find that not all the metabolites of furazolidone are known, and that their safety, given what we know of the other metabolites of furazolidone, cannot be assumed. HF–310, p. 14; GF–1617.1, pp. 9, 12; GF–1623.1, p. 22. On the basis of the factual evidence in the record, I find that the Winterlin method of analysis is an unacceptable method of residue detection until the sponsors can demonstrate that the marker—the measured substance—bears a known relationship to the depletion of the total drug residue.

Contrary to the sponsors' assertions, the evidence fails to demonstrate that furazolidone's metabolites pose no health risk to the human consumers. Given all the other evidence in the record demonstrating that furazolidone is a carcinogen and that its metabolites are mutagens, I find that, contrary to the sponsors' assertions, the metabolites of furazolidone pose a potential health risk to human consumers. Because the sponsors have failed to adduce a method of detecting furazolidone's total residues that measures, even indirectly, the depletion of these residues from treated animals, I cannot determine that, under the methods of use specified in the labeling, no residues of carcinogenic or toxicological concern remain in the animal or food products derived from them.

Accordingly, I find that the NADAs for furazolidone should be withdrawn under both the Delaney clause and the general safety clause, because I have no reliable method of detecting drug residues that pose a safety threat to human consumers who eat animal products that may contain furazolidone residues. Whereas the act requires me to consider such residues, it is up to the sponsors to show that there is a reliable method to identify and determine the safety of such residues. They have not done so.

C. Mutagenicity

I find that furazolidone is a mutagen. Tr. XII–12–3, 96; SF–36. Mutagenicity is a scientifically recognized indication of potential carcinogenicity. HF 104, p. 22. I agree with Center witness Dr. Rosenkranz that both furazolidone and nitrofurazone "have been documented as mutagenic in systems which are highly predictive of cancer-causing ability." GF–1620.1, p. 013, ¶ 26. Also, the genetic damage brought about by a mutagen is a risk to health by itself, quite apart from its relation to carcinogenicity, as former Commissioner Jere Goyen found in his Cyclamate decision (September 16, 1980, 45 FR 61507). Finally, I find that, insofar as mutagenicity is concerned, the sponsors have demonstrated no safe dose of these two nitrofurans. See Tr. XI–33.

The sponsors claim that, where furazolidone and/or its metabolites are shown to be mutagenic, they are only weakly so and, further, that a weak mutagen is unlikely to be a carcinogen. H&C exceptions at 130; SK exceptions at 98. However, I note that nitrofurantoin, one of the chemicals the sponsors contended was a weak mutagen but not a carcinogen, has since been proven to be an animal carcinogen in a study submitted for the record by both parties. See GF–1701. Therefore, based on the evidence in the record, I find substantial credible evidence that several of the known metabolites of furazolidone are mutagens that must be treated as carcinogens.

III. Nitrofurazone

A. New Evidence That Nitrofurazone Is Not Shown To Be Safe

The ALJ found, on the basis of the evidentiary record before him, that nitrofurazone is an animal tumorigen, and, therefore, is not shown to be safe under the general safety clause. The ALJ further found that no reliable detection method has been demonstrated to detect nitrofurazone-derived residues in edible animal tissue and that the residues of nitrofurazone were not shown to be safe. He concluded that the evidence before him raised serious scientific questions about the safety of nitrofurazone and resulting residues. I.D., p. 75.

Since the issuance of the I.D., the record has been reopened to receive a draft NTP report that finds, on the basis of state-of-the-art bioassays, that there is clear evidence that nitrofurazone is an animal carcinogen. GF–1700. Therefore, this study both strengthens and validates the prior evidence of record, which indicated that nitrofurazone is a suspect carcinogen.

In the face of overwhelming record evidence that nitrofurazone is a

carcinogen and a tumorigen,[7] I find that new evidence demonstrates that nitrofurazone is no longer shown to be safe under the general safety clause. Thus, the Center has carried its threshold burden with respect to nitrofurazone.

B. Residue Detection

The sponsors have offered the same method of residue detection for nitrofurazone that they offered for furazolidone, namely, the Winterlin method. This method is inadequate to detect nitrofurazone-derived residues for the same reason that it is inadequate to detect furazolidone-derived residues. The Winterlin method does not detect residues of any of the metabolites of nitrofurazone, but only of the parent drug itself. HF–260; SX–183, pp. 4–5; Tr. X–11. This omission would not be fatal if the sponsors had demonstrated that the depletion of the parent compound from edible animal tissue bears a known relationship to the depletion of all nitrofurazone residues that are potentially unsafe. However, the sponsors have produced no such evidence. In light of this evidentiary omission, I am unable to determine the probable consumption of the parent drug or "of any substance formed in or on food" (21 U.S.C. 360b(d)(2)) as the result of the use of nitrofurazone in food-producing animals.

I agree with the Center that no concentration of the residue of a drug shown to be a carcinogen, be it in a parent drug or in its metabolites, can be shown to be of no carcinogenic concern. See citations from the Center's main brief at 82–87; Id. at 76. I find that the calculation of an acceptable daily intake (ADI) is inappropriate for a carcinogen. Tr. XV–15–6. Even if such a calculation might be appropriate for a carcinogen, I would have to find that one is not appropriate for these nitrofurans because the ADI approach is based upon observation of a no-observed-effect level, which was not determined in the Low-Dose Sprague-Dawley rat study. See citations found in the Center's main brief at 89.

IV. Other Exceptions

SK excepts to the failure of the ALJ to note that nitrofuraldehyde and 5-nitro-furoics retain the 5-nitro group. SK Exceptions at 61. I grant this exception but find that this has no larger implication with respect to other conclusions in the I.D. However, I reject SK's contention that these compounds have low potential for biological activity because of their low mutagenicity and rapid oxidation or reduction and elimination from the animal's body. First, the relationship between mutagenicity and carcinogenicity is qualitative and not quantitative HF–104. Therefore, low mutagenicity does not necessarily indicate negligible carcinogenicity or noncarcinogenicity. As to the rapidity of oxidation or reduction and elimination from the animal's body, I find that there is of record no persuasive evidence that oxidation or reduction rates have any relationship to the toxicological effects of the nitrofurans.

2. I grant SK's exception (Exceptions at 62) to the wording of the I.D. at 51, lines 13–6, concerning whether 4-ipomeanol or 1-aminopyrine are metabolites of furazolidone. The significance of these compounds is that: (1) They are furans without the 5-nitro group, and are thus toxic; and (2) amino-aromatic compounds can be activated to reactive intermediates. Tr. IX–102–3. Granting this exception does not require any further amendment to the I.D.

3. As to evidentiary rulings, I affirm the rulings of the ALJ for the reasons he stated with one exception. I agree with SK that the ALJ erroneously struck portions of the testimony of two witnesses, Doctors Shriner and Olive, on grounds that their testimony was insufficiently supported by citations. Under the Federal Rules of Evidence, all relevant evidence is admissible, except as otherwise provided by law, the Constitution, or the rules of evidence. Federal Rules of Evidence, Rule 402. According to Rule 401, "relevant evidence," means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." In my view, the testimony of Doctors Shriner and Olive, if believed, would have at least had some tendency to establish SK's contentions in this proceeding. Further, under FDA's procedural regulations (21 CFR 12.94) evidence is not made excludable simply because it contains either no citations or insufficient citations. Therefore, I rule that the ALJ erred in excluding the subject testimony. The Center's objections should have been overruled as objections that went to the weight to be accorded the testimony, not to its admissibility.

Having overruled the ALJ on this admissibility question, I nevertheless find that the testimony of the two witnesses is entitled to very little weight as a result of the deficiencies complained of in the Center's objection. That is, these witnesses' views are entitled to little weight because they were not accompanied by adequate citations to evidence of record or to any other supporting literature. For this reason, although I have considered the testimony of Doctors Shriner and Olive, I give it insufficient weight to cause it to change my mind on any fact in issue in this proceeding. Though error, the exclusion was harmless error.

V. Conclusions and Order

The foregoing opinion in its entirety constitutes my findings of fact and conclusions of law. Based on the foregoing discussion, findings, and conclusions, I affirm the ALJ's initial decision as corrected and supplemented by this decision.

Specifically, I conclude that:

(1) New evidence shows that there is a reasonable basis from which serious scientific questions may be inferred about the safety of furazolidone and nitrofurazone and the residues that result from their use.

(2) Neither nitrofurazone nor furazolidone nor their metabolites have been shown to be safe under the conditions of use upon the basis of which the applications were approved within the meaning of 21 U.S.C. 360b(e)(1)(B).

(3) No reliable detection method has been demonstrated to be able to detect nitrofurazone-related residues in edible tissues when conditions of use approved in the NADAs are followed.

(4) The residues of nitrofurazone and furazolidone have not been shown to be safe.

(5) The Winterlin method of detection is incapable of measuring the metabolites of furazolidone. No other method of detection has been demonstrated to be able to measure these metabolites. Hence, no reliable method of detection has been demonstrated which is fully adequate to detect furazolidone-related residues in edible tissues when conditions of use approved in the NADAs are followed.

(6) A practical method of detection capable of detecting both the parent drug, furazolidone, and its metabolites does not exist. Therefore, it is impossible to quantify and qualify the nature of the residues of furazolidone.

(7) Furazolidone and its metabolites have been shown by substantial new evidence to induce cancer in man or animals as prohibited by 21 U.S.C. 360b(d)(1)(I).

(8) A determination of the concentration of drug residues

[7] There is ample evidence of record that tumorigens (inducers of benign tumors) can also be carcinogens (inducers of malignant tumors). CF–1700, p. 7; Tr. III–77–81; Tr. X–112.

consisting of the parent drug, furazolidone, and its metabolites that is of no carcinogenic concern has not been adequately established.

(9) Under the conditions of use specified in the labeling, the actual concentration of drug residues of furazolidone has not been shown to be at or below the level of no carcinogenic concern.

Therefore, I order that the approval of all NADAs for nitrofurazone and furazolidone listed in this document be hereby withdrawn pursuant to 21 U.S.C. 360b(d)(i)(I) and 360b(e)(1)(B). In addition, I order the removal of 21 CFR 558.262 and 558.370. I also order deletions of all references to furazolidone and nitrofurazone contained in 21 CFR 510.515, 558.4, and 558.15.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.515 [Amended]

2. Section 510.515 *Animal feeds bearing or containing new animal drugs subject to the provisions of section 512(n) of the act* is amended by removing paragraphs (a)(4) and (a)(5); by removing paragraphs (b)(11), (b)(15), (b)(17)(ii) and reserving them; and in the table in paragraph (c) by removing the entries for "8.", "9.", and "10.", and redesignating entries 11 through 14 as 8 through 11.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.4 [Amended]

4. Section 558.4 *Medicated feed applications* is amended in the Category II table in paragraph (d) by removing the entries for "Furazolidone" and "Nitrofurazone."

§ 558.15 [Amended]

5. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in the tables in paragraphs (g)(1) and (g)(2) by removing the entries for "Hess & Clark and SmithKline Animal Health Products."

§ 558.262 [Removed]

6. Section 558.262 *Furazolidone* is removed from subpart B.

§ 558.370 [Removed]

7. Section 558.370 *Nitrofurazone* is removed from subpart B.

Dated: August 16, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-20219 Filed 8-22-91; 8:45 am]

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federal register

Friday
August 23, 1991

Part IV

The President

Proclamation 6323—National Rice Month, 1991

Proclamation 6324—National Awareness Month for Children With Cancer, 1991

Federal Register

Part IV

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Proclamation 6323—National Rice Month, 1991

Proclamation 6324—National Awareness Month for Children With Cancer, 1991

Federal Register
Vol. 56. No. 164
Friday, August 23, 1991

Presidential Documents

Title 3—

The President

Proclamation 6323 of August 20, 1991

National Rice Month. 1991

By the President of the United States of America

A Proclamation

A staple food for much of the world's population, rice is one of the most important grains grown today. It is cultivated in more than 100 countries and on every continent except Antarctica. Rice was cultivated in North America as early as 1696. Indeed, by the time the United States declared its independence from Great Britain, rice had become one of this country's major agricultural exports.

Today the United States is one of the world's leading exporters of rice, supplying about 20 percent of the rice in world trade. In addition, much American-grown rice has been provided to other countries through Food for Peace programs, which have helped to promote the social and economic well-being of less developed nations and provided vital sustenance to victims of disaster.

The United States Department of Agriculture reports that American growers harvested more than 7 million metric tons of rice last year. The value of this crop is important to our Nation's economy.

Rice is an important agricultural commodity not only in terms of its economic value but also in terms of its nutritional value. An excellent source of complex carbohydrates, rice can be a healthy part of a well-balanced diet. It contains only a trace of fat and is cholesterol- and sodium-free.

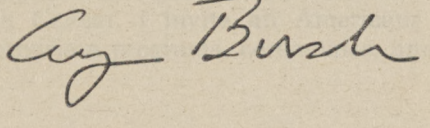
Consumers can enjoy various types of rice, from brown rice to the more traditional white rice, which is utilized in gourmet recipes as it is in simple meals. Wild rice, a native grain of North America, is being increasingly enjoyed by American consumers.

Rice may also be processed in various forms: as bran or flour in baked goods, or as an ingredient in cereals and healthful snacks. Rice is also an important component in the domestic brewing of beer.

To promote greater awareness of the versatility and the value of rice, and to celebrate America's status as a major exporter of rice for both commercial and humanitarian purposes, the Congress, by Public Law 101–492, has designated the month of September 1991 as "National Rice Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 1991 as National Rice Month.

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



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Presidential Documents

Proclamation 6324 of August 20, 1991

National Awareness Month for Children With Cancer, 1991

By the President of the United States of America

A Proclamation

Our Nation's fight against cancer has advanced on many fronts, from education and prevention to diagnosis and treatment. This month, we celebrate the remarkable progress that has been made in saving children with cancer.

The Department of Health and Human Services reports that, thanks to important scientific breakthroughs, the mortality rate for childhood cancer has dropped by more than 50 percent since 1950. This dramatic decline has been made possible by improved diagnostic and prognostic techniques, by advances in technology, and by advances in the treatment of serious forms of cancer such as leukemia and Wilm's tumor. For example, long-term research has enabled physicians to predict with greater success which patients are most likely to suffer a relapse—thereby helping the health care team to plan the optimal course of therapy.

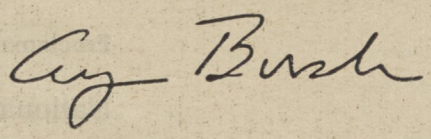
As a result of such progress, more than 70 percent of the children who were diagnosed in the 1980s as having acute lymphocytic leukemia have sustained long-term remission and can be considered cured. This is an incredible improvement when compared to the fact that, during the early 1960s, only about 4 percent of leukemia patients survived the disease.

More than a tale of medical progress, however, the story of childhood cancer also reveals the strength and the resilience of the human spirit. Children with cancer have consistently inspired others through their courage and determination. During National Awareness Month for Children with Cancer, we salute these brave youngsters and their parents, who share in their suffering and provide them with love and support, as well as the many scientists and researchers who are pressing on to new frontiers in the fight against this disease. We also gratefully recognize the pediatric oncology nurses, the social workers and clergy, and the many other professionals and volunteers who—with great compassion and skill—help young cancer victims and their families through difficult times.

Of course, while members of the National Cancer Institute and other, private research organizations have won key victories for children with cancer, we know that much work remains to be done. According to the Department of Health and Human Services, an estimated 7,800 American children will be diagnosed this year as having cancer. We will continue working together for their sake and for the sake of generations to come.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 1991 as National Awareness Month for Children with Cancer. I invite all Americans to join in observing this month with appropriate programs, ceremonies, and activities.

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



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